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# Federal Register

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- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
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- WHAT:** Free public briefings (approximately 3 hours) to present:
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  2. The relationship between the Federal Register and Code of Federal Regulations.
  3. The important elements of typical Federal Register documents.
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- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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**WHEN:** June 9 at 9:00 am  
**WHERE:** Ralph Metcalfe Federal Building  
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**RESERVATIONS:** 1-800-366-2998

### WASHINGTON, DC

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**WHERE:** Office of the Federal Register  
Conference Room, 800 North Capitol Street  
NW., Washington, DC (3 blocks north of  
Union Station Metro)  
**RESERVATIONS:** 202-523-4538



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

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Part 77

[Docket No. 94-047-1]

#### Tuberculosis in Cattle and Bison; State Designation

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the tuberculosis regulations concerning the interstate movement of cattle and bison by raising the designation of New York from a modified accredited State to an accredited-free State. We have determined that New York meets the criteria for designation as an accredited-free State.

**DATES:** Interim rule effective on June 6, 1994. Consideration will be given only to comments received on or before August 5, 1994.

**ADDRESSES:** Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 94-047-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ronald A. Stenseng, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, Veterinary Services, APHIS, USDA, room 729, Federal

Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8715.

#### SUPPLEMENTARY INFORMATION:

##### Background

Bovine tuberculosis is the contagious, infectious, and communicable disease caused by *Mycobacterium bovis*. The tuberculosis regulations, contained in 9 CFR part 77 (referred to below as the regulations), regulate the interstate movement of cattle and bison because of tuberculosis. Cattle or bison not known to be affected with or exposed to tuberculosis are eligible for interstate movement without restriction if those cattle or bison are moved from jurisdictions designated as accredited-free States or modified accredited States. The regulations restrict the interstate movement of cattle or bison not known to be affected with or exposed to tuberculosis if those cattle or bison are moved from jurisdictions designated as nonmodified accredited States.

The status of a State is based on its freedom from evidence of tuberculosis, the effectiveness of the State's tuberculosis eradication program, and the degree of the State's compliance with the standards contained in the "Uniform Methods and Rules—Bovine Tuberculosis Eradication," which is part of the regulations via incorporation by reference in part 77. A State must have no findings of tuberculosis in any cattle or bison in the State for at least 5 years in order to be designated as an accredited-free State.

Before publication of this interim rule, New York was designated in § 77.1 of the regulations as a modified accredited State. However, New York now meets the requirements for designation as an accredited-free State. Therefore, we are amending the regulations by removing New York from the list of modified accredited States in § 77.1 and adding it to the list of accredited-free States in that section.

##### Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted, as New York currently meets the criteria for designation as an accredited-free State. This action provides prospective cattle

and bison buyers with accurate and up-to-date information, which may affect the marketability of cattle and bison since some prospective buyers prefer to buy cattle and bison from accredited-free States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

#### Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

There are approximately 21,000 cattle herds in New York, with a total of about 1,560,000 cattle. An estimated 90 percent of these herds are owned by small entities. Changing the status of New York may affect the marketability of cattle and bison from the State, since some prospective cattle and bison buyers prefer to buy cattle and bison from accredited-free States. This may result in some beneficial economic impact on some small entities. However, based on our experience in similar designations of other States, the impact should not be significant.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12778**

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

**List of Subjects in 9 CFR Part 77**

Animal diseases, Bison, Cattle, Reporting and recordkeeping requirements, Transportation, Tuberculosis.

Accordingly, 9 CFR part 77 is amended as follows:

**PART 77—TUBERCULOSIS**

1. The authority citation for part 77 continues to read as follows:

**Authority:** 21 U.S.C. 111, 114, 114a, 115-117, 120, 121, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

**§ 77.1 [Amended]**

2. In § 77.1, in the definition for *Modified accredited state*, paragraph (2) is amended by removing "New York,".

**§ 77.1 [Amended]**

3. In § 77.1, in the definition for *Accredited-free states*, paragraph (2) is amended by adding "New York," immediately after "New Jersey,".

Done in Washington, DC, this 31st day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-13652 Filed 6-3-94; 8:45 am]

BILLING CODE 3410-34-P

**9 CFR Part 92**

[Docket No. 94-032-1]

**Importation of Brushtail Possums and Hedgehogs From New Zealand**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the animal importation regulations to prohibit the importation of brushtail possums and hedgehogs from New Zealand. This action is necessary to prevent the

introduction of tuberculous animals into the United States. The intended effect is to protect domestic livestock from this disease.

**DATES:** Interim rule effective May 31, 1994. Consideration will be given only to comments received on or before August 5, 1994.

**ADDRESSES:** Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 94-032-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

**FOR FURTHER INFORMATION CONTACT:** Dr. Samuel Richeson, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import and Export, Veterinary Services, APHIS, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8170.

**SUPPLEMENTARY INFORMATION:****Background**

The regulations in 9 CFR part 92 (referred to below as the regulations) prohibit or restrict the importation into the United States of certain animals and birds to prevent the introduction of communicable livestock and poultry diseases, including bovine tuberculosis.

Bovine tuberculosis is a serious communicable disease of cattle, bison, and other species, including humans, caused by *Mycobacterium bovis*. Bovine tuberculosis (referred to below as TB) causes weight loss, general debilitation, and sometimes death. This disease manifests itself as lung disease or draining, nonhealing abscesses, or both. It is generally transmitted by breathing in respiratory excretions from infected animals or drinking infected milk from infected animals.

New Zealand has reported that TB is endemic in the brushtail possum (*Trichosurus vulpecula*). These possums are a constant source of disease for the domestic livestock population of New Zealand. Based upon information received from the New Zealand Ministry of Agriculture and Fisheries and information available in scientific literature, we recently prepared a risk assessment regarding the importation of brushtail possums from New Zealand

into the United States. This risk assessment indicates that 45.8 percent (range 7.2 percent to 67.4 percent) of consignments of imported brushtail possums (generally imported in 4 consignments of 12 animals each) would contain 1 or more possums infected with *Mycobacterium bovis*. Additionally, there is no recognized test for detecting TB in brushtail possums. These factors present a significant risk that TB-infected brushtail possums from New Zealand could be imported into the United States.

Because hedgehogs from New Zealand occupy the same habitat and geographical areas as the brushtail possums, there is some risk that hedgehogs could contract TB from TB-infected possums. Also, as with the brushtail possums, there is no recognized test for detecting TB in hedgehogs. These factors present an unacceptable risk that TB-infected hedgehogs from New Zealand could be imported into the United States.

There have been a number of importations of brushtail possums and hedgehogs from New Zealand into the United States. Both these animals could likely survive and thrive in the wild in much of the United States. If infected with *Mycobacterium bovis* and allowed to roam freely, these animals could disseminate the TB organism over range and pasture land. Consuming grass contaminated with the TB organism by TB-infected brushtail possums is the major mode of TB infection in cattle in New Zealand. To prevent a similar situation in the United States, we are amending the regulations by adding a new subpart G to prohibit the importation of brushtail possums and hedgehogs from New Zealand into the United States.

**Immediate Action**

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the introduction of TB into the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive

and any amendments we are making to the rule as a result of the comments.

#### Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

This rule prohibits the importation of brushtail possums and hedgehogs from New Zealand into the United States. These animals are imported as pets, for animal exhibitions, and for petting zoos.

Regulating the importation of certain animals that pose a disease risk to livestock in the United States is a continuing program. Discontinuing the importation of brushtail possums and hedgehogs from New Zealand will have no significant cost impacts, but it will produce a benefit by helping to protect domestic livestock from this disease.

The incidence of TB in domestic cattle remains relatively small; however, it has increased slightly in the past several years. Most of the incidences have occurred in States that share a border with Mexico. Mexican-origin cattle accounted for 83 percent of all TB lesions disclosed at slaughter in 1992. There are very few cases of TB in the rest of the country.

The inventory of all cattle and calves in the United States is estimated at 101.7 million head, with an estimated value of almost \$67 billion. Nationwide, there are approximately 1.2 million operations with cattle and calves, according to USDA data.

The economic impact on the domestic cattle industry if TB-infected brushtail possums and hedgehogs from New Zealand were imported into the United States would be severe. The annual costs in New Zealand for possum damage (for example, damage to the environment and bovine TB attributable to the brushtail possum), disease surveillance, control and research probably exceed \$20 million.

According to the Fish and Wildlife Service, there are probably two known importers of brushtail possums and hedgehogs from New Zealand. These importers would be considered small entities under the Small Business Administration criteria. Although the Fish and Wildlife Service could not provide data on the actual number of imported brushtail possums and hedgehogs imported from New Zealand into the United States by these importers, the Service has stated that these animals represent a very small percent of the total number of animals

imported into the United States by these importers.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

#### Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### Paperwork Reduction Act

This document contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 is amended as follows:

#### PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 continues to read as follows:

**Authority:** 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

2. In part 92, a new subpart G is added to read as follows:

#### Subpart G—Hedgehogs and Possums

Sec.  
92.700 Definitions.  
92.701 Prohibition.

#### Subpart G—Hedgehogs and Possums

##### § 92.700 Definitions.

Wherever in this subpart the following terms are used, unless the context otherwise requires, they shall be construed, respectively, to mean:

*Brushtail possum.* Vulpine phalangers (*Trichosurus vulpecula*) of the family Phalangeridae.

*Hedgehog.* All members of the family Erinaceidae.

*United States.* All of the States of the United States, the District of Columbia,

Guam, the Northern Mariana Islands, Puerto Rico, the Virgin Islands of the United States, and all other territories and possessions of the United States.

##### § 92.701 Prohibition.

No brushtail possum or hedgehog from New Zealand shall be imported into the United States.

Done in Washington, DC, this 31st day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-13651 Filed 6-3-94; 8:45 am]

BILLING CODE 3410-34-P

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 2

RIN 3150-AE67

### Informal Hearing Procedures for Materials Licensing Adjudications

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule.

**SUMMARY:** The Nuclear Regulatory Commission is amending its regulations to provide that persons requesting a hearing in certain materials license proceedings must file their requests within 30 days of receiving actual notice of the pendency of the license application, or, if the person does not learn about the application until it has been granted, within 30 days of receiving actual notice of the grant of the application. No hearing requests filed more than 180 days after the grant of the application will be entertained. The amendment applies only to materials licensing actions which are not of sufficient importance to warrant notice in the *Federal Register*. The rule change eliminates an ambiguous provision in the Commission's current regulations and serves to ensure that hearing requests are filed as promptly as possible, in order to promote the timely identification and resolution of problems with or objections to proposed licensing actions.

**EFFECTIVE DATE:** July 6, 1994.

**FOR FURTHER INFORMATION CONTACT:** Peter G. Crane, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-504-1634.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Commission's rules governing informal hearing procedures of

adjudications on materials licenses are set forth in subpart L to part 2. When the rules do not require the Commission to publish notice of all proposed licensing actions, the requirements for requesting a hearing are tied to the date on which a requester receives actual notice of such actions.

Prior to this rule change, the regulation stated that if Federal Register notice of an action is not published, then a request for a hearing must be filed within "the earlier of—(i) Thirty (30) days after the requestor receives actual notice of a pending application or an agency action granting an application; or (ii) One hundred and eighty (180) days after agency action granting an application."

In August, 1992, the presiding officer in a materials licensing proceeding was faced with a case in which a requester with actual notice of a license application filed in 1989 waited to ask for a hearing until the NRC granted the application, three and a half years later. The licensee and the NRC staff objected that the request should have been filed within 30 days of the requester's receiving actual notice of the application. (In other words, they were arguing that the rule was meant to allow persons to file within 30 days of receiving actual notice of the grant of an application only if they were unaware until then of the pendency of the application.) The requester responded that the regulation contained no such implicit condition, and instead gave requesters a choice: Either they could file within 30 days of receiving actual notice of the application, or they could wait until the grant of the application and then file within 30 days of learning of the agency's action.

The presiding officer sustained the requester's position. He observed that the NRC staff and the licensee were in effect arguing that the regulation should be read as though it required the request to be filed at the earliest of three events: 30 days after receipt of actual notice of the filing of the application; 30 days after receipt of actual notice of the grant of the application; and 180 days after the grant of the application. He added that the Statement of Considerations accompanying the rule had referred to requests for hearing being timely if filed within 30 days of a requester's receiving actual notice "of a licensing action." The presiding officer offered a possible rationale for the two separate windows of opportunity: a potential requester, hopeful that an application might not be approved, would not have to file a hearing request until the grant of the application eliminated doubt as to the NRC's intent.

The Commission did not disturb the presiding officer's ruling, but it directed the staff to prepare a proposed rule that would make clear that requesters are indeed required to file at the earliest of the three events described above. Such a notice was published in the *Federal Register* on September 29, 1993, at 58 FR 50858.

#### Analysis of Public Comments

Two comments were received on the proposed rule, but neither one was directed to the actual subject of the rulemaking, i.e., whether the NRC should continue to allow someone with actual knowledge of an application to wait for that application to be granted before requesting a hearing.

##### 1. Comment of Kerr-McGee Corporation

The first comment, from Kerr-McGee Corporation, endorsed the proposed rule, but noted that the new language "seemingly leaves the door open for filing of requests for hearing almost at will." Kerr-McGee asserted that the rule is hinged on when the requester "receives actual notice," an "ambiguous" term that "is not related to the time an actual amendment application is filed."

The response to this comment is that the NRC's proposed rule was directed to a specific and narrow issue—whether a potential requester with actual notice of an application should be able to delay filing a hearing request until the application is granted. The notice did not contemplate revising the rule to change the concept of making the receipt of actual notice the basis of the time for filing a hearing request.

##### 2. Comment of Ohio Citizens for Responsible Energy (OCRE)

The second comment was from Ohio Citizens for Responsible Energy (OCRE), which objected to the portion of the regulation that bars petitions filed more than 180 days after the NRC's grant of an application. OCRE asserted that it was conceivable that someone would not learn of a licensing action until after the passage of 180 days, and would by then, through no fault of his or her own, have lost all opportunity to request a hearing.

OCRE's point, like Kerr-McGee's, goes beyond the scope of the quite narrow change that the NRC proposed. The Commission's notice made clear that the issue to be resolved was whether potential requesters with actual notice of an application for a particular licensing action were intended to have two bites at the apple, or should instead be required to file for a hearing at their earliest opportunity. The concept of a

180-day cutoff was never identified as being subject to reconsideration by the Commission.

Having considered the comments received, and finding that neither of them suggests a flaw in the specific correction proposed in the rule, the Commission has determined that the following final rule should be promulgated.

#### Environmental Impact: Categorical Exclusion

The NRC has determined that this regulation is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

#### Paperwork Reduction Act Statement

This rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150-0136.

#### Regulatory Analysis

The Nuclear Regulatory Commission prepared a brief regulatory analysis for the proposed rule. Neither of the commenters having discussed the regulatory analysis, the Commission has not considered it necessary to prepare a separate analysis of the final rule.

#### Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. The rule sets forth the time frame within which a person other than an applicant must file a request for a hearing in a licensing proceeding held under the informal procedures set forth in 10 CFR part 2, subpart L. The rule does not impose any obligations on regulated entities that may fall within the definition of "small entities" as set forth in section 601(3) of the Regulatory Flexibility Act, or within the definition of "small business" as found in section 3 of the Small Business Act, 15 U.S.C. 632, or within the small business size standards contained in 13 CFR part 121.

#### Backfit Analysis

This rule does not involve any new provisions which would impose backfits as defined in 10 CFR 50.109(a)(1). Accordingly, no backfit analysis pursuant to 10 CFR 50.109(c) is required.

**List of Subjects in 10 CFR Part 2**

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 2.

**PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS**

1. The authority citation for part 2 continues to read as follows:

**Authority:** Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87-615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97-425, 96 Stat. 2213, as amended (42 U.S.C. 10134(f)); sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103, 104, 105, 183, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.104 also issued under sec. 193, Pub. L. 101-575, 104 Stat. 2835 (42 U.S.C. 2243). Section 2.105 also issued under Pub. L. 97-415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200-2.206 also issued under secs. 182, 186, 234, 955, 83 Stat. 444, as amended (42 U.S.C. 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.600-2.606 also issued under sec. 102, Pub. L. 91-190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 and Table 1A of Appendix C also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85-256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91-560, 84 Stat. 1473 (42 U.S.C. 2135). Appendix B also issued under sec. 10, Pub. L. 99-240, 99 Stat. 1842 (42 U.S.C. 2021b *et seq.*).

2. In § 2.1205, paragraph (c) introductory text is republished and

paragraph (c)(2) is revised to read as follows:

**§ 2.1205 Request for a hearing; petition for leave to intervene.**

\* \* \* \* \*

(c) A person other than an applicant shall file a request for a hearing within—

\* \* \* \* \*

(2) If a Federal Register notice is not published in accordance with paragraph (c)(1), the earliest of—

(i) Thirty (30) days after the requester receives actual notice of a pending application, or

(ii) Thirty (30) days after the requester receives actual notice of an agency action granting an application in whole or in part, or

(iii) One hundred and eighty (180) days after agency action granting an application in whole or in part.

\* \* \* \* \*

Dated at Rockville, Maryland, this 31st day of May 1994.

For the Nuclear Regulatory Commission.

**John C. Hoyle,**

*Acting Secretary of the Commission.*

[FR Doc. 94-13630 Filed 6-3-94; 8:45 am]

BILLING CODE 7590-01-P

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Airspace Docket No. 93-ASW-41]

**Establishment of Class E Airspace: Texarkana, AR**

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at Texarkana, AR. Controlled airspace to the surface is needed during the hours that the control tower is closed. This action is intended to provide adequate Class E airspace for instrument flight rule (IFR) operations during the hours that the control tower is closed.

**EFFECTIVE DATE:** 0901 u.t.c., August 18, 1994.

**FOR FURTHER INFORMATION CONTACT:**

Gregory L. Juro, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone 817-222-5591.

**SUPPLEMENTARY INFORMATION:****History**

On December 3, 1993, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Texarkana, AR, was published in the **Federal Register** (58 FR 63903). Controlled airspace to the surface is needed during the hours that the control tower is closed. The proposal was to establish Class E airspace to contain IFR operations during the hours that the control tower is closed.

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. Other than editorial changes, this amendment is adopted as proposed. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1994). The Class E airspace designation listed in this document will be published subsequently in the Order.

**The Rule**

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Texarkana, AR. Controlled airspace to the surface is needed for IFR operations during the hours that the control tower is closed.

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

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

**PART 71—[AMENDED]**

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

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g), 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

*Paragraph 6002: Class E Airspace areas designated as a surface area for an airport.*

\* \* \* \* \*

**ASW AR E2 Texarkana AR [New]**

Texarkana Regional-Webb Field, AR  
(Lat. 33°27'13" N., long. 93°59'28" W.)

That airspace within a 4.2-mile radius of Texarkana Regional-Webb Field. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

\* \* \* \* \*

Issued in Fort Worth, TX, on May 19, 1994.

**Thomas C. Brown,**  
*Acting Manager, Air Traffic Division,  
Southwest Region.*

[FR Doc. 94-13694 Filed 6-3-94; 8:45 am]  
BILLING CODE 4910-13-M

**14 CFR Part 71**

[Airspace Docket No. 94-ASO-5]

**Establishment of Class E Airspace;  
Somerville, TN**

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace at Somerville, Tennessee. A Non-Directional Beacon (NDB) Runway 18 Standard Instrument Approach Procedure (SIAP) for the Fayette County Airport has recently been developed. Controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain Instrument Flight Rule (IFR) operations at the airport. The operating status of the airport will change from Visual Flight Rule (VFR) to include IFR operations concurrent with publication of the

SIAP. The area will be depicted on aeronautical charts to provide a reference for pilots.

**EFFECTIVE DATE:** 0901 u.t.c., August 18, 1994.

**FOR FURTHER INFORMATION CONTACT:**  
Wade T. Carpenter, Jr., Airspace  
Section, System Management Branch,  
Air Traffic Division, Federal Aviation  
Administration, P.O. Box 20636,  
Atlanta, Georgia 30320; telephone (404)  
305-5586.

**SUPPLEMENTARY INFORMATION:****History**

On March 31, 1994, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Somerville, Tennessee. A Non-Directional Beacon (NDB) Runway 18 Standard Instrument Approach Procedure (SIAP) was developed for the Fayette County Airport at Somerville, Tennessee (59 FR 15136). The proposal was to add controlled airspace extending upward from 700 feet above the surface to contain IFR operations in controlled airspace and to change the operating status of the airport from VFR operations to include IFR operations concurrent with the publication of the SIAP. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the Federal Aviation Administration (FAA). No comments objecting to the proposal were received.

The coordinates for this airspace docket are based on North American Datum 83. This amendment is the same as that proposed in the notice. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993. The Class E airspace designation listed in this document will be published subsequently in the Order.

**The Rule**

This amendment to part 71 of the Federal Aviation Regulations established Class E airspace at Somerville, Tennessee, to provide controlled airspace from 700 feet above the surface for aircraft executing an NDB SIAP into the Fayette County Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under

Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

**PART 71—[AMENDED]**

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

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

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

\* \* \* \* \*

**ASO TN E5 Somerville, TN [New]**

Fayette County Airport, TN  
(Lat. 35°12'22" N, long. 89°23'40" W.)

That airspace extending upward from 700 feet above the surface of the earth within a 7-mile radius of the Fayette County Airport.

\* \* \* \* \*

Issued in College Park, Georgia, on May 24, 1994.

**Michael J. Powderly,**  
*Acting Manager, Air Traffic Division,  
Southern Region.*

[FR Doc. 94-13695 Filed 6-3-94; 8:45 am]  
BILLING CODE 4910-13-M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### 36 CFR Parts 1252, 1254, and 1260

RIN 3095-AA53

#### Public Use of Records and Donated Historical Materials

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

**SUMMARY:** The National Archives and Records Administration (NARA) is updating and clarifying its regulations relating to public use of records and donated historical materials that have been transferred to NARA. Most of the changes in this regulation merely clarify existing practices and will have no significant impact upon the public. Changes in research room rules, such as requiring a picture identification when applying for a research card and prohibiting ink pens and chewing gum in rooms where original records are present, are intended to provide greater protection for the historically valuable holdings of NARA.

**EFFECTIVE DATE:** July 6, 1994.

#### FOR FURTHER INFORMATION CONTACT:

Mary Ann Hadyka or Nancy Allard on 301-713-6730 or TDD 301-713-6760.

**SUPPLEMENTARY INFORMATION:** As stated in its proposed rule published on October 22, 1993 (58 FR 54540), NARA is making some minimal changes in research room rules. We received three comments to these proposed rule changes. The three comments were received from customers who use the regional archives. Since many researchers in the regions travel long distances, they felt the proposed 3-hour limit and "first come first served" policy for use of microfilm readers would create a "hardship" to their research. Currently, some regional archives allow reservations of microfilm readers and impose time limits on use that reflect local demand for the equipment. NARA is amending this rule to give the regional archive directors the discretion to modify this new rule in a way that benefits the users of their facility.

In § 1254.26, we have made two additional nonsubstantive changes. We updated the title, Reference Services Branch Chief, to reflect a reorganization of the unit responsible for the research rooms. The revised title is Director, User Services Division. We have also clarified the procedure in § 1254.26(a) concerning permission for research privileges for students under the age of 16 to state explicitly that prospective

student researchers are encouraged to contact the National Archives in advance of their visit to determine their eligibility to do research. This reminder should particularly assist out-of-town and foreign students in making their research plans.

Since all the records from the Pickett Street facility have moved to the new NARA facility in College Park, Maryland (National Archives at College Park), all references to the Pickett Street facility have been changed to National Archives at College Park. In addition, a reference has been added to self-service copiers in National Archives at College Park for the records transferred from the National Archives Building and the Washington National Records Center. Because this change affects only the location of records, and not any conditions on their use, and because the location of the records was the subject of a separate rule making upon which public comment was invited (59 FR 6899), these changes are being made final without prior notice of proposed rule making.

This final rule contains two information collections, application for researcher identification cards and request to microfilm records, for which OMB approval has been received. This is not a significant regulation under Executive Order 12866 and has not been reviewed by OMB. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small entities.

#### List of Subjects

##### 36 CFR Part 1252

Archives and records.

##### 36 CFR Part 1254

Archives and records, Confidential business information, Freedom of information, Micrographics, Reporting and recordkeeping requirements.

##### 36 CFR Part 1260

Archives and records, Classified information.

For the reasons set forth in the preamble under 44 U.S.C. 2104(a), chapter XII of title 36 of the Code of Federal Regulations is amended as follows:

#### PART 1252—PUBLIC USE OF RECORDS, DONATED HISTORICAL MATERIALS, AND FACILITIES; GENERAL

1. The authority citation for part 1252 continues to read as follows:

Authority: 44 U.S.C. 2104(a).

2. Section 1252.1 is revised to read as follows:

##### § 1252.1 Scope.

This subchapter prescribes rules and procedures governing the public use of records and donated historical materials in the custody of the National Archives and Records Administration (NARA). Except for part 1250, this subchapter does not apply to current operating records of NARA. This subchapter also prescribes rules and procedures governing the public use of certain NARA facilities.

3. In § 1252.2, the definitions of *Director*, *Federal records center*, *Federal records center records*, *Records*, and *Researcher* are revised; the definition of *Archives* is removed; and the definitions of *Archives or archival records*, *Documents*, *Nixon Presidential historical materials* and *Presidential records* are added in alphabetical order to read as follows:

##### § 1252.2 Definitions.

\* \* \* \* \*

*Archives or archival records* mean Federal records that have been determined by NARA to have sufficient historical or other value to warrant their continued preservation by the U.S. Government, and have been transferred to the National Archives of the United States.

*Director* means the head of a Presidential library, the head of a Presidential Materials Staff, the head of a NARA division, branch, archival center, or unit responsible for servicing archival records, the head of a regional archives, or the head of a Federal records center.

*Documents* mean, for purposes of part 1254 of this chapter, archives, FRC records, donated historical materials, Nixon Presidential historical materials, and Presidential records, regardless of the media on which they are contained. Document form may include paper, microforms, photographs, sound recordings, motion pictures, maps, drawings, and electronic files.

\* \* \* \* \*

*Federal records center* includes the Washington National Records Center, the National Personnel Records Center, and the Federal records centers listed in § 1253.6 of this chapter.

*Federal records center records* (FRC records) mean records which, pending their transfer to the National Archives of the United States or their disposition in any other manner authorized by law, have been transferred to a Federal records center operated by NARA.

*Nixon Presidential historical materials* has the meaning specified in § 1275.16 of this chapter.

*Presidential records* has the meaning specified in § 1270.14 of this chapter.

*Records* mean records or microfilm copies of records transferred to NARA under 44 U.S.C. 2107 and 3103; namely, archives and Federal records center records as the terms are defined in § 1252.2. The term *records* does not include current operating records of NARA, the public availability of which is governed by part 1250 of this chapter, or donated historical materials as defined in this section.

*Researcher* means a person who has been granted access to original documents or copies of documents.

#### PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

4. The authority citation for part 1254 continues to read as follows:

**Authority:** 44 U.S.C. 2101–2118, 5 U.S.C. 552, and E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

5. Part 1254 is amended by removing the terms “record” and “records” or “Records” in the following sections and adding in their place the terms “document” and “documents” or “Documents” respectively.

a. Replace “record” with “document” in:

Sec.

1254.27(f)(2)  
1254.98(c)

b. Replace “records” or “Records” with “documents” or “Documents” in:

Sec.

1254.1(a)  
1254.1(d)  
1254.2(a)  
1254.2(c)  
1254.2(d)  
1254.4(a) wherever it appears  
1254.4(b)  
1254.4(d) wherever it appears  
1254.8(c)  
1254.18 wherever it appears  
1254.20(b)  
1254.26(e)(2)  
1254.27(c)(2)  
1254.27(f)(2)  
1254.27(f)(4)  
1254.27(f)(5)  
1254.70(a)  
1254.71(c)(1)  
1254.71(c)(2) wherever it appears  
1254.71(c)(3) wherever it appears  
1254.71(d) introductory text wherever it appears  
1254.71(d)(2) wherever it appears  
1254.71(d)(4)  
1254.71(d)(5)

1254.92(c)(1) introductory text  
1254.94(b) whenever it appears  
1254.94(f) introductory text  
1254.94(f)(3)  
1254.94(g) introductory text  
1254.94(g)(1)  
1254.94(g)(2)  
1254.94(g)(3)  
1254.94(g)(4)  
1254.94(g)(5) wherever it appears  
1254.94(g)(6) wherever it appears  
1254.94(h)  
1254.94(i) wherever it appears  
1254.96(a) introductory text wherever it appears  
1254.96(a)(1)  
1254.96(a)(2)  
1254.96(a)(3)  
1254.96(a)(5)  
1254.96(b)  
1254.98(a)  
1254.98(d)  
1254.100(b) wherever it appears  
1254.100(c)  
1254.100(d)  
1254.102(d)

6. Section 1254.1 is amended by revising paragraphs (b) and (e) to read as follows:

#### § 1254.1 General provisions.

\* \* \* \* \*

(b) Original documents will not normally be made available when microfilm copies or other alternative copies of the documents are available.

\* \* \* \* \*

(e) Requests received in the normal course of reference service that do not specifically cite the Freedom of Information Act (5 U.S.C. 552) are not considered requests made under the act. Requests under the act must follow the procedure set forth in subpart C or subpart D of this part.

\* \* \* \* \*

7. Section 1254.2 is amended by revising the section heading and paragraph (b) to read as follows:

#### § 1254.2 Location of documents and hours of use.

\* \* \* \* \*

(b) The locations and hours of operation (expressed in local time) of the depositories administered by the National Archives and Records Administration are shown in part 1253 of this chapter.

\* \* \* \* \*

8. Section 1254.4 is amended by revising paragraph (c) to read as follows:

#### § 1254.4 Research procedures.

\* \* \* \* \*

(c) Researchers who wish to use documents not on microfilm in a depository where the microfilm research room is separate from textual research

rooms, must complete a researcher identification application form and provide the information needed to decide which documents can be made available. Researchers who wish to use only microfilm documents in a depository where the microfilm research room is not separate from textual research rooms must also comply with this paragraph. Applicants must show identification containing a picture or physical description of the applicant, e.g., a driver's license or school identification card. Exceptions to this requirement must be approved by the director. If applying for access to large quantities of documents or to documents that are especially fragile or valuable, the researcher may be required to furnish additional information about personal or professional qualifications or to furnish additional reasons why access is required. The collection of information contained in this paragraph has been approved by the Office of Management and Budget with the control number 3095–0016.

\* \* \* \* \*

#### § 1254.8 [Amended]

9. In § 1254.8, paragraph (c) is amended by removing the term “National Archives Field Archives Branch” and adding the term “Regional Archives.”

10. Section 1254.10 is revised to read as follows:

#### § 1254.10 Registration.

Researchers must register each day they enter a research facility, furnishing the information asked on the registration sheet and may be asked to provide additional personal identification.

11. Section 1254.12 is revised to read as follows:

#### § 1254.12 Researcher's responsibility for documents.

(a) The research room attendant may limit the quantity of documents delivered to a researcher at one time. The researcher must sign for the documents received and may be required to show his/her researcher identification card. The researcher is responsible for the proper handling of and prevention of damage to all documents delivered to him/her until he/she returns them. When the researcher is finished using the documents, the documents must be returned to the research room attendant. The reference service slip that accompanies the documents to the research room must not be removed. If asked to do so, the researcher must return documents as much as 15

minutes before closing time. Before leaving a research room, even for a short time, a researcher must notify the research room attendant and place all documents in their proper containers.

(b) When microfilm is available on a self-service basis, research room attendants will assist researchers in identifying research sources on microfilm and provide information concerning how to locate and retrieve the roll(s) of film containing the information of interest. The researcher is responsible for retrieving and examining the roll(s). Unless a researcher requires assistance in learning how to operate microfilm reading equipment, the researcher is expected to install the microfilm on the reader. Unless otherwise permitted, a researcher is limited to one roll of microfilm at a time. After using each roll, the researcher is responsible for refiling the roll of microfilm in the location from which it was removed, unless instructed otherwise.

(c) Researchers are responsible for complying with provisions of the Copyright Act (Title 17, United States Code) which governs the making and use of electrostatic copies or other reproductions of copyrighted materials.

12. Section 1254.14 is revised to read as follows:

**§ 1254.14 Restrictions on using microfilm readers.**

(a) Use of the microfilm readers in the National Archives Building will be on a first-come, first-served basis. When other researchers are waiting to use a microfilm reader, a 3-hour limit may be placed on using a reader. After 3 hours of machine use, the researcher may sign the waiting list for an additional 3-hour period.

(b) The number of researchers in the microfilm research room in the National Archives Building will be limited, for fire safety reasons, to those researchers assigned a microfilm reader.

(c) Directors of regional archives may permit reservations for use of microfilm readers and set time limits on use to meet local circumstances. Rules for use will be posted in the research room.

13. Section 1254.16 is revised to read as follows:

**§ 1254.16 Prevention of damage to documents.**

(a) Researchers must exercise all possible care to prevent damage to documents.

(b) Documents may not be used at a desk where there is food or liquid or where an ink pen is being used. Only pencils may be used in research rooms where original documents are used.

(c) Documents must not be leaned on, written on, folded anew, traced, or handled in any way likely to cause damage.

(d) Documents must be identified for reproduction only with a paper tab provided by NARA. Documents may not be fastened with paper clips or rubber bands.

(e) Microfilm must be carefully removed from and returned to the proper microfilm boxes. Care must be taken loading and unloading microfilm from microfilm readers. Damaged microfilm must be reported to the research room attendant as soon as it is discovered.

(f) Exceptionally valuable or fragile documents may be used only under the conditions specified by the research room attendant.

**§ 1254.22 [Redesignated as § 1254.17]**

14. Section 1254.22 is redesignated as § 1254.17 and revised to read as follows:

**§ 1254.17 Keeping documents in order.**

A researcher must keep unbound documents in the order in which they are delivered to him/her. Documents that appear to be in disorder must not be rearranged by the researcher, but must be referred to the research room attendant. Researchers may use only one folder at a time. Researchers are not allowed to remove documents from more than one container at a time. Researchers should bring to the attention of the research room attendant microfilm put in the wrong box or file cabinet.

15. In § 1254.20, paragraph (a) is revised to read as follows:

**§ 1254.20 Conduct.**

(a) *Regulations.* Researchers are subject to the provisions of part 1280 of this chapter and to all rules and regulations issued and posted or distributed by a facility director supplementing subpart B of this part, including rules on the use of NARA equipment. Eating, drinking, and chewing gum in a research room are prohibited. Smoking is prohibited except in designated smoking areas. Loud talking and other activities likely to disturb other researchers are also prohibited. Persons desiring to use typewriters, computers, sound recording devices, or similar equipment must work in areas designated by the research room attendant.

\* \* \* \* \*

16. The section heading of § 1254.26 and paragraphs (a), (b), (d), (f), and (h)(1) are revised to read as follows:

**§ 1254.26 Additional rules for use of certain research rooms in NARA facilities in the Washington, DC, area.**

(a) Admission to research rooms in the National Archives Building, the Washington National Records Center, and the National Archives at College Park facility at which original documents are made available is limited to individuals examining and/or copying documents and other materials in the custody of the National Archives and Records Administration. Children under the age of 16 will not be admitted to these research rooms unless they have been granted research privileges or are granted an exception to this provision to view specific documents that a parent or other accompanying adult researcher is using. The exception will be granted by the Director of the User Services Division for a child who is able to read and who will be closely supervised by the adult researcher while in the research room. Normally, such a child will be admitted only for the short period required to view the documents. Unless otherwise permitted, children under the age of 16 who have been granted special permission to accompany an adult using records may not actively participate in research activities, e.g., removing, copying, or refiling documents. Students under the age of 16 who wish to perform research on original documents must apply in person to the Director of the User Services Division and present a letter of reference from a teacher. Such students may contact the National Archives by phone or letter in advance of their visit to discuss their eligibility for research privileges. Students under the age of 16 who have been granted research privileges will be required to be accompanied in the research room by an adult with similar privileges, unless the Director of the User Services Division specifically waives this requirement with respect to individual researchers.

(b) The procedures in paragraphs (c) through (g) of this section apply to all research rooms in the National Archives Building (except the Microfilm Research Room); the Suitland Research Room in the Washington National Records Center; and the research rooms in the National Archives at College Park. These procedures are in addition to the procedures specified elsewhere in this part.

\* \* \* \* \*

(d) Researchers must present a valid researcher identification card to the guard or research room attendant on entering the room. All researchers are required to sign each day the research room registration sheet at the entrance to the research room. Researchers will

also record the time they leave the research room at the end of the visit for that day. Researchers are not required to sign in or out when leaving the area temporarily.

\* \* \* \* \*

(f) NARA will furnish to researchers, without charge, pencils and specially marked lined and unlined notepaper and notecards, for use in the research rooms. Pencils and unused notepaper and notecards should be returned to the research room attendant at the end of the day.

\* \* \* \* \*

(h) \* \* \*

(1) Use of NARA viewing and listening equipment in the research room is provided on a first-come-first-served basis. When others are waiting to use the equipment, a three-hour limit may be imposed on the use of the equipment.

\* \* \* \* \*

17. Section 1254.27 is amended by revising the section heading, by removing from paragraph (a) the title "National Archives field branch" and adding in its place the title "regional archives," by revising paragraph (b), by removing from paragraphs (c)(2) and (c)(3) the title "chief of the branch administering the research room" and adding in its place the title "director," and by revising the introductory text of paragraph (f) and paragraphs (f)(3) and (f)(6) to read as follows:

**§ 1254.27 Additional rules for use of certain research rooms in Federal records centers, regional archives, and Presidential libraries.**

\* \* \* \* \*

(b) Researchers must present a valid researcher identification card to the guard or research room attendant on entering the room. All researchers are required to sign each day the research room registration sheet at the entrance to the research room. Where instructed to do so, researchers also sign out when leaving the research room for the day. Researchers are not required to sign in or out when leaving the area temporarily or at the end of the day.

\* \* \* \* \*

(f) Researchers may use NARA self-service copiers or authorized personal paper-to-paper copiers to copy documents in accordance with NARA document handling instructions and after review of the documents by the research room attendant to determine their suitability for copying. The director or the senior archivist on duty in the research room will review the determination of suitability if requested by the researcher. The following types

of documents are not suitable for copying on a self-service or personal copier:

\* \* \* \* \*

(3) Documents larger than the glass copy plate of the copier;

\* \* \* \* \*

(6) Documents which, in the judgement of the research room attendant, are in poor physical condition or which may be subject to possible damage if copied.

18. Section 1254.35 is added to read as follows:

**§ 1254.35 Presidential records and Nixon Presidential materials.**

Access to Presidential records transferred to NARA is governed by 36 CFR part 1270. Access to the Nixon Presidential materials is governed by 36 CFR part 1275.

19. Section 1254.36 is revised to read as follows:

**§ 1254.36 Donated historical materials.**

The public use of donated historical materials is subject to restrictions on their use and availability as stated in writing by the donors or depositors of such materials and other restrictions imposed by statute. (Researchers are encouraged to confer with the appropriate director or reference staff member on any question of copyright.) In addition, use is subject to all conditions specified by the Archivist of the United States for purposes of archival preservation.

20. Section 1254.40 is revised to read as follows:

**§ 1254.40 Access to national security information.**

(a) Declassification of and public access to national security information and material, hereinafter referred to as "classified information" or collectively termed "information" is governed by Executive Order 12356 of April 2, 1982 (3 CFR, 1982 Comp., p. 166), the implementing Information Security Oversight Office Directive Number 1 of June 22, 1982 (47 FR 27836, June 25, 1982) and the Freedom of Information Act (5 U.S.C. 552).

(b) Public access to documents declassified in accordance with this regulation may be restricted or denied for other reasons under the provisions of 5 U.S.C. 552(b) for accessioned agency records; 36 CFR 1254.36 for donated historical materials; 44 U.S.C. 2201 *et seq.* and 36 CFR part 1270 for Presidential records; and 44 U.S.C. 2111 note and 36 CFR part 1275 for Nixon Presidential materials.

**§ 1254.42 [Redesignated as § 1260.2]**

21. Section 1254.42 is redesignated as § 1260.2 in subchapter D of this chapter.

22. In § 1254.48, paragraphs (a) and (c) are revised to read as follows:

**§ 1254.48 Access by historical researchers and former Presidential appointees.**

(a) Access to classified information may be granted to U.S. citizens who are engaged in historical research projects or who previously occupied policy-making positions to which they were appointed by the President. Persons desiring permission to examine material under this special historical researcher/Presidential appointees access program should contact NARA at least 4 months before they desire access to the materials to permit time for the responsible agencies to process the requests for access. NARA will inform requesters of the agencies to which they will have to apply for permission to examine classified information, including classified information originated by the White House or classified information in the custody of the National Archives which was originated by a defunct agency.

\* \* \* \* \*

(c) To protect against the possibility of unauthorized access to restricted documents, a director may issue instructions supplementing the research room rules provided in subpart B.

23. Section 1254.50 is revised to read as follows:

**§ 1254.50 Fees.**

NARA will charge requesters for copies of declassified documents according to the fees listed in § 1258.12 of this chapter.

24. In § 1254.70, paragraph (b) is revised to read as follows:

**§ 1254.70 NARA copying services.**

\* \* \* \* \*

(b) In order to preserve the original documents, documents which are available on microfilm or other alternate copy will not be copied by other means as long as a legible copy (electrostatic, photographic, or microfilm) can be made from the microfilm.

25. In § 1254.71, paragraphs (a), (b)(1), (b)(2)(i), (d)(3), (d)(6), (f), and (g)(1) are revised to read as follows:

**§ 1254.71 Researcher use of the self-service card-operated copiers in the National Archives Building, the Washington National Records Center and the National Archives at College Park.**

(a) *General.* Self-service card-operated copiers are located in research rooms in the National Archives Building, the Suitland Research Room in the

Washington National Records Center, and the National Archives at College Park. Other copiers set aside for use by reservation are located in designated research areas. Procedures for use are outlined in paragraphs (b) through (g) of this section.

(b) \* \* \*

(1) Copiers located in research rooms in the National Archives Building, the Suitland Research Room in the Washington National Records Center, and the National Archives at College Park may be used until 15 minutes prior to closing of the research room. There is a five-minute time limit on these copiers when others are waiting to use the copier. Researchers using microfilm reader-printers may be limited to three copies when others are waiting to use the machine. Researchers wishing to copy large quantities of documents should see a staff member in the research room to reserve a copier for an extended time period.

(2) \* \* \*

(i) A copier may be reserved for one hour at a time in the textual research room in the National Archives Building and the National Archives at College Park and for one-half hour at a time in the Microfilm Research Room in the National Archives Building and in the Suitland Research Room in the Washington National Records Center. Another appointment may be reserved after completing the scheduled appointment. The appointment may be forfeited if the researcher does not arrive within 10 minutes after the scheduled time.

\* \* \* \* \*

(d) \* \* \*

(3) Documents larger than the glass copy plate of the copier;

\* \* \* \* \*

(6) Documents which, in the judgement of the research room attendant, are in poor physical condition or which may be subject to possible damage if copied.

(f) *Purchasing debitcards for copiers.* Researchers may use cash to purchase a debitcard from a vending machine during the hours that self-service copiers are in operation. Additionally, debitcards may be purchased with cash, check, money order, credit card, or funds from an active deposit account from the Cashier's Office located in room G-1 of the National Archives Building between the hours of 8:45 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. During the evening and weekend hours, the research room supervisor can make change for \$20 or less. The debitcard will, when inserted into the copier,

enable the user to make copies, for the appropriate fee, up to the value on the debitcard. Researchers may add value to the debitcard by using the vending machine. The fee for self-service copies is found in § 1258.12 of this chapter.

(g) \* \* \*

(1) To obtain a refund of any unused amount on a debitcard, a researcher must bring the debitcard to the Cashier's Office in room G-1 of the National Archives Building. Cash refunds for debitcards are currently limited to \$20.00 or less. Refunds due for more than \$20.00 are currently paid by U.S. Treasury check in approximately 6-8 weeks. Refunds due on debitcards obtained using credit cards will be made by issuing a credit of the refund amount to the credit card. Refunds due on debitcards-obtained using funds from a deposit account will be made by crediting the refund to the deposit account.

\* \* \* \* \*

26. Section 1254.72 is revised to read as follows:

**§ 1254.72 Information about documents.**

(a) Upon request, overall information pertaining to holdings or about specific documents will be furnished, provided that the time required to furnish the information is not excessive, and provided that the information is not restricted (see subpart C and subpart D).

(b) When so specified by a director, requests must be made on prescribed forms. Such forms will be approved by OMB as information collections and will bear the approved control number.

27. Section 1254.74 is revised to read as follows:

**§ 1254.74 Information from documents.**

Normally, information contained in the documents will be furnished in the form of photocopies of the documents, subject to the provisions of § 1254.70. NARA will certify facts and make administrative determinations on the basis of archives, or of FRC records when appropriate officials of other agencies have authorized NARA to do so. Such certifications and determinations will be authenticated by the seal of NARA, the National Archives of the United States, or the transferring agency, as appropriate.

28. Section 1254.76 is revised to read as follows:

**§ 1254.76 Certification of copies.**

The responsible director, or any of his or her superiors, the Director of the Federal Register, and their designees are authorized to certify copies of documents as true copies.

29. Section 1254.90 is amended by revising paragraph (a) to read as follows:

**§ 1254.90 General.**

(a) This subpart establishes rules and procedures governing the use of privately owned microfilm equipment to film archival records and donated historical materials in the National Archives Building, the Washington National Records Center, the regional archives, and the Presidential libraries.

\* \* \* \* \*

30. Section 1254.92 is amended by revising the section heading and paragraph (a), redesignating paragraphs (c)(5), (c)(5)(i), (c)(5)(ii), and (c)(6) as paragraphs (d), (d)(1), (d)(2), and (e), respectively, and revising redesignated paragraph (d)(2) to read as follows:

**§ 1254.92 Requests to microfilm records and donated historical materials.**

(a) Requests to microfilm archival records or donated historical materials (except donated historical materials under the control of the Office of Presidential Libraries) in the National Archives Building, the Washington National Records Center, or the regional archives must be made in writing to the Assistant Archivist for the National Archives (NN), NARA, Washington, DC 20408. Requests to microfilm records or donated historical materials in a Presidential library or donated historical materials in the National Archives Building under the control of the Office of Presidential Libraries must be made in writing to the Assistant Archivist for Presidential Libraries (NL), NARA, Washington, DC 20408. OMB control number 3095-0017 has been assigned to the information collection contained in this section.

\* \* \* \* \*

(d) \* \* \*

(2) If the original documents are donated historical materials, the requester must agree to include on the film this statement: "The documents reproduced in this publication are donated historical materials from (name of donor) in the custody of the (name of Presidential library or National Archives). The National Archives administers them in accordance with the requirements of the donor's deed of gift and the U.S. Copyright Law, Title 17, U.S.C."

\* \* \* \* \*

**§ 1254.96 [Amended]**

31. In section 1254.96, the word "evaluation" in paragraph (a) is corrected to read "evaluation."

## PART 1260—DECLASSIFICATION OF AND PUBLIC ACCESS TO NATIONAL SECURITY INFORMATION

32. The authority citation for part 1260 continues to read as follows:

Authority: 44 U.S.C. 2104(a); Executive Order 123356 of April 2, 1982 (3 CFR 1982 Comp., p. 166).

### § 1260.2 [Redesignated from 1254.42]

33. Section 1260.2 is redesignated from § 1254.42 of this chapter.

Dated: May 27, 1994.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 94-13636 Filed 6-3-94; 8:45 am]

BILLING CODE 7515-01-W

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 63

[AD-FRL-4892-5]

#### National Emission Standards for Hazardous Air Pollutants for Source Category: Organic Hazardous Air Pollutants From the Synthetic Organic Chemical Manufacturing Industry and Other Processes Subject to the Negotiated Regulation for Equipment Leaks; Determination of MACT "Floor"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

**SUMMARY:** On December 31, 1992, the EPA proposed standards to regulate the emissions of certain organic hazardous air pollutants from synthetic organic chemical manufacturing industry (SOCMI) production processes and seven other processes which are part of major sources under section 112 of the Clean Air Act as amended in 1990 (the Act). This rulemaking is commonly called the Hazardous Organic NESHAP or the HON. In the final action regarding the December 31, 1992 proposal, which was signed on February 28, 1994, and published in the *Federal Register* on April 22, 1994, EPA deferred taking final action regarding provisions applicable to medium storage vessels due to the need to resolve an issue of statutory interpretation of section 112(d)(3)(A) of the Act. On March 9, 1994, EPA reopened the comment period to request additional comment on the appropriate interpretation of this statutory provision and the effect of that interpretation on the appropriate control requirements for medium storage vessels at facilities subject to the HON.

This action announces EPA's final decision regarding the interpretation of

Clean Air Act section 112(d)(3)(A) for purposes of the HON and the final decision regarding control provisions applicable to medium storage vessels in SOCMI facilities subject to the HON. The decision announced in this action regarding the interpretation of Clean Air Act section 112(d)(3)(A) for purposes of the HON will be presumptively followed in subsequent MACT rulemakings, but it will not be binding. Although EPA believes that Congress intended one interpretation—referred to as the "Higher Floor Interpretation"—in Clean Air Act section 112(d)(3)(A), EPA also believes that the Agency retains discretion in important respects in setting Floors for MACT standards. EPA intends to exercise its discretion, within the statutory framework, to promulgate MACT standards that best serve the public interest.

**EFFECTIVE DATE:** June 6, 1994.

See **SUPPLEMENTARY INFORMATION** section concerning judicial review.

**ADDRESSES:** *Dockets.* The following dockets contain supporting information used in developing the proposed provisions. Docket Number A-90-19 contains general information used to characterize emissions and control costs for the industry and Docket A-90-21 contains information on storage vessels. These dockets are available for public inspection and copying between 8 a.m. and 4 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, room M1500, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** On technical issues, Dr. Janet S. Meyer, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5254. For further information on the legal issue addressed in this notice, contact Michael S. Winer, Assistant General Counsel, Air and Radiation Division (2344), Office of General Counsel, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, telephone number (202) 260-7606.

#### **SUPPLEMENTARY INFORMATION:**

##### **Judicial Review**

Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the actions taken by this document is available only on the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of

this rule. Under section 307(b)(2) of the CAA, the requirements that are subject to today's document may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

**Public Comment:** Approximately 55 comment letters were received in response to the March 9, 1994 (59 FR 11018) reopening of the comment period. The majority of these letters were from industries or industrial trade associations, arguing in favor of the less stringent "Lower Floor Interpretation." Environmental groups, State or local governments and labor unions argued almost uniformly in favor of the more stringent "Higher Floor Interpretation." The EPA considered all public comments in framing the final policy for MACT floor determination and in selection of the requirements for medium storage vessels. The major issues raised by the comments are addressed in this preamble. The EPA's responses to all the comments can be found in docket A-90-19, Subcategory VI-B.

#### **I. Summary of Decision on MACT Floor Determination**

This section describes EPA's decision with respect to the interpretation of Clean Air Act section 112(d)(3)(A) for purposes of this rulemaking. As set forth in more detail below, EPA believes that one of the interpretations of section 112(d)(3)(A)—referred to as the "Higher Floor Interpretation"—is the better and more natural reading of the statutory language.

##### **A. Background**

Section 112(d)(3) of the Clean Air Act provides that Emissions standards promulgated under this subsection for existing sources \* \* \* shall not be less stringent \* \* \* than—

(A) The average emission limitation achieved by the best performing 12 percent of existing sources \* \* \* 42 U.S.C. section 7412(d)(3). Existing sources for which the Administrator lacks emissions information and those that have recently achieved LAER are excluded from consideration. 1d. (For categories or subcategories with fewer than 30 sources, standards may not be less stringent than "the average emission limitation achieved by the best performing 5 sources." CAA section 112(d)(3)(B)). The minimum level of stringency defined by this language has come to be known as the MACT Floor.

In the March 9, 1994 *Federal Register*, EPA published a notice soliciting comment on "the appropriate interpretation of" section 112(d)(3)(A). Two interpretations of section

112(d)(3)(A) were discussed. Under the first, referred to as the "Higher Floor Interpretation," EPA would look at emission limitations achieved by each of the best performing 12 percent of existing sources, and average those limitations. "Average" would be interpreted to mean a measure of central tendency such as the arithmetic mean or median. (The arithmetic mean of a set of measurements is the sum of the measurements divided by the number of measurements in the set. The median is the value in a set of measurements below and above which there are an equal number of values, when the measurements are arranged in order of magnitude).

Under the second, "Lower Floor Interpretation," EPA would look at the average emission limits achieved by each of the best performing 12 percent of existing sources, and take the lowest. This second interpretation groups the words "average emission limitation" into a single phrase, and asks what "average emission limitation" (accounting for variability over time, or between different pollutants being emitted from a facility) is "achieved by" all members of the best performing 12 percent.

#### B. EPA's Interpretation of Section 112(d)(3)(A)

The EPA believes that the "Higher Floor Interpretation" is a better reading of Clean Air Act section 112(d)(3)(A) than the "Lower Floor Interpretation." This conclusion is based on a review of the statute, legislative history and comments received in response to EPA's March 9 notice.

##### 1. The Statutory Language

Section 112(d)(3)(A) requires that standards be no less stringent than " \* \* \* the average emission limitation achieved by the best performing 12 percent of existing sources \* \* \*". The EPA believes that the most natural and straightforward reading of this language would have EPA first determine the emission limitations achieved by sources within the best performing 12 percent, and then average those limitations. This is the method described above as the "Higher Floor Interpretation."

The EPA believes that if Congress had intended the Lower Floor Interpretation, language other than that actually used in section 112(d)(3)(A) would have been far more natural. For example, Congress could easily have expressed the Lower Floor Interpretation by requiring standards to be no less stringent than "the emission limitation achieved by all sources within the best performing 12

percent." Similarly, Congress could have required standards to be no less stringent than "the average emission limitation achieved by the best performing member of the best performing 12 percent," or "the emission limitation (averaged over time to take account of variability in the effectiveness of control) achieved by all sources within the best performing 12 percent." Any of such phrases would have been a more natural way to convey the Lower Floor Interpretation than the language Congress chose. However, the actual language of section 112(d)(3)(A) provides, in straightforward fashion, that standards may be no less stringent than the "average emission limitation achieved by the best performing 12 percent \* \* \*". To glean the Lower Floor Interpretation from this language is a strain; words and concepts not set forth in the statute must be added or inferred.

The language of section 112(d)(3)(B) makes this point even clearer. That section requires that standards for existing sources in categories or subcategories with fewer than 30 sources be no less stringent than

The average emission limitation achieved by the best performing 5 sources \* \* \*

42 U.S.C. 7412(d)(3)(B). If an interpretation parallel to the Lower Floor Interpretation were intended, it would have been more natural for this provision to read "the emission limitation achieved by the 5th best performing source."

##### 2. The Legislative History

The legislative history lends strong support to the view that, in passing section 112(d)(3)(A), Congress intended the Higher Floor Interpretation.

On the House side, the language that would eventually become section 112(d)(3)(A) was offered as a compromise amendment by Rep. Dingell on the House Floor on May 23, 1990. (The language of the amendment was identical to section 112(d)(3)(A) as ultimately enacted into law; only the numbers were different). Rep. Dingell yielded time to Rep. Collins "for purposes of explaining the amendment." Legislative History of 1990 CAA Amendments at 2896. In doing so, Rep. Collins noted that she had originally supported slightly more stringent numbers than those included in the amendment, and that under her original proposal

The average of emissions from the 10 percent cleanest sources would be the MACT standard. In cases where there are less than 30 sources in a category or subcategory, the

average of the 3 cleanest sources would determine the standard.

*Id.* She went on to explain that under the compromise amendment introduced by Rep. Dingell

MACT for existing stationary sources would be the average of the best 15 [percent] of technologies within each category or subcategory. For categories or subcategories where there are less than 30 sources, the standard is based on the average emissions from the best performing 5 sources.

#### Legislative History of 1990 CAA Amendments at 2897.

Rep. Collins' formulations are consistent with the Higher Floor Interpretation, not the Lower. The "average of the 3 cleanest sources" cannot mean, as the Lower Floor Interpretation would require, the level of control achieved by all three of the "cleanest sources." Nor can the "average of the best 15 [percent] of technologies" mean a technology as good as that used by all sources within the top 15 percent.

Another discussion of section 112(d)(3) is similar. On October 27, 1990, Sen. Durenberger (a principal supporter of the Clean Air Act Amendments) explained the provision on the Senate floor. His explanation was as follows:

The standard may not be less stringent than the average of the emission levels achieved by the best performing 12 percent of the existing sources within the category\* \* \* The Administrator is to exclude from the calculation of the average of top 12 percent any source which met the following conditions\* \* \*

Legislative History of 1990 CAA Amendments at 870 (Cong. Rec. S16929—Oct. 27, 1990). The second sentence of Sen. Durenberger's statement, in particular, is inconsistent with the Lower Floor Interpretation. Sen. Durenberger makes clear that the "average" called for in the statute is of the "top 12 percent," not the emission limitations achieved over time at each individual source.

No legislative history was found that supports the Lower Floor Interpretation. The EPA believes that the legislative history indicates that individual legislators—including those central to the drafting of section 112(d)(3)—understood the word "average" to mean that once the emission limitations achieved by the best performers in a category had been determined, those results should be averaged. This is the method of the Higher Floor Interpretation, not the Lower.

##### 3. Issues Raised in Public Comment

###### a. Arguments Concerning the Statutory Language.

(i) *Plain Meaning of the Statute.*

Several commenters argued that the meaning of the statute was plain on its face and that Congress clearly intended the Higher Floor Interpretation. These commenters argued that when section 112(d)(3)(A) is read as a whole in its most natural way, the Congressional intent in favor of the Higher Floor Interpretation is clear. They argued that if Congress had intended the Lower Floor Interpretation, it would have used different language in the statute.

The EPA agrees with these comments. As set forth in greater detail above, EPA believes the plain statutory language strongly favors the Higher Floor Interpretation.

(ii) *Congress' Failure to Use the Words "of the".* Several commenters argued that if Congress had meant the Higher Floor Interpretation, it would have added the words "of the" to the statute, so that section 112(d)(3)(A) would read "the average of the emission limitations achieved by the best performing 12 percent." These commenters saw the absence of the words "of the" in the statute as evidence that Congress intended the Lower Floor Interpretation.

The EPA agrees that the statute would be more clear if Congress had used the words "of the," but disagrees with the conclusion drawn by these commenters for two reasons. First, standard English usage often permits dropping the prepositions "of the" without changing the meaning of a phrase. (For example, "the biggest mountain in North America" has the same meaning as "the biggest of the mountains in North America." "Best singer in the band" has the same meaning as "best of the singers in the band.") The same cannot be said, however, for the various phrases and concepts that must be read into section 112(d)(3)(A) in order to arrive at the Lower Floor Interpretation. Phrases like "the worst performing member of..." or "averaged over time..." simply are not dropped as part of standard English. Their absence from section 112(d)(3)(A)—unlike the absence of the words "of the"—must be considered significant in interpreting the provision.

Second, although the words "of the" do not appear in section 112(d)(3)(A), they were used by key legislators in summarizing that section prior to passage of the 1990 Clean Air Act Amendments. As noted above, when Sen. Durenberger (a principal supporter of the Clean Air Act Amendments) spoke on the Senate floor on October 27, 1990, he explained section 112(d)(3)(A) as follows:

The standard may not be less stringent than the average of the emission levels

achieved by the best performing 12 percent of the existing sources within the category\* \* \*

Legislative History of 1990 CAA Amendments at 870 (Cong. Rec. S16929—Oct. 27, 1990) (emphasis added). As also noted above, when Rep. Collins introduced the provision in the House, she described it as follows:

The average of emissions from the 10 percent cleanest sources would be the MACT standard. In cases where there are less than 30 sources in a category or subcategory, the average of the 3 cleanest sources would determine the standard.

Legislative History of 1990 CAA Amendments at 2896 (emphasis added) (describing a provision with identical language but different numbers than the one ultimately enacted into law).

In EPA's view, the fact that Congress did not use the words "of the" in section 112(d)(3)(A) is fully consistent with standard English. However, the fact that key legislators did use these words in describing the provision to their colleagues, in combination with the failure of those legislators to use the phrases on which the Lower Floor Interpretation depends, provides a strong indication that Congress intended the Higher Floor Interpretation in enacting section 112(d)(3)(A).

(iii) *Purpose of the Word "Average".* Several commenters argued that the word "average" in section 112(d)(3)(A) should be read to require averaging not of emissions from different sources within the top 12 percent, but instead of emissions from individual sources at different times, or from different emission points, or made up of different HAP. The EPA does not agree that the word "average" in section 112(d)(3)(A) can reasonably be read to serve this purpose. First, such a reading is difficult, if not impossible, to reconcile with the provision of section 112(d)(3) establishing a "floor" for new sources. Under those provisions, new source standards may not be less stringent than

The emission control that is achieved in practice by the best controlled similar source. 42 U.S.C. 7412(d)(3). Notably, Congress did not use the word "average" in this provision. If the word "average" in section 112(d)(3)(A) was intended to refer to averages across time, or between emission points, or among different HAP, then Congress must have intended that such averaging would take place for existing source standards, but not for new source standards. There is no reason to believe Congress intended this implausible result.

There is a much more likely explanation: That to the extent Congress contemplated that averaging across

time, or between emission points, or among HAP would play a role in either existing or new source MACT standards, it considered the terms "emission limitation" and "emission control" fully adequate to reflect that fact. In EPA's air program, emission limitations have routinely been expressed in terms of averages across time, for example, without any special statutory direction or authority. There is no reason to believe that Congress would have thought that special instructions were needed to ensure that EPA continued this practice, and even less reason to believe Congress would have thought special instructions were needed with respect to existing source standards, but not new source standards.

Furthermore, the legislative history of section 112 casts doubt on the interpretation of the word "average" offered by these commenters. When Congress comprehensively revised section 112 in the Clean Air Act Amendments of 1990, it based the revisions in substantial part on the Clean Water Act's effluent guidelines program. (See, e.g., Remarks of Sen. Durenberger, Cong. Rec. S516 (January 30, 1990) ("\* \* \* this approach to regulation of toxic air pollutants is not without precedent. A program very similar to the one I have just described has already been implemented under the Clean Water Act".) Under that program, certain limits (known as "BPT limits") have long been based on the "average of the best" performance at existing facilities. (See generally Remarks of Sen. Muskie, Legislative History of Federal Water Pollution Control Act of 1972 at 169-70 ("The Administrator should establish the range of 'best practicable' levels based upon the average of the best existing performance by plants of various sizes, ages and unit processes.")) In determining "average of the best" under the Clean Water Act, EPA has historically identified the best performers in an industrial category, and then averaged their performances. This methodology is consistent with the Higher Floor Interpretation and not the Lower.

(iv) *Proximity of the Word "Average" to the Words "Emission Limitation".* Several commenters argued that the proximity of the word "average" to the words "emission limitation" suggests that "average" modifies "emission limitation," and not the entire phrase following those words. The EPA does not agree with this argument. In English, adjectives often modify not only the noun immediately following, but an entire phrase. In the phrase "the biggest mountain in North America climbed by

members of the Washington, D.C. Climbing Club," for example, the adjective "biggest" modifies the entire remainder of the phrase. There is no reason to conclude that the word "average" in section 112(d)(3)(A) plays a different role.

(v) *Use of the Words "Achieved By"*. Several commenters argued that the use of the words "achieved by" in the statute indicates that all sources within the top 12 percent must be achieving the emission limitations used to set the MACT Floor.

The EPA does not agree with this argument. The EPA believes the argument depends both on inferring the presence of the word "all" in section 112(d)(3)(A), and (as discussed above) on ignoring, or incorrectly construing, the meaning of the word "average." Section 112(d)(3)(A) simply does not say "the emission limitation achieved by all sources within the best performing 12 percent \* \* \*." Congress' use of the words "achieved by" cannot reasonably be stretched to accomplish such a rewriting of the statute.

b. *Arguments Concerning Structure of the Statute*. Several commenters argued that elements of the statute's structure support the Lower Floor Interpretation. For example, some commenters argued that the Lower Floor Interpretation best reflects EPA's authority to consider cost and other factors in setting standards more stringent than MACT Floor. Other commenters argued that the Lower Floor Interpretation best reflects the distinction between existing source MACT and new source MACT.

The EPA does not agree with these arguments. In fact, the Higher Floor Interpretation fully preserves both of these structural elements of the statute. With the Higher Floor Interpretation, just as with the Lower, EPA still has authority to establish existing source standards more stringent than the Floor based on enumerated criteria. With the Higher Floor Interpretation, just as with the Lower, there is still a distinction between the Floor for existing sources and the level of control required for new sources. (Under section 112(d)(3), standards for new sources must be at least as stringent as "the emission control that is achieved in practice by the best controlled similar source"). The fact that there may be "less distance" to travel above the Floor with the Higher Floor Interpretation does not establish an inconsistency between that interpretation and other parts of the statute, nor does it mean that the interpretation is flawed in any way.

Furthermore, structural arguments tend to favor the Higher Floor Interpretation more strongly than the

Lower. Section 112 was passed in its current form to ensure quick and dramatic reductions in air toxics emissions. Congress was frustrated with the slow pace of toxics control prior to 1990, and many members in part blamed EPA for weak controls. See, e.g., H. Comm. Rep. 101-490 at 150-54, 322-23; S. Rpt. 101-228 at 128-33. The structure and purpose of section 112 as a whole indicates that section 112(d)(3)(A) was intended to establish a stringent minimum level of control for hazardous air pollutants.

c. *Additional Arguments*. Several commenters argued that the Higher Floor Interpretation would require EPA to set MACT Floors that failed to correspond to real-world control technologies.

The EPA does not agree with this argument. The EPA believes that the argument depends upon a flawed premise: That the word "average" can only mean "arithmetic mean." In fact, there are a number of conventional methods for determining the average of a data set, including the median. Congress did not mandate a particular method of determining "average" or central tendency in section 112(d)(3)(A), and the choice of methodology—whether median, mean, or some other measure—can often change the results markedly. For example, if the five facilities that make up the top 12 percent of a source category are achieving reductions equal to 99 percent, 98 percent, 95 percent, 94 percent and 93 percent, EPA need not set the MACT Floor equal to the arithmetic mean of these values, which is 95.8 percent. Using the Higher Floor Interpretation, EPA could set the MACT Floor equal to the median of these values, which is 95 percent.

This discussion responds to the most significant comments on legal issues received in response to the March 9, 1994 Federal Register document. Other comments on legal issues are addressed in item number VI-B-61 in docket A-90-19.

### C. Conclusion

The EPA believes that Congress spoke with clarity in section 112(d)(3)(A) of the Clean Air Act. That provision—requiring standards to be no less stringent than "the average emission limitation achieved by the best performing 12 percent of existing sources"—lends little support for an interpretation under which standards might be set at the emission limitation achieved by the worst performing member of the best performing 12 percent of existing sources. The legislative history offers no support for

such an interpretation, and indeed points strongly in the opposite direction. The EPA believes that the Higher Floor Interpretation represents the best reading of the statutory language.

## II. Discretion in Setting Floors for MACT Standards

In today's notice, EPA announces its conclusion that Congress intended the Higher Floor Interpretation. The effect of this decision, however, is not to identify any particular number (e.g. the 94th percentile) as the Floor for all MACT standards. EPA retains discretion in important respects in setting Floors for MACT standards, and intends to exercise its discretion, within the statutory framework, to promulgate MACT standards that best serve the public interest.

EPA believes the Agency retains substantial discretion, within the statutory framework, to set MACT Floors at appropriate levels. For example, because Congress did not define the term "average" in section 112(d)(3), or in the legislative history, it implicitly delegated the authority to EPA to do so. The choice of methodology—whether mean, median, mode, or some other measure—can often change the results. (The mean of a set of measurements is the sum of the measurements divided by the number of measurements in the set. The median is the value in a set of measurements below and above which there are an equal number of values, when the measurements are arranged in order of magnitude. The mode is the value that occurs most often in a set of measurements). As some commenters noted, the "average of the best performing 12%" corresponds to the 94th percentile when the word "average" is construed to be the "median." If, however, "average" is construed to be the "arithmetic mean" or "mode," a different result may obtain. EPA construes the word "average" in section 112(d)(3) to authorize the Agency to use any reasonable method, in a particular factual context, of determining the central tendency of a data set. In addition, EPA has discretion to use its best engineering judgment in collecting and analyzing the data, and in assessing the data's comprehensiveness, accuracy and variability, in order to determine which sources achieve the best emission reductions. EPA also has discretion in determining how to analyze the data, and thus in determining the appropriate "average" in each category or subcategory.

There are other important ways that EPA retains discretion in setting MACT floors. For example, Congress authorized EPA to subcategorize source categories based on classes, types and sizes of sources, which will result in different Floors for different subcategories. CAA section 112(d)(1). Using this authority, EPA can tailor standards to certain characteristics of particular emission units and sources. EPA retains flexibility, for example, to conclude that the production processes used at particular sources in the relevant category are sufficiently different from processes used at other sources in the same category to justify the creation of a new subcategory.

These examples are not meant to be exhaustive. EPA has only begun the process of setting MACT standards. As EPA gains experience in setting MACT Floors, other issues may arise that will require EPA to exercise its discretion in determining, for each case, what represents the average emission limitation achieved by the best performing 12% of existing sources (or the best performing five sources, in categories or subcategories with fewer than 30 sources).

### III. Precedential Impact of Today's Determination

In its March 9, 1994 document, EPA stated that "the MACT floor decision \* \* \* in this rulemaking will have broad precedential effect, and will be presumptively followed in subsequent MACT rulemakings." 59 FR 11018. Several commenters objected this statement, arguing that the issue of how best to interpret section 112(d)(3)(A) should have been addressed in a separate, generally applicable rulemaking.

The EPA wishes to emphasize that, although today's decision concerning the interpretation of Clean Air Act section 112(d)(3) for purposes of the HON will be precedential for future rulemakings, it will not be binding. Specifically, EPA will fully consider all comments on individual MACT standards, including those regarding the proper interpretation of the language in sec. 112(d)(3)(A), received on or before the close of the comment periods for those standards.

### IV. Application of MACT Floor Decision to Medium Storage Vessels at Facilities Subject to the HON

As described in the March 9, 1994 *Federal Register* reopening the comment period, EPA requested comment on whether the control requirements for medium storage vessels previously proposed by EPA

would be appropriate in the event those proposed controls were to be determined to be more stringent than the floor. Only four commenters addressed the question of the appropriate controls requirement for medium storage vessels and provided rationale for their opinions. Of these commenters, only one submitted information which purported to represent control information for SOCOMI storage vessels. This information was reviewed and found to not provide any information on control performance and to represent storage vessels associated with non-SOCMI processes (i.e., other source categories) as well as SOCOMI processes. Therefore, the submitted information could not be used to revise the database. The EPA review of this information is contained in item VI-B-62 in docket A-90-19. This section of the preamble, therefore, only presents the basis for the final decision on control requirements for medium sized storage vessels.

For medium vessels, about 8 percent of the vessels are controlled with either a 90-percent efficient control device or an IFR or EFR with a continuous seal. All of the controlled medium-sized vessels contained liquids with vapor pressures of 13.1 kPa (1.9 psia). Because the arithmetic mean characteristics of the top 12 percent of the medium vessels would not represent the performance of any known technology, the EPA used the median as the average for these vessels. Thus, for medium-sized storage vessels, the floor determined by the average characteristics of the top 12 percent of the sources would require control of vessels storing liquids with vapor pressures of 13.1 kPa (1.9 psia) by either a 90-percent efficient control device or an IFR or EFR with a continuous seal.

In selection of the control provisions for medium-sized storage vessels, EPA considered the regulatory alternatives that were presented in the April 22, 1994 *Federal Register* document. These alternatives reflected a combination of: (1) The floor control for medium-sized storage vessels, which at the time of proposal, were equipped with the floor controls and (2) the proposed control provisions for medium-sized storage vessels which were equipped with no control or less efficient controls than the performance of the revised floor component for the source-wide floor. The EPA did not develop a regulatory alternative corresponding to application of the revised floor control level to all storage vessels. Such an alternative would have essentially the same control costs as the proposed control provisions, but would result in a lower

emission reduction. Because the floor control would represent a less economically efficient option and would add to the complexity of the rule, this option was not formally evaluated.

For medium storage vessels at existing sources, control at the regulatory alternative used to represent the floor control was estimated to cost \$2.4 million/yr and to result in an emission reduction of 370 Mg/yr (110 tons/yr). The regulatory option for control level beyond the floor component is estimated to further reduce emissions by less than 100 Mg/yr (110 tons/yr) at an additional cost of \$4 million/yr, or \$48,000/Mg for each additional Mg of emission reduction. Due to the relatively high incremental costs and low emission reductions of this alternative, the EPA believes that the control level for the medium storage vessels component of the source-wide floor represented the maximum reduction achievable considering cost and other impacts.

## IV. Administrative Requirements

### A. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials) (Section 307(d)(7)(A)).

### B. Paperwork Reduction Act

The information collection requirements of these provisions in this rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by the EPA (ICR No. 1414.02), and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 401 M Street, SW., (2136), Washington, DC 20460, or by calling (202) 260-2740. These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the *Federal Register*.

The reporting and recordkeeping burden of the information collection requirements of the provisions for medium sized storage vessels are included in the estimate of the overall reporting burden, which is presented in ICR No. 1414.02. The information collection requirements for the entire rule has an estimated annual reporting

burden averaging 1,400 hours per response, and an estimated annual recordkeeping burden averaging 5,400 hours per respondent. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, EPA, 401 M Street, SW., (Mail code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

**C. Executive Order 12866**

This final action regarding provisions applicable to medium sized storage vessels in facilities subject to the HON has been reviewed in accordance with Executive Order 12866. Under the terms of the Order, the Administrator has assessed the potential costs and benefits of the regulatory action. The methods for and results of these cost and benefit analyses are described in the HON's Regulatory Impact Analysis (RIA). The RIA was included in the HON docket at proposal, and thus it was made available for public comment.

Executive Order 12866 also requires that the record for "significant" rules include an assessment of the potentially effective and reasonably feasible alternatives to the planned action. The potentially effective and reasonably feasible alternatives to the control requirements in the HON were also analyzed as part of the rule development process. The methods for and results of these analyses are described in the HON's Background Information Document (BID). The BID was included in the HON docket at proposal, and thus it was also available for public comment. In addition, many of the alternative requirements considered by the Administrator were described in the preamble for the HON proposal.

The potential costs associated with selection of the final provisions are primarily the result of statutory requirements. All elements of the cost that are not directly attributable to statutory requirements were deemed appropriate because the Administrator determined that they were necessary for administering this program effectively and efficiently. In assessing the potential costs and benefits—both quantitative and qualitative—of this

rule, the Administrator has determined that the benefits justify the costs.

The Administrator has also determined that this regulatory action does not unduly interfere with State, local and tribal governments in the exercise of their governmental functions.

**D. Regulatory Flexibility Act Compliance**

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the EPA to consider potential impacts of Federal regulations on small business entities. If a preliminary analysis indicates that a proposed regulation would have a significant economic impact on 20 percent or more of small entities, then a regulatory flexibility analysis must be prepared.

Regulatory impacts are considered significant if any of the following criteria are met: (1) Compliance increases annual production costs by more than 5 percent, assuming costs are passed on to consumers; (2) compliance costs as a percentage of sales for small entities are at least 10 percent more than compliance costs as a percentage of sales for large entities; (3) capital costs of compliance represent a "significant" portion of capital available to small entities, considering internal cash flow plus external financial capabilities; or (4) regulatory requirements are likely to result in closures of small entities.

The potential costs of the requirements for medium sized storage vessels were considered as part of the economic impact analysis for the entire regulation. The assessment of the economic impacts of the overall regulation were presented in the April 22, 1994 *Federal Register* (59 FR 19449). Therefore, the addition of the final provisions to the standard does not alter the conclusion that the standard is not expected to have a significant economic impact on a substantial number of small firms.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule will not have an economic impact on small entities because no additional costs will be incurred.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 27, 1994.

Carol M. Browner,  
Administrator.

For the reasons set out in the preamble, part 63, title 40, chapter I, of

the Code of Federal Regulations is amended as follows:

**PART 63—[AMENDED]**

1. The authority citation for part 63 continues to read as follows:

Authority: Sections 101, 112, 114, 116, and 301 of the Clean Air Act (42 U.S.C. 7401, *et seq.*, as amended by Pub. L. 101-549, 104 Stat. 2399).

**Subpart G—National Emission Standards for Organic Hazardous Air Pollutants from Synthetic Organic Chemical Manufacturing Industry Process Vents, Storage Vessels, Transfer Operations, and Wastewater**

2. Table 5 of the appendix to subpart G is revised to read as follows:

**TABLE 5.—GROUP 1 STORAGE VESSELS AT EXISTING SOURCES**

Vessel capacity (cubic meters)	Vapor Pressure <sup>1</sup> (kilopascals)
75 ≤ capacity <151 .....	≥13.1
151 ≤ capacity .....	≥5.2

<sup>1</sup> Maximum true vapor pressure of total organic HAP at storage temperature.

[FR Doc. 94-13666 Filed 6-3-94; 8:45 am]  
BILLING CODE 6560-50-P

**40 CFR Part 281**

[FRL-4893-2]

**Kansas; Final Approval of State Underground Storage Tank Program**

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination on Kansas' application for final approval.

**SUMMARY:** The State of Kansas has applied for final approval of its underground storage tank (UST) program under subtitle I of the Resource Conservation and Recover Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Kansas' application and has reached a final determination that Kansas' underground storage tank program satisfies all of the requirements necessary to qualify for final approval. Thus, EPA is granting final approval to the State of Kansas to operate its program.

**EFFECTIVE DATE:** Final approval for Kansas shall be effective at 1 p.m. eastern time on July 6, 1994.

**FOR FURTHER INFORMATION CONTACT:** Lee Daniels, Coordinator, Underground Storage Tank Section, EPA Region 7, 726 Minnesota Ave., Kansas City, Kansas, 66101. Phone: (913) 551-7651

## SUPPLEMENTARY INFORMATION:

## A. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) enables EPA to approve state UST programs to operate in the state in lieu of the Federal UST program. To qualify for final authorization, a state's program must: (1) Be "no less stringent" than the Federal program in leak detection, maintaining records, release reporting, corrective action, tank closure, financial responsibility, new tank standards and the notification requirements of section 9004(a)(8) of RCRA, 42 U.S.C. 6991c(a)(8); and (2) provide for adequate enforcement (Section 9004(a) of RCRA, 42 U.S.C. 6991c(a)).

On September 1, 1994, Kansas submitted an application for "complete" program approval which includes regulation of both petroleum and hazardous substance tanks. Kansas also regulates heating oil tanks with the exception of tanks used to store heating oil for consumptive use at a single family residence. However, this part of the Kansas program is broader in scope than the Federal program and is not included in this final approval. On March 2, 1994, EPA published a tentative decision announcing its intent to grant Kansas final approval. Further background on the tentative decision to grant approval appears at 59 FR 9950, March 2, 1994.

Along with the tentative determination, EPA announced the availability of the application for public comment. Also, EPA provided notice that a public hearing would be provided only if significant public interest on substantive issues was shown. EPA received no comments on the application and no request for a public hearing, therefore, a public hearing was not held.

## B. Decision

I conclude that the State of Kansas' application for final approval meets all the statutory and regulatory requirements established by subtitle I of RCRA. Accordingly, Kansas is granted final approval to operate its UST program. The State of Kansas now has the responsibility for managing all regulated UST facilities within its borders and carrying out all aspects of the UST program except with regard to Indian lands, where EPA will retain and otherwise exercise regulatory authority. Kansas also has primary enforcement responsibility, although EPA retains the right to conduct inspections under section 9005 of RCRA, 42 U.S.C. 6991d, and to take enforcement actions under section 9006 of RCRA, 42 U.S.C. 6991e.

## Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

## Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. This approval effectively suspends the applicability of certain Federal regulations in favor of Kansas' program, thereby eliminating duplicative requirements for owners and operators of underground storage tanks in the state. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

## List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

**Authority:** This action is issued under the authority of sections 2002(a), 7004(b), and 9004 of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6974(b), and 6991c.

Dated: April 29, 1994.

William Rice,

Acting Regional Administrator.

[FR Doc. 94-13665 Filed 6-3-94; 8:45 am]

BILLING CODE 6560-50-F

## 40 CFR Part 721

[OPPTS-50612A; FRL-4750-3]

RIN 2070-AB27

## Aromatic Amino Ether; Withdrawal of a Significant New Use Rule

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

**ACTION:** Withdrawal of final rule.

**SUMMARY:** EPA is withdrawing a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance generically described as an aromatic amino ether which was the subject of premanufacture notice (PMN) P-90-1840. EPA initially published this SNUR using direct final rulemaking procedures. EPA received critical comments on this rule. Therefore, the Agency is withdrawing this rule, as required under the Expedited SNUR rulemaking process (40 CFR part 721 subpart D). In a separate notice of

proposed rulemaking published elsewhere in today's issue of the *Federal Register*, EPA is proposing a SNUR for this substance with a 30-day comment period.

**EFFECTIVE DATE:** This action is effective on June 6, 1994.

## FOR FURTHER INFORMATION CONTACT:

Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** In the *Federal Register* of October 4, 1993 (58 FR 51684), EPA issued several direct final SNURs including a SNUR for the substance described generically as aromatic amino ether, PMN P-90-1840. As described in 40 CFR 721.160, EPA is withdrawing the rule issued for P-90-1840 under direct final rulemaking procedures because the Agency received adverse comments. As required by § 721.160(a)(3)(iii), EPA is proposing the rule published elsewhere in today's issue of the *Federal Register*. For further information regarding EPA's expedited process for issuing SNURs, interested parties are directed to 40 CFR part 721 subpart D and 54 FR 31314 (July 27, 1989). The record for the direct final SNUR for this substance which is being withdrawn by this rule was established at OPPTS-50612. That record includes information considered by the Agency in developing this rule, and includes the adverse comments to which the Agency has responded with this notice of withdrawal. The docket control number for the withdrawal is OPPTS-50612A. For details refer to the proposal published elsewhere in today's issue of the *Federal Register*. The relevant portions of the original docket for the direct final SNUR are being incorporated under OPPTS-50612B, which is established for the proposed rule.

A public version of the record, without any confidential business information (CBI), is available in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office, from 12 noon to 4 p.m., Monday through Friday, except legal holidays. NCIC is located in Rm. E-G102, 401 M St., SW., Washington, DC 20460.

## List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: May 24, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention,  
Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

#### PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, and 2625(c).

#### § 721.3390 [Removed]

2. By removing § 721.3390.

[FR Doc. 94-13680 Filed 6-3-94; 8:45 am]

BILLING CODE 6580-50-F

#### 40 CFR Part 721

[OPPTS-50601C; FRL-4746-7]

#### Fluorene Substituted Aromatic Amine; Modification of a Significant New Use Rule

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

**ACTION:** Final rule.

**SUMMARY:** EPA is modifying a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for a fluorene substituted aromatic amine based on a modification to the TSCA section 5(e) consent order regulating that chemical substance.

**EFFECTIVE DATE:** The effective date of this rule is July 6, 1994.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** In the *Federal Register* of September 23, 1992 (57 FR 44050), EPA issued a SNUR establishing significant new uses for fluorene substituted aromatic amine (P-91-43). Because of the modification to the consent order for this substance, EPA is modifying this SNUR.

#### I. Background

The Agency proposed the modification of the SNUR for this substance in the *Federal Register* of July 28, 1993 (58 FR 40397). The background and reasons for the modification of the SNUR are set forth in the preamble to the proposed modification. The Agency received no public comment concerning the proposed modification. As a result EPA is modifying this SNUR.

#### II. Rationale for Modification of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this modification, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health and environmental effects of the substance, and EPA identified the tests considered necessary to evaluate the potential risks of the chemical substance. Specifically, EPA concluded that dermal and respiratory protection, hazard communication requirements, limiting uses to industrial uses only, a production volume limit, and a prohibition against releases to surface waters were necessary to control the potential unreasonable risks of the substance. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated. In light of data received for an analogous substance which indicates that the PMN substance is not expected to cause retinopathy, the submitter petitioned, and EPA determined, that the requirement that labels and Material Safety Data Sheets (MSDSs) indicate that the PMN substance may cause blindness and that eye protection should be worn when handling the substance was no longer appropriate and hence, was unnecessary to protect human health. The section 5(e) order modification eliminated that labeling and MSDS requirement based on the finding of no retinopathy effects. The modification of SNUR provisions for the substance designated herein is consistent with the modification of the section 5(e) order.

#### III. Rulemaking Record

The record for the rule which EPA is modifying was established at OPPTS-50601. This record includes information considered by the Agency in developing this rule and includes the modification to the consent order to which the Agency has responded with this proposal.

#### IV. Regulatory Assessment Requirements

##### A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an

action that is likely to result in a rule: (1) Having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

##### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by this rule will not be substantial, even if all of the SNUR notice submitters were small firms.

##### C. Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070-0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

#### List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: May 24, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention,  
Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

#### PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, and 2635(c).

2. In § 721.3764 by revising paragraph (a)(2)(ii) to read as follows:

§ 721.3764 Fluorene substituted aromatic amine.

(a) \* \* \*

(2) \* \* \*

(ii) *Hazard communication program.*

Requirements as specified in

§ 721.72(a), (b), (c), (d), (e)

(concentration set at 0.1 percent), (f), (g)(1)(iv), (g)(1)(vi), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4)(iii), and (g)(5).

\* \* \* \* \*

[FR Doc. 94-13678 Filed 6-3-94; 8:45 am]

BILLING CODE 6580-50-F

#### 40 CFR Part 721

[OPPTS-50585E; FRL-4649-8]

#### Amide of Polyamine and Organic Acid; Revocation of a Significant New Use Rule

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

**ACTION:** Final rule.

**SUMMARY:** EPA is revoking a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for amide of polyamine and organic acid based on receipt of new data. The data indicate that for purposes of section 5 of TSCA the substance will not present an unreasonable risk of injury to health.

**EFFECTIVE DATE:** The effective date of this rule is July 6, 1994.

#### FOR FURTHER INFORMATION CONTACT:

Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of September 28, 1990 (55 FR 39892), EPA issued a SNUR establishing significant new uses for amide of polyamine and organic acid

(P-89-1062). Because of additional data EPA has received for this substance, EPA is revoking this SNUR.

#### I. Background

The Agency proposed the revocation of the SNUR for this substance in the Federal Register of May 7, 1993 (58 FR 27255). The background and reasons for the revocation of the SNUR are set forth in the preamble to the proposed revocation. The Agency received no public comment concerning the proposed revocation. As a result EPA is revoking this SNUR.

#### II. Objectives and Rationale of Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance, and that the substance is expected to be produced in substantial quantities and there may be significant or substantial environmental exposure. EPA identified the tests necessary to evaluate the risks of the substance. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter, and a SNUR was promulgated. The consent order required the PMN submitter to perform toxicity testing on the chemical substance.

EPA reviewed testing conducted by the PMN submitter pursuant to the consent order for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The revocation of SNUR provisions for the substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above, EPA is revoking SNUR provisions for this chemical substance. EPA will no longer require notice of any company's intent to manufacture, import, or process this substance. In addition, export notification under section 12(b) of TSCA will no longer be required.

#### III. Rulemaking Record

The record for the rule which EPA is revoking was established at OPPTS-50585 (P-89-1062). This record includes information considered by the Agency in developing this rule and includes the test data to which the

Agency has responded with this revocation.

#### IV. Regulatory Assessment Requirements

EPA is revoking the requirements of this rule. Any costs or burdens associated with this rule will also be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: May 24, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention,  
Pesticides and Toxic Substances.

Therefore, 40 CFR part 721 is amended as follows:

#### PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.6180 [Removed]

2. By removing § 721.6180.

[FR Doc. 94-13679 Filed 6-3-94; 8:45 am]

BILLING CODE 6580-50-F

#### 40 CFR Part 721

[OPPTS-50575D; FRL-4649-9]

#### Adipic Acid, Polymer with 1,4-Cyclohexanedimethanol, Dipropylene Glycol, Alkanepolyol, Substituted Alkanolamines, and Carbomonocyclic Dicarboxylic Acid; Revocation of a Significant New Use Rule

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

**ACTION:** Final rule.

**SUMMARY:** EPA is revoking a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for adipic acid, polymer with 1,4-cyclohexanedimethanol, dipropylene glycol, alkanepolyol, substituted alkanolamines, and carbomonocyclic dicarboxylic acid based on receipt of new data. The data indicate that the substance will not present an unreasonable risk to health.

**EFFECTIVE DATE:** The effective date of this rule is July 6, 1994.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of April 24, 1990 (55 FR 17376), EPA issued a SNUR establishing significant new uses for adipic acid, polymer with 1,4-cyclohexanedimethanol, dipropylene glycol, alkanepolyol, substituted alkanolamines, and carbomonocyclic dicarboxylic acid (P-89-653). Because of additional data EPA has received for this substance, EPA is revoking this SNUR.

### I. Background

The Agency proposed the revocation of the SNUR for this substance in the Federal Register of May 5, 1993 (58 FR 26727). The background and reasons for the revocation of the SNUR are set forth in the preamble to the proposed revocation. The Agency received no public comment concerning the proposed revocation. As a result, EPA is revoking this SNUR.

### II. Objectives and Rationale of Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance, and that the substance is expected to be produced in substantial quantities and there may be significant or substantial environmental exposure. EPA identified the tests necessary to evaluate the risks of the substance. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter pursuant to the 5(e) consent order for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and subsequently revoked the section 5(e) consent order. The revocation of SNUR provisions for the substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above, EPA is revoking SNUR provisions for this chemical substance. EPA will no longer require notice of any company's intent to manufacture, import, or process this substance.

### III. Rulemaking Record

The record for the rule which EPA is revoking was established at OPPTS-50575 (P-89-653). This record includes information considered by the Agency in developing this rule and includes the test data to which the Agency has responded with this revocation.

### IV. Regulatory Assessment Requirements

EPA is revoking the requirements of this rule. Any costs or burdens associated with this rule will also be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: May 25, 1994.

**Lynn R. Goldman,**

*Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

Therefore, 40 CFR part 721 is amended as follows:

#### PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

#### § 721.6600 [Removed]

2. By removing § 721.6600.

[FR Doc. 94-13683 Filed 6-3-94; 8:45 am]

BILLING CODE 6560-50-F

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

43 CFR Parts 1720, 2070, 2510, and 8350

[WO-260-4212-02-24 1A; Circular No. 2656]

RIN 1004-AB98

### Homesteading; Designation of Areas and Sites; Programs and Objectives

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final rule.

**SUMMARY:** This administrative final rule removes Bureau of Land Management (BLM) regulations on programs and objectives, designation of areas and sites, homesteads, and established areas from the Code of Federal Regulations. These regulations are obsolete either because their authorities have expired or been repealed, or they have been superseded by other regulations or supplanted by BLM Manual provisions. **EFFECTIVE DATE:** June 6, 1994.

**ADDRESSES:** Inquiries and suggestions should be sent to: Director (260), Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Jim Paugh, (307) 775-6306.

**SUPPLEMENTARY INFORMATION:** Parts 1720, 2070, 2510, and subpart 8352 of title 43 of the Code of Federal Regulations are being removed in this administrative final rule. In some instances, the statutory authorities prompting a part either have been repealed or have expired. In other cases, the provisions of a part have been superseded by other regulations or replaced by BLM Manual provisions.

Part 1720, which is being removed by this rule, lists policies pertaining to the disposal and management of the public lands as managed by BLM before the enactment of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1700 *et seq.* These pre-FLPMA policies were based, to a considerable extent, on the Classification and Multiple Use Act, which expired according to its own terms on December 23, 1970. The BLM's post-FLPMA management and disposal policies now are reflected not only in FLPMA, but also in BLM's land use planning regulations, along with its other management- or disposal-related regulations, and its manualized instructions to BLM personnel. The BLM's Manual is open to public inspection. See 43 CFR 2.3.

Part 2510 pertains to the homestead laws that were repealed on October 21, 1976 (as to Alaska, October 21, 1986), by FLPMA. Because homestead entries no longer can be made with regard to the public lands of the United States, the regulations in this part are no longer needed.

Part 2070 and subpart 8352 were used to designate areas and sites. The types of designations referred to in these provisions have all been superseded by designations created in FLPMA and other laws. Such designations include areas of critical environmental concern, covered in 43 CFR part 1600; national conservation areas and national recreation areas, covered in various specific resource management regulations; wilderness, covered in part 8560; and national trails and rivers, covered in part 8350.

Because this final rule is an administrative action to remove obsolete provisions, it has been determined that it has no impacts on the public. The Department of the Interior, therefore, for good cause finds under 5 U.S.C. 553(b)(B) and 553(d)(3) that notice and public procedure thereon are unnecessary and that this rule may take effect upon publication.

The principal author of this final rule is Jim Paugh of the BLM Wyoming State Office, assisted by the staff of the Division of Legislation and Regulatory Management, BLM.

Because this final rule is a purely administrative regulatory action having no effects upon the public or the environment, it has been determined that the rule is categorically excluded from review under section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866.

As required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property. No private property rights would be affected by a rule that merely removes obsolete regulations no longer governing activities on the public lands. The Department therefore certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. Removing obsolete regulations that no longer govern activities on the public lands

will have no economic effect whatsoever.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department has certified to the Office of Management and Budget that this proposed rule meets the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

#### List of Subjects

##### 43 CFR Part 1720

Forests and forest products, Grazing lands, Natural resources, Public lands, Public lands-mineral resources, Public lands-sale, Recreation and recreation areas, Watersheds, Wilderness areas, Wildlife.

##### 43 CFR Part 2070

Natural resources, Public lands, Public lands-classification, Recreation and recreation areas.

##### 43 CFR Part 2510

Homesteads, Irrigation, Reclamation.

##### 43 CFR Part 8350

National Trails System, National Wild and Scenic Rivers System, Penalties, Public lands.

For the reasons stated in the preamble, and under the authority of section 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1740), chapter II, subtitle B, title 43 of the Code of Federal Regulations, is amended as set forth below:

#### PART 1720—[REMOVED]

1. Part 1720 is removed.

#### PART 2070—[REMOVED]

2. Part 2070 is removed.

#### PART 2510—[REMOVED]

3. Part 2510 is removed.

#### PART 8350—[AMENDED]

4. The authority citation for 43 CFR part 8350 continues to read as follows:

Authority: 16 U.S.C. 1241, 16 U.S.C. 1271, 43 U.S.C. 1701 *et seq.*

5. Part 8350 is amended by removing subpart 8352, consisting of sections 8352.0-1, 8352.0-2, 8352.0-5, 8352.0-6, 8352.1, 8352.2, 8352.3, and 8352.4.

Dated: May 11, 1994.

Nancy Keir Hayes,  
Assistant Secretary of the Interior.

[FR Doc. 94-13595 Filed 6-3-94; 8:45 am]

BILLING CODE 4310-84-P

#### 43 CFR Public Land Order 7056

[AK-932-4210-06; AA-16807]

#### Partial Revocation of Executive Order No. 4257 Dated June 27, 1925; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

**SUMMARY:** This order revokes an Executive Order insofar as it affects approximately 54.47 acres of National Forest System land and 8.91 acres of public land withdrawn for use by the Coast Guard, Department of Transportation, for the Woronkofski Point Lighthouse. The land is no longer needed for the purpose for which it was withdrawn. This action will also open the land within the Forest to such forms of disposition as may by law be made of National Forest System land. The land has been and will continue to be subject to the Tongass National Forest reservation. Upon revocation, the public land will be subject to the terms and conditions of Public Land Order No. 5180, as amended, and any other withdrawal of record.

**EFFECTIVE DATE:** June 6, 1994.

**FOR FURTHER INFORMATION CONTACT:** Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), and by section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (1988), it is ordered as follows:

1. Executive Order No. 4257 dated June 27, 1925, which withdrew National Forest System land and public land for lighthouse purposes, is hereby revoked insofar as it affects the following described land:

#### Copper River Meridian

##### Tongass National Forest

A parcel of land located within secs. 5 and 6 of T. 63 S., R. 83 E., described as U.S. Survey No. 1712, excluding the following parcel:

Beginning at a point which is S. 87°21'00.6" E., 309.65 feet from U.S.L.M. No. 1712, at approximate latitude 56°26'00" N., longitude 132°30'30" W;

Thence S. 23°20'04" W., 219.26 feet;  
Thence N. 68°00'42.2" W., 163.49 feet;  
Thence N. 58°17'00" W., 69.30 feet;  
Thence N. 25°03'00" W., 56.10 feet;  
Thence N. 20°08'00" W., 42.24 feet;  
Thence N. 39°08'00" E., 50.16 feet;  
Thence S. 79°08'00" E., 257.40 feet.

Thence N. 66°00'00" E., 56.10 feet to the point of beginning, containing approximately 1 acre.

The area described, less the excluded parcel, contains approximately 54.47 acres of National Forest System land and 8.91 acres of public land, for a total of approximately 63.38 acres.

2. At 10 a.m. on July 6, 1994, the National Forest System land described above will be opened to such forms of disposition as may by law be made of National Forest System land, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

At 10 a.m. on July 6, 1994, the public land described above will be opened to location and entry under the United States mining laws for metalliferous minerals, pursuant to the term of 30 U.S.C. 49(a) (1988), subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable laws. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: May 17, 1994.

**Bob Armstrong,**

*Assistant Secretary of the Interior.*

[FR Doc. 94-13580 Filed 6-3-94; 8:45 am]

BILLING CODE 4310-JA-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 301

[Docket No. 931235-4107; I.D. 052694A]

#### Pacific Halibut Fisheries

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

**ACTION:** Notice of inseason action.

**SUMMARY:** The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC), publishes notice of this inseason action pursuant to IPHC regulations approved by the United States Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of Pacific halibut stocks in order to help sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

**EFFECTIVE DATE:** May 17, 1994.

#### FOR FURTHER INFORMATION CONTACT:

Steven Pennoyer, telephone 907-586-7221; Gary Smith, telephone 206-526-6140; or Donald McCaughran, telephone 206-634-1838.

**SUPPLEMENTARY INFORMATION:** The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by the Secretary of State of the United States of America (58 FR 17791, April 6, 1993). On behalf of the IPHC, this inseason action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

#### Inseason Action

##### 1994 Halibut Landing Report No. 2

First Oregon Sport Season to Close May 20.

The preliminary catch estimate for the 1994 sport halibut fishery between Cape Falcon (latitude 45°46'00"N) and the California border (latitude 42°00'00"N) indicates the 53,641 pound (24.3 mt) catch limit will be reached on May 20. Therefore, the sport halibut fishery in this area will close at 11:59 p.m. on May 20.

Sport fishing for Pacific halibut will re-open May 21 through August 5, 7 days a week, only in the area inside the 30-fathom curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600 from Cape Falcon to the California border, or until 2,716 pounds (1.2 mt) are estimated to have been taken and the season is closed by the Commission, whichever occurs first. The daily bag limit remains two halibut per person, one with a minimum overall size limit of 32 inches (81 cm) and the second with a minimum overall size limit of 50 inches (127 cm).

Dated: May 31, 1994.

**David S. Crestin,**

*Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 94-13702 Filed 6-3-94; 8:45 am]

BILLING CODE 3510-22-F

#### 50 CFR Part 625

[Docket No. 940262-4963; I.D. 052494C]

#### Summer Flounder Fishery

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

**ACTION:** Notification of commercial quota transfer.

**SUMMARY:** NMFS announces that the States of Connecticut, Maryland, North Carolina, and the Commonwealth of Virginia are transferring various amounts of commercial summer flounder quota to the State of Delaware. The public is advised that the quota adjustments have been made, and is informed of the revised commercial quota for each state involved.

**EFFECTIVE DATE:** June 1, 1994.

**FOR FURTHER INFORMATION CONTACT:** Hannah Goodale, 508-281-9101.

#### SUPPLEMENTARY INFORMATION:

Regulations implementing Amendment 2 to the Fishery Management Plan for the Summer Flounder Fishery are found at 50 CFR part 625. The regulations require annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 625.20.

The commercial quota for summer flounder for the 1994 calendar year set equal to 16,005,560 lb (7.3 million kg) and the allocations to each state were published March 7, 1994 (59 FR 10586). NMFS issued a notification that the commercial quota available to the State of Delaware for 1994 had been harvested, effective March 30, 1994 (59 FR 15863, April 5, 1994). The 1994 quotas for several states were adjusted for overages occurring in 1993, as required under § 625.20(d)(2), on May 25, 1994. The quotas after adjustments for overages in 1993 for the states affected by this action were: Delaware, -1,359 lb (-616 kg); Maryland, 324,117 lb (147,018 kg); North Carolina, 4,369,775 lb (1,982,117 kg); and Virginia, 3,242,354 lb (1,470,722 kg). Since Connecticut's quota was not exceeded in 1993, its 1994 quota of 361,258 lb (163,866 kg) did not need adjustment for overages prior to this action.

The final rule implementing Amendment 5 to the FMP was published December 17, 1993 (58 FR 65936), and allows two or more states, under mutual agreement and with the concurrence of the Director, Northeast

Region, NMFS (Regional Director), to transfer or combine summer flounder commercial quota. The Regional Director is required to consider the criteria set forth in § 625.20(f)(1) in the evaluation of requests for quota transfers or combinations.

Section 625.20(3) further states that a state may not submit a request to transfer or combine quota if a request to which it is party is pending before the Regional Director. While Delaware is the recipient of the four transfers, each request to transfer quota was presented separately by each state, and therefore considered individually by the Regional Director. Publication as one notification is efficient and convenient for reference.

Connecticut, Maryland, North Carolina, and Virginia have agreed to transfer 96 lb (44 kg), 1,000 lb (454 kg), 2,782 lb (1,262 kg), and 2,162 lb (981 kg), respectively, of their commercial quotas to Delaware. The Regional Director has determined that the criteria set forth in § 625.20(f) have been met, and publishes this notification of quota transfers. The revised quotas for the calendar year 1994 are: Connecticut, 361,162 lb (163,822 kg); Delaware, 4,681 lb (2,123 kg); Maryland, 323,117 lb (146,565 kg); North Carolina, 4,366,993 lb (1,980,855 kg) and Virginia, 3,240,192 lb (1,469,742 kg).

Because current landings estimates indicate that the Delaware inshore fishery has harvested the quota made available through these transfers, no quota is currently available for landings in that State. Federally permitted vessels may not land summer flounder in the State of Delaware.

This action does not alter any of the conclusions reached in the Environmental Impact Statement prepared for Amendment 2 to the FMP regarding the effects of summer flounder fishing activity on the human environment. Amendment 2 established procedures for setting an annual coastwide commercial quota for summer flounder and a formula for determining commercial quotas for each state. The quota transfer provision was established by Amendment 5 to the FMP and the environmental assessment prepared for Amendment 5 found that the action had no significant impact on the environment. Under § 6.02b.3(b)(i)(aa) of NOAA Administrative Order 216-6, this action is categorically excluded from the requirement to prepare additional environmental analyses. This is a routine administrative action that reallocates commercial quotas within the scope of previously published environmental analyses.

#### Classification

This action is required by 50 CFR part 625 and is exempt from OMB review under E.O. 12866.

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

Dated: May 31, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-13657 Filed 6-1-94; 2:24 pm]

BILLING CODE 3510-22-P

#### 50 CFR Part 672

[Docket No. 931199-4042; I.D. 060194A]

#### Groundfish of the Gulf of Alaska

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

ACTION: Closure.

**SUMMARY:** NMFS is closing the directed fishery for pollock in Statistical Area 61 (between 159° and 170° W. long.) in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the second quarterly allowance of the total allowable catch (TAC) for pollock in this area.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), June 2, 1994, until 12 noon, A.l.t., July 1, 1994.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Sloan, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the GOA (FMP) prepared by the North Pacific Fishery Management Council under the authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The second quarterly allowance of pollock TAC in Statistical Area 61 is 5,037 metric tons (mt), as established by the 1994 final specifications (59 FR 7647, February 16, 1994) and modified in accordance with § 672.20(a)(2)(iv).

The Director, Alaska Region, NMFS (Regional Director), has determined, in accordance with § 672.20(c)(2)(ii), that the 1994 second quarterly allowance of pollock TAC in Statistical Area 61 soon will be reached. The Regional Director established a directed fishing allowance of 4,400 mt, and has set aside the remaining 637 mt as bycatch to support other anticipated groundfish fisheries.

The Regional Director has determined that the directed fishing allowance has been reached. Consequently, directed fishing for pollock in Statistical Area 61 is prohibited, effective from 12 noon, A.l.t., June 2, 1994, until 12 noon, A.l.t., July 1, 1994.

Directed fishing standards for applicable gear types may be found in the regulations at § 672.20(g).

#### Classification

This action is taken under 50 CFR 672.20 and is exempt from OMB review under E.O. 12866.

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

Dated: June 1, 1994.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94-13726 Filed 6-1-94; 4:16 pm]

BILLING CODE 3510-22-F

#### 50 CFR Part 675

[Docket No. 931100-4043; I.D. 060194B]

#### Groundfish of the Bering Sea and Aleutian Islands Area

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

ACTION: Closure.

**SUMMARY:** NMFS is prohibiting retention of sablefish by persons using trawl gear in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands (BSAI) management area. NMFS is requiring that catches of sablefish by these persons in the BS be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the share of the sablefish total allowable catch (TAC) assigned to trawl gear in the BS has been reached.

**EFFECTIVE DATE:** 12 noon, Alaska local time (A.l.t.), June 1, 1994, until 12 midnight, A.l.t., December 31, 1994.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Sloan, 907-586-7228.

**SUPPLEMENTARY INFORMATION:** The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.24(c)(1)(i), the share of the sablefish TAC assigned to trawl gear in the BS was established by the final 1994 initial specifications of groundfish (59 FR 7656, February 16, 1994) as 230 metric tons.

The Director, Alaska Region, NMFS, has determined, in accordance with § 675.24(d)(2), that the share of the sablefish TAC assigned to trawl gear in the BS has been reached. Therefore,

NMFS is requiring that further catches of sablefish by persons using trawl gear in the BS be treated as prohibited species in accordance with § 675.20(c)(3), effective from 12 noon, A.l.t., June 1, 1994, until 12 midnight, A.l.t., December 31, 1994.

#### Classification

This action is taken under § 675.24 and is exempt from OMB review under E.O. 12866.

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

Dated: June 1, 1994.

**Richard H. Schaefer,**

*Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 94-13725 Filed 6-1-94; 4:16 pm]

BILLING CODE 3510-22-F

# Proposed Rules

Federal Register

Vol. 59, No. 107

Monday, June 6, 1994

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Chapter I

[Summary Notice No. PR-94-13]

#### Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

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

**ACTION:** Notice of petitions for rulemaking received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received by August 5, 1994.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. \_\_\_\_\_, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frederick M. Haynes, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3939.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on May 31, 1994.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

#### Petitions for Rulemaking

*Docket No.:* 26633

*Petitioner:* Messrs. Jack W. Tunstill,

Richard H. Low, and Wayne Witt

*Regulations Affected:* 14 CFR 61.95

*Description of Rulechange Sought:* To amend § 61.95(a)(1) of the FAR which requires student pilots to receive both ground and flight instruction in the specific terminal control area for which solo flight is authorized. The petitioners propose that a student pilot who has met the requirements of § 61.95 for either the Tampa or Orlando TCA's be allowed to operate in both TCA's

*Petitioner's Reason for the Request:*

*Denial, May 17, 1994.*

[FR Doc. 94-13699 Filed 6-3-94; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 39

[Docket No. 94-NM-43-AD]

#### Airworthiness Directives; Aerospatiale Model ATR42-200 and -300 Series Airplanes

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Model ATR42-200 and -300 series airplanes. This proposal would require a one-time dye penetrant inspection to detect cracking in certain hinge pins of the nose landing gear (NLG), and replacement of cracked pins with crack-free pins. This proposal is prompted by reports of cracking of certain hinge pins in the NLG. The actions specified by the proposed AD

are intended to prevent collapse of the NLG due to cracking of the hinge pins.

**DATES:** Comments must be received by July 18, 1994.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-43-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Sam Grober, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-1187; fax (206) 227-1320.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice

must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94-NM-43-AD." The postcard will be date stamped and returned to the commenter.

#### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 94-NM-43-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

#### Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Aerospatiale Model ATR42-200 and -300 series airplanes. The DGAC advises that cracking has been found on the hinge pins during routine overhaul of the nose landing gear (NLG) on Model ATR42-200 and -300 series airplanes. The cause for this cracking has been attributed to improper heat treatment during manufacture of the hinge pins. The defective pins have been isolated to those manufactured by Nardi having part number D56867 and serial numbers beginning with the letter "N." This condition, if not corrected, could result in collapse of the NLG due to cracking of the hinge pins.

Avions de Transport Regional has issued Service Bulletin ATR42-32-0064, dated January 17, 1994, that describes procedures for a one-time dye penetrant inspection to detect cracking in certain hinge pins of the NLG, and replacement of cracked pins with crack-free pins. The DGAC classified this service bulletin as mandatory and issued French Airworthiness Directive 94-005-055(B), dated January 5, 1994, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same

type design registered in the United States, the proposed AD would require a one-time dye penetrant inspection to detect cracking in certain hinge pins in the NLG, and replacement of cracked pins with crack-free pins. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 128 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$42,240, or \$330 per airplane.

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

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

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

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

**Authority:** 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

### § 39.13 [Amended]

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

**Aerospatiale:** Docket 94-NM-43-AD.

**Applicability:** Model ATR42-200 and -300 series airplanes equipped with hinge pins installed at the nose landing gear (NLG) that are manufactured by Nardi, have part number D56867, and have serial numbers beginning with the letter "N"; certificated in any category.

**Compliance:** Required as indicated, unless accomplished previously.

To prevent collapse of the NLG due to cracking of the hinge pins, accomplish the following:

(a) Prior to the accumulation of 10,000 total landings or within 1,000 landings after the effective date of this AD, whichever occurs later, perform a dye penetrant inspection to detect cracking in the hinge pins on the NLG in accordance with Avions de Transport Regional Service Bulletin ATR42-32-0064, dated January 17, 1994.

(1) If no cracking is found, prior to further flight, reinstall that hinge pin in accordance with the service bulletin.

(2) If cracking is found, prior to further flight, install a new hinge pin or a pin that has been previously inspected and found to be crack-free, in accordance with the service bulletin.

(b) As of the effective date of this AD, no hinge pin manufactured by Nardi having part number D56867 and any serial number beginning with the letter "N," shall be installed on the NLG of any airplane, unless that pin has been previously inspected and has been found to be crack-free, in accordance with Avions de Transport Regional Service Bulletin ATR42-32-0064, dated January 17, 1994.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

**Note:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

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

Issued in Renton, Washington, on May 31, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane  
Directorate, Aircraft Certification Service.

[FR Doc. 94-13628 Filed 6-3-94; 8:45 am]

BILLING CODE 4910-13-U

#### 14 CFR Part 39

[Docket No. 89-NM-205-AD]

#### Airworthiness Directives; Aerospatiale Model ATR 42, et al.; Series Airplanes

AGENCY: Federal Aviation  
Administration, DOT.

ACTION: Proposed rule; withdrawal.

**SUMMARY:** This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to various smaller transport category airplanes certificated for operation with a main deck Class B cargo compartment. That action would have required either the conversion of all main deck Class B cargo compartments to the Class C configuration; or the use of flame penetration-resistant containers with smoke detection and fire extinguishing systems to carry all cargo; or the accomplishment of certain operational and equipment changes and design modifications to maximize cargo fire detection and control. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received new data and is undertaking alternative rulemaking action. Accordingly, the proposed rule is withdrawn.

#### FOR FURTHER INFORMATION CONTACT:

Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations to add a new airworthiness directive (AD), applicable to various smaller transport category airplanes certificated for operation with a main deck Class B cargo compartment, was published in the *Federal Register* on September 5, 1990 (55 FR 36284). The proposed rule would have required either the conversion of all main deck Class B cargo compartments to a Class C configuration; or the use of flame penetration-resistant containers with smoke detection and fire extinguishing systems to carry all cargo; or the accomplishment of certain operational and equipment changes and design

modifications to maximize cargo fire detection and control. That action was prompted by a report of an uncontained fire in a main deck cargo compartment on a transport category airplane. The proposed actions were intended to prevent an uncontrolled cargo fire that could cause extensive damage to the systems and structure of the airplane.

Since the issuance of that NPRM, the FAA has received additional data and has initiated other rulemaking activity, which has caused it to reconsider its previous position on this rulemaking action.

The FAA received over 128 comments and suggestions to the proposal, including ones from affected operators, aircraft manufacturers, industry representatives, and civil aviation authorities from around the world. The general nature of almost all of the comments received was in disagreement with the issuance of the proposed rule.

One commenter requests that further action on this AD be postponed until the proposed actions have been carefully coordinated with the aviation authorities of the countries controlling the type certificates of the applicable aircraft. The FAA notes that, during the development of this proposal, it apprised foreign civil airworthiness authorities (FCAA) of the planned actions. The FAA has given due consideration to the comments and recommendations that were received from each of these FCAA's.

Many commenters question the justification for the proposed rule and request that it be withdrawn. Five commenters question the FAA's method of requiring change via an AD. Several commenters consider that the proposed rule fails to meet the regulatory requirements of § 39.1 ("Airworthiness Directives; Applicability") of the Federal Aviation Regulations (14 CFR 39.1); these commenters contend that the FAA has not established that the unsafe condition is likely to exist or develop on the affected airplanes. One commenter points out that a review of the FAA's Service Difficulty Reports (SDR) failed to disclose any problem with regard to detection, access to, or control of smoke or fires in baggage compartments of airplanes of the type and size affected by the proposal. One of these commenters points out that there is no service history to suggest that compartments of this size [under 400 cubic feet] have been or are likely to be a fire hazard. Four commenters consider that the FAA's intent in proposing the AD should instead be addressed either as a change to affected operators' Operation Specifications or as a change to part 121 ("Certification and

Operations; Domestic, Flag, and Supplemental Air Carriers and Commercial Operators of Large Aircraft") of the Federal Aviation Regulations (14 CFR part 121).

The FAA agrees with certain observations made by these commenters. The FAA has conducted a review of the SDR's as well as the United Kingdom Civil Airworthiness Authority's (CAA) World Airline Accident Summary and found no reports of incidents or accidents caused by fire in the Class B cargo compartment of transport airplanes addressed by this notice. The historical data that was reviewed indicates only that there has not been a cargo compartment fire in the size of airplanes specified in the notice. However, the lack of incidents of fire does not establish that the Class B compartment, as defined in the existing certification regulations, has appropriate safeguards if a fire were to occur. It is this aspect that the proposed rule was meant to address.

Some commenters state that the smaller cargo compartments of the airplanes affected by this proposed AD are different from the larger compartments on the airplanes that are affected by AD 93-07-15, amendment 39-8547 (58 FR 21243, April 20, 1993), since those compartments contain pallets and/or containers. One commenter states that the smaller cargo compartments used in commuter service have not been established to be similar, from the standpoint of safety, to main deck Class B compartments of larger transports; therefore, any action to address fire safety should concentrate on large "Combi" cargo compartments, as in AD 93-07-15. Another commenter considers that the fire detection problems that may exist on jumbo-jet airplanes do not have any relevance for smaller airplanes. Another commenter states that the hazard of carrying large pallets/containers in increasingly large "Combi" compartments is the issue to be addressed, not the size of the compartment itself.

The FAA disagrees that the smaller cargo compartments are not similar, with regard to fire safety, to the larger compartments containing pallets or containers. On the smaller transport airplanes, cargo and luggage are loaded in a manner such that smoke detection and access may be inhibited if the fire is deep-seated (buried in the cargo), much the same as in a container or pallet on a larger transport airplane. Further, the FAA has observed, and one commenter to the notice admitted, that in many instances, some operators of the smaller transport airplanes load the airplane's cargo compartments in such a

manner that there is no place to displace the cargo within the compartment in order to get at a fire. This presents a two-fold hazard:

1. The fire cannot be accessed and continues to burn; and
2. If cargo is removed from the cargo compartment, passengers could be exposed to fire, toxic smoke, and fumes; this situation is unsafe and contrary to the concept and rule requirements of the Class B cargo compartment.

Four commenters provide information concerning the economic effects of the proposed AD. One of these commenters, an operator, states that it has had a long-term investment in its combi operations; however, if the rule is issued, any further "Combi" operations would be cost-prohibitive for this operator. This would force the operator to raise passenger ticket prices, and resort to less frequent all-passenger or all-cargo flights. Another commenter states that the proposed requirements of the rule would have a devastating effect on service to remote communities that have no alternative means of transport available. Another commenter states that it would cost up to \$200,000 per airplane to accomplish the requirement to convert the cargo compartment to a Class C configuration; this would be a great economic burden for small operators. Another commenter estimated that the requirements of the proposed rule would cost 10% of its annual gross revenues.

In light of these comments and other information provided, the FAA must continue to consider the following aspects relevant to this rulemaking action:

1. A service history indicating that there has not been a fire in the Class B cargo compartments of the size of aircraft addressed by the proposed rule; and
2. Cargo loading practices on the smaller transport category airplanes that may inhibit smoke detection and negate access requirements of the Class B cargo compartment.

Because of the potentially catastrophic consequences of fire in Class B cargo compartments and the impossibility of eliminating the potential for such fires, the FAA cannot conclude that the existing Class B compartments do not present an unsafe condition. However, this condition is a result of flaws in the underlying design standards for these compartments, and correcting those flaws may have significant economic and operational consequences. For these reasons, the FAA has concluded that issuance of an AD to address this condition is not warranted at this time.

The FAA now considers that a change to part 25 ("Airworthiness Standards: Transport Category Airplanes") of the FAR (14 CFR part 25) and to the relevant operating regulations of the FAR to address these issues is more appropriate and will allow further public participation in the rulemaking process.

In 1989, just prior to the time that the notice was published, a subgroup of the Department of Transportation Task Force on FAA Reform recommended that a Standing Advisory Committee for Rulemaking be established. The Secretary of Transportation approved this recommendation, and the Aviation Rulemaking Advisory Committee (ARAC) was chartered in 1991. The purpose of the committee is to provide advice and recommendations to the FAA concerning the full range of the FAA's rulemaking activity with respect to safety-related issues. The expected benefits of ARAC are to take advantage of the industry technical expertise and experience, to resolve controversies in an open forum, to resolve issues before formal rulemaking, and to broaden public participation in the process.

The FAA has asked ARAC to consider 70 rulemaking issues, one of which is rulemaking relative to the Class B cargo compartment. A "Class B Cargo Compartment Harmonization Working Group" was established recently to formulate and harmonize an international position on amended requirements for the Class B cargo compartment as installed on transport category airplanes. In its deliberations, ARAC currently is considering the safety issues related to the Class B cargo compartment, appropriate rule requirements, necessary rule changes, estimated costs, and comments and advice from the aviation industry.

In light of this other on-going rulemaking activity, the FAA hereby withdraws the proposed AD.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore, is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

#### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

#### The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 89-NM-205-AD, published in the Federal Register on September 5, 1990 (55 FR 36284), is withdrawn.

Issued in Renton, Washington, on May 31, 1994.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 94-13629 Filed 6-3-94; 8:45 am]

BILLING CODE 4910-13-U

#### 14 CFR Part 71

[Airspace Docket No. 94-ASO-6]

**Proposed Establishment of Class D Airspace: Robins AFB, GA, Proposed Amendment of Class D Airspace and Establishment of Class E Airspace: Middle Georgia Regional Airport, Macon, GA**

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

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish a new and independent Class D airspace at Robins AFB, Georgia. Robins AFB has a full time air traffic control tower. This notice further proposes to amend Class D airspace at Middle Georgia Regional Airport, Macon, Georgia, by removing Robins AFB from the Macon, Georgia, Class D description. This notice also proposes to establish Class E airspace at Middle Georgia Regional Airport, Macon, Georgia, when the associated control tower is closed. The intended effect of this action is to clarify when two-way communication with these air traffic control towers is required and to provide adequate Class E airspace for instrument approach procedures when the Middle Georgia Regional Airport control tower is closed.

**DATES:** Comments must be received on or before: July 5, 1994.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 94-ASO-6, Manager, System Management Branch, ASO-530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 530, 1701 Columbia Avenue, College Park, Georgia 30337; telephone (404) 305-5200.

**FOR FURTHER INFORMATION CONTACT:** Wade Carpenter, Airspace Section, System Management Branch, Air Traffic

Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305-5586.

#### SUPPLEMENTARY INFORMATION:

##### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94-ASO-6." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 530, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

##### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

##### The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to

establish a new independent Class D airspace at Robins AFB, Georgia. Additionally, the FAA is proposing to amend Class D airspace and establish Class E airspace at Middle Georgia Regional Airport, Macon, Georgia. Prior to Airspace Reclassification an Airport Traffic Area (ATA) and a control zone existed at these airports. However, Airspace Reclassification, effective September 16, 1993, discontinued the use of the terms "airport traffic area" and "control zones," replacing them with the designation "Class D airspace". Robins AFB was incorporated in the Class D airspace for Middle Georgia Regional Airport, Macon, Georgia. Robins AFB has a full time control tower. However, the Macon Radar Approach Control/Tower, which controls aircraft for the Middle Georgia Regional Airport, is part-time. The intended effect of this proposal is to amend the Class D airspace at Middle Georgia Regional Airport by removing Robins AFB from the Macon, Georgia Class D Airspace and designation. This notice also proposes to establish Class E surface airspace at the Middle Georgia Regional Airport, Macon, Georgia, to provide adequate controlled airspace for instrument approach procedures when the Macon Radar Approach Control/Tower is closed.

The coordinates for this airspace docket are based on North American Datum 83. Designations for Class D and Class E airspace are published respectively in paragraphs 5000 and 6002 of FAA Order 7400.9A dated June 17, 1993 and effective September 16, 1993 which is incorporated by reference in CFR 71.1 effective September 16, 1993. The Class D and E airspace designations listed in this document would be published subsequently in the Order.

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

#### List of Subjects in 14 CFR Part 71

Aviation safety, 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—[AMENDED]

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

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

#### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

##### *Paragraph 5000 Class D Airspace*

\* \* \* \* \*

##### **ASO GA D Robins AFB, GA [New]**

Robins AFB, GA  
(Lat. 32°38'25" N., long. 83°35'31" W.)  
Macon, Middle Georgia Regional Airport, GA  
(Lat. 32°41'35" N., long. 83°38'58" W.)

That airspace extending upward from the surface to and including 2,900 feet MSL within a 5.5-mile radius of Robins AFB, excluding the portion of a line connecting the 2 points of intersection within a 4.1-mile radius circle centered on the Middle Georgia Regional Airport, Macon, Georgia.

\* \* \* \* \*

##### **ASO GA D MACON, GA [Amended]**

Macon, Middle Georgia Regional Airport, GA  
(Lat. 32°41'35" N., long. 83°38'58" W.)  
Robins AFB, GA  
(Lat. 32°38'25" N., long. 83°35'31" W.)

That airspace extending upward from the surface to and including 2,900 feet MSL within a 4.1-mile radius of Middle Georgia Regional Airport, excluding the portion south of a line connecting the 2 points of intersection within a 5.5-mile radius circle centered on the Robins AFB Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

\* \* \* \* \*

##### *Paragraph 6002 Class E airspace areas designated as a surface area for an airport.*

\* \* \* \* \*

##### **ASO GA E2 MACON, GA [New]**

Macon, Middle Georgia Regional Airport, GA  
(Lat. 32°41'35" N., long. 83°38'58" W.)  
Robins AFB, GA

(Lat. 32°38'25" N., long. 83°35'; 31" W.)

That airspace extending upward from the surface within a 4.1-mile radius of Middle Georgia Regional Airport, excluding the portion south of a line connecting the 2 points of intersection within a 5.5-mile radius circle centered on the Robins AFB Airport. The Class E airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

\* \* \* \* \*

Issued in College Park, Georgia, on May 13, 1994.

Walter E. Denley,

Acting Manager, Air Traffic Division Southern Region.

[FR Doc. 94-13696 Filed 6-3-94; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 71

[Airspace Docket No. 94-AGL-4]

#### Proposed Class E Airspace Modification; Freeport, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; withdrawal.

**SUMMARY:** This action withdraws the Notice of Proposed Rulemaking (NPRM), which proposed to modify the Class E airspace near Freeport, IL, to accommodate a new Nondirectional Beacon (NDB) Runway 06 Standard Instrument Approach Procedure (SIAP) and a new Localizer (LOC) Runway 24 SIAP to Albertus Airport, Freeport, IL. The NPRM is being withdrawn since it is a duplicate of another regulation airspace action that was published in the *Federal Register* on April 6, 1994.

**DATES:** This withdrawal is effective June 6, 1994.

#### FOR FURTHER INFORMATION CONTACT:

Robert J. Woodford, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294-7568.

#### SUPPLEMENTARY INFORMATION:

##### The Proposed Rule

On March 29, 1994, a notice of proposed rulemaking was published in the *Federal Register* to modify the Class E airspace near Freeport, IL, to accommodate a new NDB Runway 06 SIAP and a new LOC Runway 24 SIAP to Albertus Airport, Freeport, IL (59 FR 14573). No comments were received. However, the NPRM is being withdrawn since it is a duplicate of another regulatory airspace action that was

published in the *Federal Register* on April 6, 1994.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Withdrawal of Proposed Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 94-AGL-4, as published in the *Federal Register* on March 29, 1994 (59 FR 14573), is hereby withdrawn.

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

Issued in Des Plaines, IL on May 23, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94-13697 Filed 6-3-94; 8:45 am]

BILLING CODE 4910-13-M

#### 14 CFR Part 71

[Airspace Docket No. 94-AGL-2]

#### Proposed Class E Airspace Establishment; Savanna, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; withdrawal.

**SUMMARY:** This action withdraws the Notice of Proposed Rulemaking (NPRM), which proposed to establish Class E airspace near Savanna, IL, to accommodate a new Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME-A) instrument approach procedure to Tri-Township Airport, Savanna, IL. The NPRM is being withdrawn since it is a duplicate of another regulatory airspace action that was published in the *Federal Register* on April 6, 1994.

**DATES:** This withdrawal is effective June 6, 1994.

#### FOR FURTHER INFORMATION CONTACT:

Robert J. Woodford, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294-7568.

#### SUPPLEMENTARY INFORMATION:

##### The Proposed Rule

On March 29, 1994, a Notice of Proposed Rulemaking was published in the *Federal Register* to establish Class E airspace near Savanna, IL, to accommodate a new VOR/DME-A instrument approach procedure to Tri-Township Airport, Savanna, IL (59 FR 14578). No comments were received.

However, the NPRM is being withdrawn since it is a duplicate of another regulatory airspace action that was published in the *Federal Register* on April 6, 1994.

#### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

#### Withdrawal of Proposed Rule

Accordingly, pursuant to the authority delegated to me, Airspace Docket No. 94-AGL-2, as published in the *Federal Register* on March 29, 1994 (59 FR 14578), is hereby withdrawn.

**Authority:** 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

Issued in Des Plaines, Illinois on May 23, 1994.

Roger Wall,

Manager, Air Traffic Division.

[FR Doc. 94-13698 Filed 6-3-94; 8:45 am]

BILLING CODE 4910-13-M

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

#### 27 CFR Parts 6, 8, 10 and 11

[Notice No. 796; Re: Notice No. 794]

RIN 1512-AB10

#### Unfair Trade Practices Under the Federal Alcohol Administration Act; Extension of Comment Period and Correction (93F-003P)

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

ACTION: Proposed rule; extension of comment period and correction.

**SUMMARY:** In Notice No. 794 (59 FR 21698), published in the *Federal Register* on April 26, 1994, the Bureau of Alcohol, Tobacco and Firearms (ATF) proposed changes to the trade practice regulations under the Federal Alcohol Administration (FAA) Act on tied-house, exclusive outlets, commercial bribery, and consignment sales. ATF is extending the comment period to allow persons who intended to comment additional time to submit such comments. This notice also makes an editorial correction to the text of the proposed regulations as described in the supplementary information below.

**DATES:** Written comments must be received by July 27, 1994.

**ADDRESSES:** Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, PO Box

50221, Washington, DC 20091-0221; Notice No. 794.

**FOR FURTHER INFORMATION CONTACT:** Marjorie Ruhf, Wine and Beer Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226; telephone (202) 927-8230.

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 26, 1994, ATF published a notice of proposed rulemaking, Notice No. 794 (59 FR 21698) in the *Federal Register*. In the notice, ATF proposed to amend trade practice regulations in 27 CFR parts 6 (Tied-House), 8 (Exclusive Outlet), 10 (Commercial Bribery) and 11 (Consignment Sales) by adding standards for enforcing the "exclusion" element where appropriate and by revising other regulations as the result of an agency review and an industry petition. At this time, no final decision has been made on whether to hold public hearings and ATF continues to reserve that decision.

**Extension of Comment Period**

In order to allow interested persons to comment fully, the comment period, originally scheduled to close on June 27, 1994, will be extended until July 27, 1994. All written comments received will be considered in the development of a decision on this matter. Comments that provide the factual basis supporting the views or suggestions presented will be particularly helpful in developing a reasoned regulatory decision on this matter.

**Correction**

In notice no. 794, (93F-003P), beginning on page 21698 of the issue of Tuesday, April 26, 1994, make the following correction:

On page 21712, in the third column, Paragraph 55, the table of contents entry for section 10.54 read, "Criteria for determining retailer independence." This should be changed to read, "Criteria for determining trade buyer independence."

**Drafting Information**

The principal author of this document is Marjorie Ruhf, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

**List of Subjects**

27 CFR Part 6

Advertising, Alcohol and alcoholic beverages, Antitrust, Credit and trade practices.

27 CFR Part 8

Alcohol and alcoholic beverages, Antitrust, and Trade practices.

27 CFR Part 10

Alcohol and alcoholic beverages, Antitrust, and Trade practices.

27 CFR Part 11

Alcohol and alcoholic beverages, Antitrust, and Trade practices.

**Authority**

This notice is issued under the authority of 27 U.S.C. 205.

Approved: May 27, 1994.

**Daniel R. Black,**  
*Acting Director.*

[FR Doc. 94-13600 Filed 6-3-94; 8:45 am]

BILLING CODE 4810-31-U

**ENVIRONMENTAL PROTECTION AGENCY**

40 CFR Part 63

[AD-FRL-4891-8]

**National Emission Standards for Hazardous Air Pollutants for Source Categories: Aerospace Manufacturing and Rework**

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

**ACTION:** Proposed rule and notice of public hearing.

**SUMMARY:** The proposed standards would limit emissions of hazardous air pollutants (HAP) from new and existing commercial, civil, and military aerospace original equipment manufacturing (OEM) and rework facilities that are major sources of HAP emissions. A major source is defined in section 112(a) of the Clean Air Act as amended in 1990 (Act) as a source that emits, or has the potential to emit, considering controls, 10 tons per year (tpy) or more of any individual HAP or 25 tpy or more of any combination of HAP. The proposed standards implement section 112(d) of the Act, which requires the Administrator to regulate emissions of the HAP listed in section 112(b) of the Act. Many of these pollutants are emitted from cleaning, primer, topcoat, depainting, and chemical milling maskant operations. These operations are being covered in the proposed rule. The intent of the proposed rule is to protect the public health by requiring new and existing major sources to control HAP emissions to the level attainable by the maximum achievable control technology (MACT). The EPA is also proposing Method 309 with the standards. Method 309 would

be used to determine the rolling material balance period for carbon adsorbers.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standards.

**DATES:** *Comments:* Comments must be received on or before August 5, 1994.

**ADDRESSES:** *Comments:* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), ATTN: Docket No. A-92-20, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. *Public Hearing:* If anyone contacts the EPA requesting a public hearing, the hearing will be held at the EPA Office of Administration Auditorium in Research Triangle Park, North Carolina. Persons wishing to present oral testimony must contact Ms. Julia Latta, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578 by July 1, 1994.

*Background Information Document:* The background information document (BID) may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "National Emission Standards for Hazardous Air Pollutants for Source Categories: Aerospace Manufacturing and Rework—Background Information for Proposed Standards," EPA-453/R-94-036a.

*Docket:* Docket No. A-92-20, containing supporting information used in developing the proposed rule, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, room 1500, 1st Floor, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** For information concerning the proposed rule, contact Ms. Vickie Boothe at (919) 541-0164, Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

**SUPPLEMENTARY INFORMATION:** The information presented in this preamble is organized as follows:

- I. Background
- II. Summary of the Proposed Rule
  - A. Applicability
  - B. Proposed Standards for Affected Sources
  - C. Compliance Dates

- D. Compliance Extensions
- E. Compliance Testing and Monitoring
- F. Recordkeeping and Reporting Requirements
- III Summary of Environmental, Energy, and Economic Impacts of the Proposed Rule
  - A. Emission Reductions
  - B. Secondary Environmental Impacts
  - C. Energy Impacts
  - D. Cost Impacts
  - E. Economic Impacts
- IV Process Descriptions and Control Technologies
  - A. Process Descriptions
  - B. Control Techniques
- V. Rationale for the Proposed Rule
  - A. Regulatory Development Process for NESHAP
  - B. Determining Maximum Achievable Control Technology (MACT) "Floors"
  - C. Selection of Pollutants and Source Category(ies)
  - D. Selection of Emission Points Covered by the Proposed Rule
  - E. Selection of the Basis for the Proposed Rule
  - F. Selection of the Format of the Proposed Rule
  - G. Selection of Emission Test Methods and Monitoring Requirements
  - H. Selection of Recordkeeping and Reporting Requirements
  - I. Selection of Compliance Deadlines
  - J. Operating Permit Program
  - K. Solicitation of Comments
- VI. Administrative Requirements
  - A. Public Hearing
  - B. Docket
  - C. Executive Order 12866
  - D. Paperwork Reduction Act
  - E. Regulatory Flexibility Act
  - F. Clean Air Act Section 117
  - G. Regulatory Review
- VII. Statutory Authority

The proposed regulatory text is not included in this **Federal Register** notice, but is available in Docket No. A-92-20 or by written or telephone request from the Air and Radiation Docket and Information Center (see ADDRESSES). This notice with the proposed regulatory language is also available on

the Technology Transfer Network (TTN), one of EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free, except for the cost of a phone call. Dial (919) 541-5742 for up to a 14,400 bps modem. If more information on TTN is needed, call the HELP line at (919) 541-5384.

**I. Background**

The Act requires, under section 112, that EPA evaluate and control emissions of HAP. The control of HAP is to be achieved through promulgation of emission standards under sections 112(d) and (f) for categories of sources that emit HAP. Pursuant to section 112(c) of the Act, EPA published in the **Federal Register** the initial list of source categories that emit HAP on July 16, 1992 (57 FR 31576). This list includes major and area sources of HAP that the EPA intends to regulate before November of the year 2000.

For the purposes of the proposed rule, aerospace industries refers to all facilities that manufacture aerospace vehicles or components and all facilities that rework (including repair) these aerospace vehicles or components. Aerospace vehicle or component is defined as any fabricated part, processed part, assembly of parts, or completed unit of any aircraft including, but not limited to, airplanes, helicopters, missiles, rockets, and space vehicles.

Section 183(b)(3) of the Act requires the Administrator to issue control techniques guidelines (CTG) for volatile organic compound (VOC) emissions from aerospace coatings and solvents to such levels as the Administrator determines are achievable through adoption of best available control measures (BACM). The EPA is required

to take into account the applicable requirements of section 112 in developing the guidelines.

The organic HAP emissions limitations described in the remainder of this notice also address the VOC emissions from aerospace coatings and solvents. Thus, the control techniques evaluated for the MACT standard are also applicable to VOC emissions.

The EPA traditionally issues a draft CTG containing recommended control levels for public comment. Rather than issue a separate draft CTG in this case, the EPA is using this notice to request public comment on a draft BACM, which is the same as the proposed MACT for coatings and solvents. Comments received on the proposed MACT rule will also be considered in formulating a final BACM.

The information described here will also serve to provide guidance to the States for developing VOC rules to meet other Clean Air Act requirements.

Certain low-usage coatings were not addressed in the NESHAP. These coatings are adhesives, sealants, and 30 specialty coatings which represent less than 6 percent of the total HAP emissions from the industry. Also, the EPA data analyses indicate that the MACT floor for these coatings would be no control. The EPA is requesting public comment on the need for a separate CTG providing guidance for the control of these coatings.

**II. Summary of the Proposed Rule**

Table 1 provides an overview of the proposed rule, including applicability; the standards for each affected source; test methods and procedures; and monitoring, recordkeeping, and reporting requirements.

TABLE 1. SUMMARY OF SUBPART GG OF 40 CFR PART 63—NATIONAL EMISSION STANDARDS FOR AEROSPACE MANUFACTURING AND REWORK FACILITIES

Affected source	Requirement	Description
Aerospace Facilities .....	Applicability: General Information.	This rule applies to facilities engaged in original equipment manufacture and rework of aerospace components and assemblies and that are major sources as defined in 40 CFR part 63. Specific operations are covered by the rule. (63.741)
	Estimated Number of Facilities.	Over 2,800 facilities are expected to be affected by the rule. Applicable SIC codes include 3720, 3721, 3724, 3728, 3760, 3761, 3764, 3765, and 4581.
	Permit Requirements .....	1. Major sources required to obtain operating permit in State where facility is located according to procedures in 40 CFR part 70 and applicable State regulations. (63.741(d))
All Affected Sources .....	Standards .....	1. Comply with §§63.4 through §63.6 of the General Provisions of 40 CFR part 63, Subpart A. <sup>1</sup> (63.743(a)) 2. Submit an operation and maintenance plan. (63.743(b)) 3. Obtain approval to use control device not listed in this subpart. (63.743(c)) 4. Wastes subject to RCRA are exempt from the waste storage and handling requirements of this subpart. (63.741(e))

TABLE 1. SUMMARY OF SUBPART GG OF 40 CFR PART 63—NATIONAL EMISSION STANDARDS FOR AEROSPACE MANUFACTURING AND REWORK FACILITIES—Continued

Affected source	Requirement	Description
Cleaning Operations .....	Compliance Dates .....	As provided for in the General Provisions, <sup>2</sup> within 3 years after the effective date for existing sources and no later than the standards' effective date or upon startup, as appropriate, for new and reconstructed sources. (63.749(a))
	Test Methods and Procedures.	See individual affected sources. Also, comply with §63.7 of the General Provisions. (63.750(q))
	Monitoring Requirements ..	See individual affected sources. Also, generally same as in §63.8(f) and (g) of the General Provisions. (63.751(e) and (f))
	Recordkeeping Requirements.	Comply with §63.10 of the General Provisions. <sup>3</sup> (63.752(a))
	Reporting Requirements ...	1. Comply with §§63.9 and 63.10 of the General Provisions. <sup>4</sup> (63.753(a)(1) and (3)) 2. Operating permit application can be used for initial notification. (63.753(a)(2))
	Standards .....	Housekeeping measures for all cleaning operations at a facility subject to this subpart. Measures address placing solvent laden cloth or paper in closed containers, storing fresh and used cleaning solvent in closed containers, and minimizing losses during handling and transfer. (63.744(a))
	Test Methods and Procedures.	None.
Hand-Wipe Cleaning Operations.	Monitoring Requirements ..	None.
	Recordkeeping Requirements.	The name, HAP content of each cleaning solvent, and supporting documentation. (63.752(b)(1))
	Reporting Requirements ...	<i>Semiannual</i> 1. New cleaning solvents that contain no HAP. (63.753(b)(1)(i)) 2. Discontinued cleaning solvents. (63.753(b)(1)(ii))
	Standards .....	1. Except for spray gun cleaning, all hand-wipe cleaning solvent must meet either a composition requirement or have a vapor pressure less than 45 mm Hg. (63.744(b)) 2. List of cleaning operations exempt from composition and vapor pressure requirements. (63.744(e))
	Test Methods and Procedures.	1. Composition determination through manufacturer's data. (63.750(a)) 2. Vapor pressure determination through readily available sources if single component; ASTM E 260-85 for multiple component solvents. (63.750(b))
	Monitoring Requirements ..	For enclosed spray gun cleaners, visual inspection for leaks at least once per month. (63.751(a))
	Recordkeeping Requirements.	1. If complying with composition requirements, name, data/calculations, and annual volumes. (63.752(b)(2)) 2. If complying as result of vapor pressure, name, vapor pressure, data/calculations/test results, and monthly volumes. (63.752(b)(3)) 3. For "non-compliant" cleaning solvents used in exempt operations, daily volumes by operation, and parts/assemblies cleaned. (63.752(b)(4))
Spray Gun Cleaning .....	Reporting Requirements ...	<i>Semiannual</i> 1. Noncompliant solvent usage. (63.753(b)(1)(iii)) 2. New solvents and vapor pressure or composition. (63.753(b)(1)(iv)) <i>Annual</i> 3. Everything is in compliance. (63.753(b)(2))
	Standards .....	1. Use one of four specified techniques or an equivalent. (63.744(c)) 2. For enclosed spray gun cleaners, repair as soon as practicable, but within 15 days. (63.744(c)(1)(ii))
	Test Methods and Procedures.	None.
	Monitoring Requirements ..	None.
	Recordkeeping Requirements.	Record all leaks, including source identification and dates leaks found and repaired. (63.752(b)(5))
	Reporting Requirements ...	<i>Semiannual</i> 1. Noncompliant spray gun cleaner used. (63.753(b)(1)(v)) 2. Leaks of enclosed spray gun cleaners not repaired within 15 days of detection. (63.753(b)(1)(vi)) <i>Annual</i> 3. Everything is in compliance. (63.753(b)(2))
	Standards .....	Operating procedures specify emptying into enclosed container or collection system or equivalent. (63.744(d))
Flush Cleaning .....	Test Methods and Procedures.	None.
	Monitoring Requirements ..	None.
	Recordkeeping Requirements.	None.
	Reporting Requirements ...	<i>Annual</i> Everything is in compliance. (63.753(b)(2))
Primer and Topcoat Application Operations.	Standards .....	<i>Uncontrolled Primers</i> 1. Organic HAP content limit: 350 grams/liter (2.9 lbs/gallon)(less water) as applied. (63.745(b)(1))

TABLE 1. SUMMARY OF SUBPART GG OF 40 CFR PART 63—NATIONAL EMISSION STANDARDS FOR AEROSPACE MANUFACTURING AND REWORK FACILITIES—Continued

Affected source	Requirement	Description
		<p>2. VOC content limit: 350 grams/liter (2.9 lbs/gallon) (less water and exempt solvents) as applied. (63.745(b)(2)) <i>Uncontrolled Topcoats</i></p> <p>3. Organic HAP content limit: 420 grams/liter (3.5 lbs/gallon)(less water) as applied. (63.745(b)(3))</p> <p>4. VOC content limit: 420 grams/liter (3.5 lbs/gallon) (less water and exempt solvents). (63.745(b)(4)) <i>Uncontrolled Primers and Topcoats</i></p> <p>5. Primers and topcoats can achieve compliance through: (1) being below limit in themselves or (2) average with compliant primers. (63.745(d))</p> <p>6. Primers and topcoats cannot be averaged together. Controlled and uncontrolled coatings cannot be averaged together. (63.745(d)(2)(ii) and (d)(2)(iii)) <i>Controlled Primers and Topcoats</i></p> <p>7. If control device is used, must be designed to capture and control all emissions from the application operation and must achieve an overall control efficiency of at least 81%. (63.745(c)) <i>All Primers and Topcoats</i></p> <p>8. Specific application techniques must be used. If alternative is sought, can only be used if emissions are less than or equal to HVLP or electrostatic spray application techniques as demonstrated under actual production conditions. (63.745(e)(1))</p> <p>9. All application equipment must be operated according to manufacturer's specifications. (63.745(e)(2))</p> <p>10. Exemptions from 8 above provided for certain situations. (63.745(e)(3))</p> <p>11. Operating requirements for the application of primers that contain inorganic HAP, including control with either particulate filters or waterwash and shutdown if pressure falls outside manufacturer's specified operating limits. (63.745(f)(1) through (4))</p> <p>12. Exemptions from 11 provided for certain application operations. (63.745(f)(5))</p>
	Performance Test Periods and Tests.	<p>1. Test Periods For compliant coatings: each 30-day period. For "averaged" coatings: each 24-hour period. For "controlled" coatings, non-carbon adsorber: three 1-hour runs. For "controlled" coatings, carbon adsorber: each rolling period. (63.749(d)(1))</p> <p>2. Performance tests. Initial performance test for all control devices to demonstrate compliance with overall control efficiency requirement. (63.749(d)(2))</p>
	Test Methods and Procedures.	<p>1. Organic HAP level determination procedures. (63.750(c) and (d))</p> <p>2. VOC level determination procedures. (63.750(e) and (f))</p> <p>3. Overall control efficiency of carbon adsorber determined using mass balance calculation in 40 CFR 60.433; for other control devices, determine capture efficiency and destruction efficiency. For capture efficiency, use Procedure T in Appendix B to 40 CFR 52.741 for total enclosures and 40 CFR 52.741(a)(4)(iii) procedures for all other enclosures. (63.750(g) and (h))</p> <p>4. For alternative application methods, first determine emission levels for initial 90-day period using only HVLP or electrostatic. Then use alternative application method for period of time necessary to coat equivalent amount of parts with same coatings. Alternative application method may be used when emissions generated during the test period are less than or equal to the emissions generated during the initial 90-day period. Dried film thickness must be within specification for initial 90-day period. (63.750(i))</p>
	Monitoring Requirements ...	<p>1. Temperature sensors with continuous recorders for incinerators, and install, calibrate, maintain, and operate temperature monitors according to manufacturer's specifications. (63.751(b))</p> <p>2. Continuously monitor pressure drop across filter or waterwash. (63.751(c))</p>
	Recordkeeping Requirements.	<p>1. Name and organic HAP and VOC contents for all primers and topcoats. (63.752(c)(1))</p> <p>2. For "compliant" coatings, organic HAP and VOC contents as applied, data/calculations used to determine them, and monthly usage. (63.752(c)(2))</p> <p>3. For "averaged" coatings, daily values of HAP and VOC contents (<math>H_a</math> and <math>G_a</math>) and data calculations used to calculate <math>H_a</math> and <math>G_a</math>. (63.752(c)(3))</p> <p>4. For "controlled" coatings (incinerator), overall control efficiency and incinerator temperature(s). (63.752(c)(4))</p> <p>5. For "controlled" coatings (carbon adsorber), overall control efficiency and length of rolling period and all supporting data/calculations. (63.752(c)(5))</p> <p>6. Pressure drop across filters/waterwash once per shift, and acceptable limits. (63.752(d))</p>
	Reporting Requirements ...	<p><i>Semiannual</i></p> <p>1. All instances where organic HAP/VOC levels were exceeded. (63.753(c)(1)(i) and (ii))</p> <p>2. Control device exceedances (out-of-compliance). (63.753(c)(1) (iii), (iv) and (v))</p> <p>3. Periods when operation not immediately shut down due to pressure drop being outside limits. (63.753(c)(1)(vi))</p> <p>4. New control devices. (63.753(c)(1)(vii))</p>

TABLE 1. SUMMARY OF SUBPART GG OF 40 CFR PART 63—NATIONAL EMISSION STANDARDS FOR AEROSPACE MANUFACTURING AND REWORK FACILITIES—Continued

Affected source	Requirement	Description	
Depainting Operations .....	Applicability .....	<p><i>Annual</i></p> <p>5. Number of times the pressure drop limits were exceeded. (63.753(c)(2))</p> <p>6. Everything is in compliance. (63.753(c)(2))</p>	
	Standards .....	<p>Applies to the entire aerospace vehicle. Does not apply to parts or units normally removed. Wings and stabilizers always covered. (63.746(a))</p> <p>1. Unless exempted, no organic HAP are to be emitted from depainting operations. (63.746 (b)(1), (b)(3))</p> <p>2. Requirement to minimize HAP during periods of non-chemical based equipment malfunction. (63.746(b)(2))</p> <p>3. Use of organic HAP-containing strippers for spot stripping and decal removal limited to 26 gallons per aircraft per year for commercial aircraft and 50 gallons per aircraft per year for military aircraft. (63.746(c))</p> <p>4. Operating requirements for depainting operations generating airborne inorganic HAP, including control with particulate filters that are at least 99% efficient. (63.746(d))</p>	
	Performance Test Periods and Tests.	<p>1. For no organic HAP emissions: each 24-hour period. (63.749(f)(1))</p> <p>2. For spot stripping and decal removal usage limits: each calendar year. (63.749(f)(1))</p> <p>3. Initial performance test to demonstrate compliance with percent reduction efficiency requirement for particulate filters. (63.749(f)(2))</p>	
	Test Methods and Procedures.	<p>1. Use manufacturer's data (or approved alternative) to determine organic HAP content. (63.750(j))</p> <p>2. Procedures provided for determining gallons of HAP containing stripper used for aircraft. (63.750(k))</p> <p>3. Use EPA Method 5 to determine particulate filter control efficiency. (63.750(l))</p>	
	Monitoring Requirements .. Recordkeeping Requirements.	<p>Continuously monitor pressure drop across filter. (63.751(d))</p> <p>1. Name, organic HAP content and supporting documentation, and monthly volume of all organic HAP-containing chemical strippers. (63.752(e)(1))</p> <p>2. List of parts/assemblies normally removed. (63.752(e)(2))</p> <p>3. For non-chemical based equipment, name and type, and malfunction information including dates, description, and alternative methods used. (63.752(e)(3))</p> <p>4. For spot stripping and decal removal, annual volume used, annual average volume per aircraft, and all data/calculations used to calculate volume per aircraft. (63.752(e)(4))</p> <p>5. The pressure drop across the filter once per shift, pressure drop limits specified by manufacturers, and control efficiency including test results/data/calculations. (63.752(e)(5))</p>	
	Reporting Requirements ...	<p><i>Semiannual</i></p> <p>1. Emission of organic HAP from nonexempted depainting operations. (63.753(d)(1)(i))</p> <p>2. New and reformulated chemical strippers and HAP contents. (63.753(d)(1) (ii), (iii) and (iv))</p> <p>3. New non-chemical based depainting techniques. (63.753(d)(1)(v))</p> <p>4. Malfunction information on non-chemical based techniques including dates, description, and alternative methods used. (63.753(d)(1)(vi))</p> <p>5. Periods when operation not immediately shut down due to pressure drop being outside limits. (63.753(d)(1)(vii))</p> <p>6. List of new/discontinued aircraft models and, for new models, list of parts normally removed for depainting. (63.753(d)(1)(viii))</p>	
	Chemical Milling Maskant Application Operations.	Applicability .....	<p><i>Annual</i></p> <p>7. Exceedances of average annual volume limits for spot stripping and decal removal. (63.753(d)(2)(i))</p> <p>8. Everything is in compliance. (63.753(d)(2)(ii))</p> <p>9. Number of times the pressure drop limits were exceeded. (63.753(d)(2)(iii))</p> <p>Applies only to operations using Type II chemical milling etchants (63.747(a))</p>
		Standards .....	<p><i>Uncontrolled Maskants</i></p> <p>1. Organic HAP emissions: ≤160 grams/liter (1.3 lbs/gallon) (less water) as applied. (63.747(c)(1))</p> <p>2. VOC emissions: ≤160 grams/liter (1.3 lbs/gallon) (less water and exempt solvents) as applied. (63.747(c)(2))</p> <p>3. Maskants can achieve compliance through: (1) being below limits by themselves or (2) averaging with compliant maskants. (63.747(e))</p> <p>4. Both controlled and uncontrolled maskants cannot be averaged together.</p> <p><i>Controlled Maskants</i></p> <p>5. If control device is used, must be designed to capture and control all emissions from maskant operation and must achieve an overall control efficiency of at least 81%. (63.747(d))</p>

TABLE 1. SUMMARY OF SUBPART GG OF 40 CFR PART 63—NATIONAL EMISSION STANDARDS FOR AEROSPACE MANUFACTURING AND REWORK FACILITIES—Continued

Affected source	Requirement	Description
	Performance Test Periods and Tests.	1. Test Periods. For compliant maskants: each 30-day period. For "averaged" maskants: each 24-hour period. For "controlled" coatings, carbon adsorber: each rolling period. For "controlled" coatings, non-carbon adsorber: three 1-hour runs. (63.749(g)(1)) 2. Initial performance test required for all control devices to demonstrate compliance with overall control efficiency requirement. (63.749(g)(2))
	Test Methods and Procedures.	Procedures provided essentially identical to those for primers and topcoats for organic HAP and VOC content levels. Use of Method 309 for determining rolling period for carbon adsorber. (63.750(m)–(p))
	Monitoring Requirements ..	Same as for primers and topcoats if incinerators are used.
	Recordkeeping Requirements.	Same as for primers and topcoats. (63.752(f))
	Reporting Requirements ...	<i>Semiannual</i> 1. Exceedances of organic HAP/VOC levels. (63.753(e)(1)(i) and (ii)) 2. Control device exceedances (out of compliance). (63.753(e)(1)(iii)) 3. New maskants. (63.753(e)(1)(iv)) 4. New control devices. (63.753(e)(1)(v))
		<i>Annual</i> 5. Everything is in compliance. (63.753(e)(2))
Waste Handling and Storage Operations..	Applicability .....	Wastes that are subject to RCRA are exempt from the requirements of this subpart. (63.741(e))
	Standards .....	Unless subject to RCRA, work practice requirements to minimize spills during handling and transfer and storage in close containers. (63.748)
	Test Methods and Procedures.	None.
	Monitoring Requirements ..	None.
	Recordkeeping Requirements.	Identification of each waste stream, whether or not it is subject to RCRA, and supporting documentation. (63.752(g))
	Reporting Requirements ...	<i>Semiannual</i> 1. Any change in RCRA status of waste stream, any new waste stream, and its RCRA status. (63.753(f)(1)) <i>Annual</i> 2. No new waste streams and no change in RCRA status of existing waste streams. (63.753(f)(2))

<sup>1</sup> The EPA promulgated regulations for subpart A of 40 CFR 63, which were published in the *Federal Register* on March 16, 1994 at 59 FR 12408.  
<sup>2</sup> Ibid. <sup>3</sup> Ibid. <sup>4</sup> Ibid.

A. Applicability

1. Description of the Source Category

The proposed rule would apply to each aerospace manufacturing and rework facility that is a major source, as defined under section 112(a) of the Act. A major source is one that emits or has the potential to emit, considering controls, 9.1 megagrams per year (Mg/yr) (10 tpy) or more of any hazardous air pollutant or 22.7 Mg/yr (25 tpy) or more of any combination of hazardous air pollutants for all activities conducted at the facility. An aerospace facility is defined as a facility that produces in any amount an aerospace vehicle or component, or a facility that reworks (or repairs) these vehicles or components. Aerospace operations at any major source that conduct both aerospace and non-aerospace work would be subject to the proposed standards, regardless of the relative proportion of aerospace and non-aerospace work at the facility.

While the proposed rule applies only to major sources, the EPA requests comment on whether all or some of its

requirements should be applied to non-major sources. The Agency solicits available information from state and local air pollution control agencies and others on the nature, number and location of non-major aerospace facilities, the quantities and types of hazardous air pollutants they emit, the impact of these emissions on health and the environment, and the extent to which these emissions already are controlled. Comments also are requested on the economic and other impacts that would result from applying requirements of the proposed rule to these smaller sources.

In general, aerospace facilities are covered by the SIC codes listed in Table 2. However, facilities classified under other SIC codes may be subject to the proposed standards if the facility meets the definition of a major source and the definition of an aerospace facility.

Based on information obtained through the Federal Aviation Administration and the U.S. Department of Commerce—Bureau of the Census, there are an estimated 2,869 aerospace

facilities that will be subject to the proposed standards. Of this number, 1,395 manufacture or rework commercial products, and 1,474 manufacture or rework military products. The combined HAP emissions from these facilities are estimated to be over 189,000 Mg/yr (208,000 tpy).

In addition to these facilities, there are numerous subcontractors that manufacture or rework aerospace vehicles or components. The subcontractors may work directly for the

TABLE 2.—Aerospace Manufacturing SIC Codes

SIC Code	Description
3720	Aircraft and Parts.
3721	Aircraft.
3724	Aircraft Engines and Engine Parts.
3728	Aircraft Parts and Equipment.
3760	Guided Missiles, Space Vehicles, and Parts.
3761	Guided Missiles and Space Vehicles.
3764	Space Propulsion Units and Parts.

TABLE 2.—Aerospace Manufacturing SIC Codes—Continued

SIC Code	Description
3769	Space Vehicle Equipment.
	Aerospace Rework SIC Code
4581	Airports, Flying Fields, and Services.

OEM or rework facilities, or indirectly through first line subcontractors. Since many of these subcontractors perform various types of work, they are often classified under non-aerospace SIC codes. Consequently, an estimate of the number of subcontractors cannot be made. One company alone, however, employs the services of over 5,000 subcontractors.

## 2. Affected Sources

The proposed rule would limit organic HAP emissions from the following sources at aerospace facilities: cleaning operation, primer application operation, topcoat application operation, depainting operation, chemical milling maskant application operation, and the handling and storage of waste. The proposed rule would also limit inorganic HAP emissions from primer, topcoat, and depainting operations.

Organic HAP emissions from primer, topcoat, and chemical milling maskant application operations occur from the evaporation of the solvent contained in the coatings. These emissions occur during the application of the coatings on aerospace vehicles or parts, which may take place in large open areas, such as hangars, or in partially or fully enclosed spaces, such as within spray booths.

Organic HAP emissions from cleaning and depainting operations occur from the evaporation of the volatile portion of the cleaning solvents or chemical strippers. Cleaning emissions are nearly always fugitive in nature and occur at essentially every processing step. Emissions from depainting are typically fugitive in nature since the operation is carried out within a large hangar or in open tanks.

Organic HAP emissions from waste occur from evaporation of the volatile portion of the waste while it is being handled or stored. These emissions are fugitive in nature, occurring from each waste container.

Inorganic HAP emissions from primer and topcoat application operations occur during the application of the primer or topcoat. These inorganic HAP emissions are paint particulates, commonly referred to as "overspray," that do not adhere to the surface being

coated. Like the organic HAP emissions from the operations, the emissions of the inorganic HAP occur in large open areas, such as hangars, or in partially or fully enclosed spaces, such as within spray booths.

Inorganic HAP emissions from depainting operations occur from most non-chemical methods, such as plastic media blasting, used to strip an aerospace vehicle. (Chemical stripping techniques do not release inorganic HAP.) These emissions occur as particulates generated during the blasting process. The operation is typically carried out within a large hangar equipped with a ventilation system and particulate filtration device (e.g., a baghouse). The inorganic HAP that are released from the depainting operations are primarily found in the paint being stripped, although some stripping media may contain trace amounts of inorganic HAP.

## B. Proposed Standards for Affected Sources

In addition to the standards for affected sources as discussed below, the proposed rule contains general standards. The general standards stipulate that all affected sources subject to the proposed rule are also subject to, as appropriate, § 63.4, § 63.5, and § 63.6 of subpart A of 40 CFR part 63.<sup>1</sup> However, certain time frames specified in these sections have been changed in the proposed rule as follows:

(1) All affected sources shall submit any request for an extension of compliance not later than 12 months before the affected source's compliance date regardless of whether sources are included in emissions averaging or not, rather than not later than 18 months before the affected source's compliance date for sources that are including emission points in an emissions average as provided for in § 63.6(i)(4)(i)(B).

(2) The Administrator (or the State with an approved permit program) will notify the owner or operator in writing of his/her intention to deny approval of a request for an extension of compliance submitted under either § 63.6(i)(4) or (i)(5) within 60 calendar days after receipt of sufficient information to evaluate the request, rather than notifying the owner of his/her approval or intention to deny approval of a request for an extension of compliance within 30 calendar days as provided for in § 63.6(i)(12)(i) and § 63.6(i)(13)(i). In addition, if the Administrator does not notify the owner or operator in writing

of his/her intention to deny approval within 60 calendar days after receipt of sufficient information to evaluate a request for an extension of compliance, then the request shall be considered approved.

(3) The Administrator (or the State) will notify the owner or operator in writing of the status of his/her application submitted under § 63.6(i)(4)(ii) (that is, whether the application contains sufficient information to make a determination) within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted, rather than 15 calendar days as provided for in § 63.6(i)(13)(i). In addition, if the Administrator does not notify the owner or operator in writing of the status of his/her application within 30 calendar days after receipt of the original application and within 30 calendar days after receipt of any supplementary information that is submitted, then the information in the application or the supplementary information is to be considered sufficient upon which to make a determination.

(4) Each owner or operator is to be provided 30 calendar days to present additional information to the Administrator after he/she is notified of the intended denial of a compliance extension request submitted under either § 63.6(i)(4) or § 63.6(i)(5), rather than 15 calendar days as provided for in § 63.6(1)(12)(iii)(B) and § 63.6(i)(13)(iii)(B).

(5) Each owner or operator who has submitted an extension request application under § 63.6(i)(5) is to be provided 30 calendar days to present additional information or arguments to the Administrator after he/she is notified that the application is not complete, rather than 15 calendar days as provided for in § 63.6(i)(13)(ii), and

(6) A final determination to deny any request for an extension submitted under either § 63.6(i)(4) or § 63.6(i)(5) will be made within 60 calendar days after presentation of additional information or argument (if the application is complete), or within 60 calendar days after the final date specified for the presentation if no presentation is made, rather than 30 calendar days as provided for in § 63.6(i)(12)(iv) and § 63.6(i)(13)(iv).

In addition, the proposed rule requires each owner or operator who uses a control device or equipment to control HAP emissions to prepare an operation and maintenance plan in accordance with § 63.6 of subpart A of

<sup>1</sup> The EPA promulgated regulations for subpart A of 40 CFR part 63, which were published in the *Federal Register* on March 16, 1994 at 59 FR 12408.

40 CFR part 63.<sup>2</sup> In addition to the information required in § 63.6, the proposed rule requires that the owner or operator of the control device or equipment include the following information: (1) The operation and maintenance criteria for each air pollution control device or equipment, including a standardized checklist to document the operation and maintenance of the equipment; (2) a systematic procedure for identifying malfunctions and for reporting them immediately to supervisory personnel; and (3) procedures to be followed to ensure that equipment or process malfunctions due to poor maintenance or other preventable conditions do not occur.

The general standards also state that an owner or operator who uses an air pollution control device or equipment not listed in the proposed rule must submit to the Administrator for approval a description of the device, test data verifying the performance of the device or equipment for HAP and/or VOC emissions, appropriate operating parameters that would be monitored to establish compliance with the proposed standards, and a copy of the inspection and maintenance plan required under § 63.6 of 40 CFR part 63.

Finally, § 63.6(g) of subpart A of 40 CFR part 63 allows an owner or operator of an affected source to use alternative means of compliance. This allows the development and use of new technology

not known or not demonstrated at the time the rule was promulgated. The affected sources for the proposed standards are defined as follows: (1) Each cleaning operation (all hand-wipe cleaning operations constitute an affected source, each spray gun cleaning operation constitutes an affected source, and all flush cleaning operations constitute an affected source); (2) each primer application operation, which includes all primer applications at the facility; (3) each topcoat application operation, which includes all topcoat applications at the facility; (4) each depainting operation, which includes all depainting of the outer surface of aerospace vehicles at the facility; (5) each chemical milling maskant application operation, which includes all chemical milling maskant applications at the facility for subsequent use in Type II chemical milling etchants; and (6) each waste storage and handling operation, which includes all waste handling and storage at the facility.

The proposed standards also specify that HAP-containing waste that is subject to the provisions of RCRA would not be subject to the waste handling and storage requirements of the proposed standards. The EPA included this provision so that the proposed standards would not require less strict handling and storage of waste than the RCRA requirements.

The following paragraphs summarize the proposed standards for each affected source.

1. Cleaning Operation

The proposed standards for the cleaning operation, including those specific to hand-wipe, spray gun, and flush cleaning operations, would apply to all new and existing affected sources. The proposed standards would require that all fresh and spent cleaning solvents be stored in closed containers and that solvent-laden cloth, paper, or other material be placed in bags or other closed containers immediately after use. The bags or containers would be required to be kept closed at all times (except when depositing or removing material) and of such design so as to contain the vapors of the cleaning solvent. In addition, the proposed standards would require the owner or operator to implement handling and transfer procedures to minimize spills during filling and transferring the cleaning solvent to or from enclosed systems, vats, waste containers, and other cleaning operation equipment that holds or stores fresh or spent cleaning solvents. The above requirements are known collectively as housekeeping measures.

The proposed standards for the hand-wipe cleaning operation would require the use of a cleaning solvent that conforms to the approved composition list detailed in Table 3 or a cleaning solvent that has a vapor pressure less than or equal to 45 millimeters of mercury (mm Hg) at 20°C (24.1 in. H<sub>2</sub>O at 68°F).

TABLE 3.—COMPOSITION REQUIREMENTS FOR APPROVED CLEANING SOLVENTS

Cleaning solvent type	Composition requirements
Aqueous .....	Cleaning solvents in which water is the primary ingredient (≥80 percent of solvent as applied must be water). Aqueous solvents must be non-flammable, non-combustible, and 100 percent soluble in water. Detergents, surfactants, and bioenzyme mixtures and nutrients may be combined with the water along with a variety of additives such as organic solvents (e.g., high boiling point alcohols), builders, saponifiers, inhibitors, emulsifiers, pH buffers, and antifoaming agents.
Hydrocarbon-Based .....	Cleaners that are composed of a mixture of hydrocarbons and oxygenated hydrocarbons and have a maximum vapor pressure of 7 mm Hg at 20°C (3.75 in. H <sub>2</sub> O at 68°F). These cleaners also contain no HAP or ozone depleting compounds.

The EPA is proposing a work practice standard for the cleaning of spray guns at all new and existing affected sources. The proposed rule would require all spray guns to be cleaned by one or more of the following methods (or their equivalent): (1) Use of an enclosed spray gun cleaning system that is kept closed when not in use, (2) nonatomized discharge of solvent into a waste container that is kept closed when not in use, (3) disassembly of the spray gun and cleaning in a vat that is kept closed

when not in use, and (4) atomized spray into a waste container that is fitted with a device designed to capture atomized solvent emissions. In addition, the EPA is proposing that leaks from enclosed spray gun cleaners be repaired as soon as practicable but no later than 15 days from when the leak is first discovered. The EPA is also proposing a work practice standard for the flush cleaning of parts, assemblies, and components of a coating unit. Under the proposed rule, each time a part, assembly, or

component of a coating unit (with the exception of spray guns) is flush cleaned, the spent cleaning solvent would be emptied into an enclosed container or collection system that is kept closed when not in use.

The following cleaning operations, which would still be required to comply with the proposed housekeeping requirements, would be exempt from the proposed cleaning solvent composition and vapor pressure requirements:

<sup>2</sup>Ibid.

(1) Cleaning during the manufacture, assembly, installation, or testing of components of breathing oxygen systems that are exposed to the breathing oxygen,

(2) Cleaning during the manufacture, assembly, installation, or testing of parts, subassemblies, or assemblies that are exposed to strong oxidizers or reducers (e.g., nitrogen tetroxide, liquid oxygen, hydrazine),

(3) Cleaning and surface activation prior to adhesive bonding,

(4) Cleaning of electronics and assemblies containing electronics,

(5) Cleaning of aircraft fluid systems that are exposed to the fluid,

(6) Cleaning of fuel cells, fuel tanks, and limited access spaces,

(7) Surface cleaning of solar cells, coated optics, and thermal control surfaces,

(8) Cleaning during fabrication, assembly, installation, and maintenance of upholstery, curtains, carpet, and other textile materials used on the interior of the aircraft,

(9) Cleaning of metallic and non-metallic materials used in honeycomb cores during the manufacture of these cores, and cleaning of the completed cores used in the manufacture of aerospace vehicles or components,

(10) Cleaning of polycarbonate substrates, and

(11) Cleaning and solvent usage associated with production, research, development, quality control, and laboratory testing.

## 2. Primer and Topcoat Application Operations

The proposed standards for primer and topcoat application operations would be the same for all new and existing affected sources. Standards are being proposed to limit organic and inorganic HAP emissions from these operations.

a. *Organic HAP and VOC emissions.* The standards being proposed would limit the organic HAP emissions from primer application operations to an equivalent organic HAP content level of 350 grams of organic HAP per liter (2.9 pounds per gallon (lb/gal)) of primer (less water) as applied, and from topcoat application operations to an equivalent organic HAP content level of 420 grams of organic HAP per liter (3.5 lb/gal) of topcoat (less water) as applied. In addition to the organic HAP limits, the proposed standards would limit VOC emissions from primer application operations to an equivalent VOC content level of 350 grams of VOC per liter (2.9 lb/gal) of primer (less water and exempt solvents) as applied, and from topcoat application operations to an equivalent

VOC content level of 420 grams of VOC per liter (3.5 lb/gal) of topcoat (less water and exempt solvents) as applied. Equivalent organic HAP and VOC content level means the calculated organic HAP (or VOC) content of coatings that when multiplied by the usage of the coatings yields the amount of organic HAP (or VOC) actually emitted to the atmosphere by the use of the coatings. Exempt solvents are those organic compounds that have been determined by the EPA to have negligible photochemical reactivity.

The EPA has received information indicating that the organic HAP and VOC content limits for topcoats do not represent demonstrated technology for exterior commercial topcoats. Consequently, the EPA is soliciting comments on whether a separate category should be developed for exterior commercial topcoats with HAP and VOC content levels higher than the proposed levels for topcoats. These comments should provide a technical justification for a higher limit, including why currently available commercial topcoats cannot be used by all sources.

Sources would be allowed to comply with the proposed organic HAP and VOC content levels by one or both of the following means: (1) Use coatings that individually comply with the organic HAP and VOC levels or (2) use any combination of uncontrolled coatings such that the daily volume-weighted average organic HAP and VOC contents of these coatings comply with the organic HAP and VOC levels for that category (averaging of primers and topcoats together is prohibited). Averaging between uncontrolled coatings and controlled coatings is prohibited under the proposed rule.

Instead of complying with the proposed organic HAP and VOC content levels through compliant coatings or averaging, the proposed standards allow the use of control devices provided each control device used for the control of organic HAP or VOC emissions from primer or topcoat application operations has an overall control efficiency, taking into account capture and removal efficiency, of greater than or equal to 81 percent. In addition, except for incidental emissions that may escape from the capture system, the control device cannot be used to control only a portion of emissions from a coating operation.

Compliance with the proposed organic HAP and VOC content level standards would be shown on a monthly basis for compliant coatings, and on a daily basis for coatings complying by averaging. Compliance for control devices other than carbon

adsorbers would be shown on a continuous basis based on a specific operating parameter or parameters, such as temperature for incinerators. When a carbon adsorber is used to comply with the proposed standard, compliance with the 81 percent overall control efficiency requirement must be demonstrated for each rolling material balance period. The length of the rolling period will vary from source to source and is determined by the procedure specified in proposed Method 309 in the proposed rule. The minimum rolling period is one day, and the maximum rolling period is 30 days.

The EPA is also proposing an equipment standard for the application of primers and topcoats. The proposed standard would require the use of flow coat, roll coat, brush coat, dip coat, electrostatic attraction, or high volume low pressure (HVLV) spray guns other than for the exemptions listed below. All application equipment would be required to be operated and maintained according to manufacturer's specifications at all times.

The EPA is proposing to allow other application equipment that is demonstrated to achieve emission levels equivalent to HVLV or electrostatic spray guns. Compliance must be demonstrated by comparing the emissions generated by the alternative application method to the emissions generated by HVLV or electrostatic application methods under actual production conditions. The alternative method must generate emissions less than or equal to that generated by HVLV or electrostatic spray methods.

During the alternative application method test period, the owner or operator must ensure that the coating dried film thickness is equivalent to that applied during the initial 90-day test period. This is required to ensure that the owner or operator does not bias the test results by applying an excessive amount of coating during the initial 90-day period and applying a minimal amount of coating during the alternative application method test period. The EPA is requesting comments on whether the requirements of the proposed standards are sufficient to ensure that this situation does not occur. Specifically, comments should address whether detailed recordkeeping should also be required in order to determine that equivalent dried film thicknesses were applied.

The EPA is proposing to exempt the following situations and operations from the proposed equipment standards for the application of primers and topcoats, although whatever application equipment is used would still be

required to be operated and maintained according to manufacturers specifications at all times: (1) Any situation that normally requires the use of an extension on the spray gun to properly reach limited access spaces, (2) the application of coatings that contain fillers that adversely affect atomization with HVLP spray guns and cannot be applied by any of the specified application techniques, (3) the application of coatings that normally have a dried film thickness of less than 0.0005 inch and cannot be applied by any of the specified application techniques, (4) the use of airbrush application methods for stenciling, lettering, and other identification markings, and (5) touchup and repair operations.

b. *Inorganic HAP emissions.* The standards being proposed for inorganic HAP emissions from primer and topcoat application operations would apply to those operations that spray apply coatings that contain inorganic HAP (usually chromium, cadmium, and selenium). Such operations would be required to be performed in a booth or hangar in which the air flow is directed across the part or assembly being coated and exhausted through one or more outlets. This air stream would be required to pass through either dry particulate filters or a waterwash system to remove the particulates before exhausting to the atmosphere. In addition, the pressure drop across the filter or waterwash would have to be continuously monitored. If the pressure drop moves outside of the limits specified by the manufacturer to maintain proper performance of the dry particulate filters or waterwash system, then the operation must be shut down immediately and corrective action taken. The process cannot resume until the pressure drop is returned to the limits specified by the manufacturer.

The EPA is requesting comments on whether pressure drop is an appropriate parameter on which to make continuous compliance determinations with the inorganic HAP emission standards. The possibility exists that different filter or waterwash manufacturers may specify different pressure drop limits for products with essentially the same performance. Since the proposed standards rely on pressure drop as the basis for making compliance determinations, such a difference would result in different requirements from one facility to another. Thus, the EPA is requesting comments specifically on whether a standardized pressure drop limit can be established, or if another operating parameter exists on which to make compliance determinations that

would be consistent and enforceable for all types and brands of filters and waterwash systems.

If pressure drop is selected as the parameter to be used to determine continuous compliance, then a violation of the standards could occur under one of the following conditions: (1) Whenever the pressure drop moves outside the limits specified by the manufacturer or (2) when the pressure drop is found to be outside the specified limits when monitored and recorded once per operating shift. As the proposed rule is currently written, a violation would occur in the latter situation. The EPA is requesting comments on which of these options, or another option, is most appropriate.

The EPA is proposing to exempt the following list of operations from the proposed standards for inorganic HAP emissions from primer and topcoat application operations:

- (1) Touch-up of scratched surfaces or damaged paint,
- (2) Hole daubing for fasteners,
- (3) Touch-up of trimmed edges,
- (4) Coating prior to joining dissimilar metal components,
- (5) Stencil operations performed by brush or air brush,
- (6) Section joining, and
- (7) Touch-up of bushings and other similar components.

### 3. Depainting Operation

Standards are being proposed for both organic HAP emissions and inorganic HAP emissions from depainting. With the exception of the proposed standards for spot stripping and decal removal, as discussed below, the standards being proposed for depainting would be the same for all new and existing affected sources. The proposed standards would apply only to the depainting of the outer surface of entire aerospace vehicles, including the fuselage, wings, and horizontal and vertical stabilizers of the aircraft, and the outer casing and stabilizers of missiles and rockets. Standards for the depainting of parts, subassemblies, radomes, and parts normally removed from the completed vehicle before depainting are not being proposed at this time. However, wings and stabilizers would always be required to comply.

a. *Organic HAP emissions.* The proposed standards would require that there be no organic HAP emissions from the depainting operation. These standards could be achieved through the use of (1) chemical strippers that contain no organic HAP or (2) media blasting equipment, high intensity ultraviolet light blasting, or any other non-chemical depainting technique.

However, the proposed rule would allow the use of organic HAP-containing chemical stripper for spot stripping and decal removal. The proposed rule would limit this use of organic HAP-containing chemical stripper to an average of 26 gallons per aircraft for commercial aircraft and 50 gallons per aircraft for military aircraft, calculated on an annual basis.

Non-chemical-based depainting equipment would be required to be operated and maintained according to manufacturer's specifications. During any period of malfunction, the owner or operator would be allowed to use a substitute material to repaint the vehicles. Unless the substitute material does not contain any organic HAP, the substitute material would not be allowed to be used for more than 14 consecutive days.

The proposed rule does not contain an annual limit on the number of days a source may use HAP-containing chemical strippers during periods of malfunction of non-chemical-based depainting equipment. The EPA is requesting comments on whether an annual limit should be imposed and, if so, technical justification for the number of days specified by the limit.

b. *Inorganic HAP emissions.* The proposed rule for inorganic HAP emissions would apply to those depainting methods (typically blasting methods) that generate airborne particulate emissions, such as dust and paint particles, that contain inorganic HAP. The proposed standards would require that the depainting operation be carried out in an enclosed hangar and that any air stream removed from the depainting area be directed through a particulate filter (e.g., panel-type filter or baghouse) before exhausting to the atmosphere. This filtration system must have a particulate removal efficiency greater than or equal to 99 percent, and the pressure drop across the filter must be continuously monitored. If the pressure drop moves outside of these limits as recorded each operational shift, then the operation must immediately be shut down and corrective action taken. The process cannot resume until the pressure drop is within the limits specified by the manufacturer.

As described above for primer and topcoat application operations, the EPA is requesting comments concerning the appropriateness of using pressure drop to make compliance determinations and what action should be taken when the pressure drop moves outside of the specified limits.

#### 4. Chemical Milling Maskant Application Operation

The proposed standards for the chemical milling maskant application operation would be the same for all new and existing affected sources and applies only to those operations utilizing a Type II chemical milling etchant. The proposed standards would limit organic HAP emissions to an equivalent organic HAP content level of 160 grams of organic HAP per liter (1.3 lb/gal) of chemical milling maskant (less water) as applied, and limit the VOC emissions to an equivalent VOC content level of 160 grams of VOC per liter (1.3 lb/gal) of chemical milling maskant (less water and exempt solvents) as applied. Alternatively, as for primer and topcoat application operations, control devices that achieve an overall control efficiency of at least 81 percent and control all emissions (except for incidental emissions) may be used.

Compliance with the organic HAP and VOC content level standards would be allowed using one or both of the following means: (1) Use chemical milling maskants that individually comply with the organic HAP and VOC content levels or (2) use any combination of chemical milling maskants such that the daily volume-weighted average organic HAP and VOC content levels of these chemical milling maskants used in the chemical milling maskant operation comply with the organic HAP and VOC content levels. Averaging uncontrolled chemical milling maskants with controlled chemical milling maskants, however, is prohibited under the proposed rule.

Compliance with the proposed organic HAP and VOC content level standards would be shown on a monthly basis for compliant chemical milling maskants and on a daily basis for chemical milling maskants complying by averaging. Compliance for control devices other than carbon adsorbers would be shown on a continuous basis based on a specific operating parameter or parameters, such as temperature for incinerators. When a carbon adsorber is used to comply with the proposed standard, compliance with the 81 percent overall control efficiency requirement must be demonstrated for each rolling material balance period. The length of the rolling period will vary from source to source and is determined by the procedure specified in proposed Method 309 in the proposed rule. The minimum rolling period is one day, and the maximum rolling period is 30 days.

#### 5. Handling and Storage of Waste

The proposed standards for handling and storage of waste would be the same for all new and existing facilities. The proposed rule would require that the handling and transfer of HAP-containing waste to or from containers, tanks, vats, vessels, or piping systems be conducted in such a manner that minimizes spills. In addition, all HAP-containing waste would be stored in closed containers.

##### C. Compliance Dates

The proposed rule would require all existing sources to comply no later than three years after the effective date of the standards. In addition, the proposed rule adopts the compliance dates specified in § 63.6(b) and § 63.6(c) of the General Provisions, 40 CFR part 63, subpart A.<sup>3</sup>

##### D. Compliance Extensions

During development of the aerospace national emission standards for hazardous air pollutants (NESHAP), the EPA received comments from the regulated community regarding the process that would be used to comply with the rule and certain difficulties that were anticipated, particularly with the facilities' selection and approval of product substitutions for coatings and hand-wipe cleaning solvents. Because of the large number of product substitutions that may have to undergo testing and qualification at each facility, some facilities may need to request a compliance extension.

Section 63.6(i) of 40 CFR part 63 provides the requirements for requesting an extension of compliance with a relevant standard established under part 63.<sup>4</sup> Specifically, § 63.6(i)(4) allows the issuance of a permit granting an extension of up to one year to comply with the standard, if such additional period is necessary for the installation of controls. Section 63.6(i)(4)(i)(B) requires requests for compliance extensions to be submitted no later than 12 months before the affected source's compliance date.

The EPA is seeking comment on the significance of the potential difficulties of complying with the proposed aerospace NESHAP in the allotted 3 years (or 4 years if the one-year extension described above is applied for and approved). In addition, the EPA is seeking comment regarding how these difficulties can be addressed within the confines of the statutory requirements of sections 112(d) and 112(i) of the Act. Specifically, the EPA is seeking

<sup>3</sup>Ibid.

<sup>4</sup>Ibid.

comment on what types of activities, such as technical assistance, can be provided to assist sources attempting to come into compliance with the aerospace NESHAP.

##### E. Compliance Testing and Monitoring

In addition to the specific testing and monitoring requirements specified below for each affected source, the proposed rule adopts the testing requirements specified in § 63.7 of the General Provisions, 40 CFR part 63, subpart A.<sup>5</sup>

##### 1. Test Methods and Procedures

a. *Cleaning operation.* For multi-component cleaning solvents, compliance with the proposed vapor pressure specifications would be determined using E 260-85 to quantify the amount of each organic compound in the cleaning solvent. The vapor pressure of each organic compound would be determined from the manufacturer's data, standard engineering reference texts, or other equivalent methods. The total composite vapor pressure would then be calculated by summing the partial vapor pressure of each component according to Raoult's Law.

For single component cleaning solvents, the EPA is proposing that vapor pressure data supplied by the manufacturer of the cleaning solvent, standard engineering reference texts, or other equivalent methods be used for compliance determinations.

Owners or operators seeking to comply with the cleaning solvent approved composition list would have to show compliance using data supplied by the manufacturer of the cleaning solvent. The data must identify all components of the cleaning solvent and demonstrate that one of the approved composition definitions is met.

b. *Primer and topcoat application operations.* As noted earlier, the proposed standards for organic HAP and VOC emissions would require compliance with an equivalent organic HAP content level (pounds of organic HAP per gallon of coating (less water) as applied) and an equivalent VOC content level (pounds of VOC per gallon of coating (less water and exempt solvents) as applied) for primers and for topcoats. Compliance with these organic HAP and VOC content levels may be accomplished by using compliant coatings, averaging between compliant and non-compliant coatings, control devices, or any combination of these methods. In addition, the proposed standards would require the use of

<sup>5</sup>Ibid.

certain application techniques for the application of primers and topcoats.

Test methods and procedures have been identified for compliance with the organic HAP and VOC content levels. No test methods or procedures have been identified for the application equipment requirements; however, a test method has been identified for the qualification of alternative application methods.

Method 24 in appendix A to 40 CFR part 60 would be used to determine the VOC content of each primer and topcoat as applied. Alternatively, manufacturer's data may be used to determine the VOC content of these coatings. However, in the event of any inconsistency between manufacturer's data and Method 24 test results, the Method 24 test results will take precedence.

The facility may rely on manufacturer's data to determine the organic HAP content level of each coating. The total organic HAP weight fraction and density of each coating as received would be determined using the manufacturer's data. The volume of each primer and topcoat used would be determined using company records. If diluent solvents or other ingredients are added to a primer or topcoat prior to application, then the total organic HAP and VOC weight fractions, density, and volume must be adjusted appropriately to account for such additions. These values would be required for each 24-hour period; however, only changes in formulation would require re-determination of total organic HAP and VOC weight fractions and density.

The proposed standards would then require the owner or operator to calculate the volume-weighted average mass of both VOC and organic HAP in coatings emitted per volume of coating (less water and exempt solvents for VOC; less water for HAP) as applied. This calculation would be performed for each 24-hour period.

If an owner or operator is seeking to comply by using compliant coatings, the owner or operator would need to determine the organic HAP content (less water as applied) and VOC content (less water and exempt solvents as applied). If no changes in formulation as applied occurred, then a re-calculation of the organic HAP and VOC content levels would not be required. Where compliant coatings are used, the proposed rule would require the determination of the organic HAP content using manufacturer's data and VOC content using Method 24 or manufacturer's data.

If a control device is used, the proposed standards require the owner or

operator to conduct an initial performance test to demonstrate compliance with the overall control efficiency requirement of at least 81 percent. The percent reduction achieved by a control device may be determined based either on total organic compounds (TOC) minus methane and ethane or on total organic HAP.

For a carbon adsorber, the overall control efficiency would be determined using a mass balance. The mass balance calculation would be made every rolling period (the length of the rolling period will vary from facility to facility and will range from 1 to 30 days).

For control devices other than carbon adsorbers, the overall control efficiency would be based on capture efficiency and destruction efficiency. Capture efficiency would be determined based on the procedure specified in § 52.741(a)(4)(iii) of 40 CFR subpart O, unless the operation is performed within a total enclosure. An enclosure that meets the requirements of a total enclosure as specified in § 52.741, appendix B, Procedure T of 40 CFR subpart O would have a capture efficiency of 100 percent.

The destruction efficiency of a control device other than a carbon adsorber would be determined using the following methods. Method 1 or 1A of 40 CFR part 60, appendix A, as appropriate, would be used for selection of the sampling sites, and the gas volumetric flow rate would be determined using Method 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate. Method 18 of 40 CFR part 60, appendix A, would then be used to measure either TOC minus methane and ethane or total organic HAP at the inlet and outlet of the control device. Also, any other test methods or data that have been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, may be used.

The proposed standards would also allow the use of alternative application methods provided that they generate organic HAP and VOC emissions less than or equal to the emissions generated by HVLP or electrostatic spray guns. The emission levels of the alternative application method must be determined under actual production conditions. This test would first involve determining the organic HAP and VOC emissions for the 90-day period immediately preceding the implementation of the alternative application method. During this initial 90-day period, only HVLP or electrostatic spray guns would be used. The alternative method would then be used on actual production parts or

assemblies for a period of time sufficient to coat an equivalent amount of parts and assemblies as coated in the initial 90-day period. Coatings used during the test period must be the same as those used during the initial 90-day period. In addition, the dried film thickness must be equivalent to that applied during the initial 90-day period.

The organic HAP and VOC emissions for the period of time where the alternative method was used would then be calculated. Where the organic HAP and VOC emissions after implementation of the alternative method are less than or equal to the emissions for the initial 90-day period, the alternative application method is in compliance.

The South Coast Air Quality Management District (SCAQMD), in conjunction with the California Air Resources Board (CARB), is currently developing a test protocol to measure the transfer efficiency of spray application equipment. This test protocol would represent an alternative method of qualifying application equipment for use under the proposed standards. Since this test protocol is still under development, the EPA is requesting comments from those familiar with this test protocol or any other transfer efficiency laboratory test method concerning the ability of these procedures to accurately and repeatedly measure the transfer efficiency of spray application equipment. In addition, the EPA is requesting comments on other methods that may be used to measure the transfer efficiency of spray application equipment.

*c. Depainting.* For the organic HAP emissions portion of the proposed standards for depainting, the only test method or procedure that would be required is the determination of the organic HAP content of each chemical stripper. The proposed standards would require the use of information supplied by the manufacturer to determine the organic HAP content. If the organic HAP content of the chemical stripper cannot be determined from manufacturer's data, then the owner or operator would submit an alternative procedure for determining the organic HAP content for approval by the Administrator.

For the annual limit on the gallons of organic HAP-containing chemical stripper used for spot stripping and decal removal, the total annual volume as applied of organic HAP-containing chemical stripper and the number of aircraft depainted would be determined from company records. The proposed standards would then require the owner or operator to calculate the gallons of organic HAP-containing chemical

stripper used per aircraft. This calculation would be performed for each annual period.

The proposed standards require inorganic HAP emissions from repainting operations to be reduced by 99 percent using particulate filters such as baghouses, cartridge filters, or dry filter media. The EPA is proposing the use of Method 5 in appendix A to 40 CFR part 60 to determine removal efficiency. The proposed standards would require retesting whenever the particulate filter or supplier of the filter media changes, or whenever modifications are made to the emission collection system.

d. *Chemical Milling Maskants*. The same basic test methods and procedures identified for primer and topcoat application operations are also being proposed for chemical milling maskants, requiring the determination of total organic HAP weight fraction, density, and volume of chemical milling maskants as applied. Simpler procedures are being proposed, as for primer and topcoat application operations, to demonstrate compliance where only compliant chemical milling maskants are being used.

As for primer and topcoat application operations, any control device, including a carbon adsorber, used to control emissions from chemical milling maskant application operations must have an overall control efficiency of at least 81 percent and must control, except for incidental emissions, all of the emissions from the maskant operation. Test methods that would be used to determine the overall control efficiency are identical to those given previously for primer and topcoat application operations.

e. *Handling and storage of waste*. No test methods are being proposed.

## 2. Monitoring Requirements

Monitoring is required by the proposed standards to determine whether a source is in continuous compliance. This can be accomplished by continuously measuring site-specific operating parameters, the values of which are established by the owner or operator during the initial compliance test. The operating parameter value is defined as the minimum or maximum value established for a control device or process parameter that, if achieved by itself or in combination with other operating parameter values, determines that an owner or operator is complying with the applicable emission limitation or standards. This type of enhanced monitoring would be required for those emission points for which the standards are expressed as a percent control. In

addition, the owner or operator is expected to install and operate the equipment properly. For owners or operators complying with the proposed standards for spray gun cleaning through the use of enclosed spray gun cleaners, compliance would be demonstrated through recordkeeping (see section II.F).

The proposed rule would require temperature to be monitored, using a continuous recorder, for incinerators. For catalytic incinerators, temperature monitors would be placed immediately before and after the catalyst bed. For other incinerators, the temperature monitor would be placed in the firebox or in the ductwork immediately downstream of the firebox and before any substantial heat exchange occurs. All monitoring equipment would be installed, calibrated, maintained, and operated according to manufacturer's specifications.

Section 63.6(g) of 40 CFR part 63, subpart A, allows an owner or operator of an affected source to request the use of alternative methods of emission reduction for complying with design, equipment, work practice, or operational emission standards, or combination thereof, established under this part.<sup>6</sup> Under the proposed rule, an owner or operator of an affected source may also use control devices other than those specifically identified in the proposed rule as a means for achieving compliance with any portion of the rule. If devices other than those identified are used, the proposed standards would require the owner or operator to submit the parameters to be monitored to the Administrator for approval.

The proposed standards would require each owner or operator to establish a range of values for each of these monitored parameters during the initial performance test. As long as the control device is operated within the established ranges, the proposed emission standards are considered to be met. Consequently, exceedances of these parameters would be considered a violation of the standards since operating the control device outside of the parameters may reduce the efficiency of the control device.

a. *Cleaning operations*. The proposed rule would require enclosed spray gun cleaners to be visually inspected at least once per month for leaks. The inspections would occur while the enclosed cleaner is in operation.

b. *Primer and topcoat application operations*. Where an incinerator or other control device is used to control organic HAP and VOC emissions from

primer and topcoat application operations, the monitoring requirements specified above would be required.

For control of inorganic HAP emissions from primer and topcoat application operations, the proposed standards would require that the pressure drop across the particulate filters or waterwash be monitored on a continuous basis.

c. *Repainting*. No monitoring requirements for organic HAP emissions are being proposed. For inorganic HAP emissions, continuous monitoring of the pressure drop across the filter, as for primers and topcoats, is being proposed.

d. *Chemical milling maskant application operations*. Where a control device is used to control organic HAP and VOC emissions from chemical milling maskant application operations, the monitoring requirements specified above would be required.

e. *Handling and storage of waste*. No monitoring requirements are being proposed.

## F. Recordkeeping and Reporting Requirements

The proposed rule proposes to adopt the requirements contained in § 63.9 (a) through (e) and § 63.9 (h) through (j) and § 63.10 (a), (b), (d), and (f) of 40 CFR part 63, subpart A.<sup>7</sup> The proposed rule, however, contains additional or clarifying elements and changes certain time periods allowed for submitting or responding to certain reports and requests required in § 63.10. These elements and changes are summarized below for each of the operations for which standards are being proposed.

### 1. Recordkeeping Requirements

a. *Cleaning operations*. For each cleaning solvent used at the facility, the proposed rule would require a record of the name of the cleaning solvent and documentation that shows the organic HAP constituents of the cleaning solvent. For each cleaning solvent used in hand-wipe cleaning operations that conforms to the approved composition list, the records that would be maintained are the name of each cleaning solvent, documentation demonstrating compliance to the approved composition list, and annual purchasing records showing the annual volume purchased of each. For each cleaning solvent used in hand-wipe cleaning operations that does not conform to the approved composition list but does conform to the vapor pressure requirement, the information required to be recorded would be the name of each cleaning solvent, the

<sup>6</sup>Ibid.

<sup>7</sup>Ibid.

monthly usage of the cleaning solvent at each operation, the composite vapor pressure, the manufacturer's data sheets or other documentation of the vapor pressure, and any test reports and calculations performed to determine the composite vapor pressure.

For cleaning solvents that do not conform to either the composition or vapor pressure requirements and are used for the exempt cleaning operations, daily records must be maintained of the name and volume of each cleaning solvent at each operation at which it is used, and the parts, assemblies, or subassemblies cleaned at these operations.

In addition, a record of all leaks from spray gun cleaners would be kept, including source identification, the date that the leak was discovered, and the date that the leak was repaired.

*b. Primer and topcoat application operations.* For all primers and topcoats used at the facility, records must be maintained of the name of each primer and topcoat and its organic HAP and VOC content as received. In addition, the EPA is proposing different levels of recordkeeping requirements depending on how the organic HAP and VOC content levels are met. For primers or topcoats that are individually compliant with the organic HAP and VOC content limits, records would be required of the organic HAP and VOC content as applied, all data, calculations, and test results (including Method 24 results taken during an enforcement inspection) used in determining the organic HAP and VOC contents as applied, and the monthly usage of each coating formulation within each coating category.

If averaging among compliant and non-compliant coatings is used to achieve compliance, then the proposed standards would require that up-to-date records of daily volume-weighted average mass of organic HAP and VOC contained in the coatings as applied be maintained. This information would include all data and calculations used in determining these daily values, such as manufacturer's data certifying the organic HAP content of each coating as applied and Method 24 test results (including those taken during an enforcement inspection) or manufacturer's data that show the VOC content as applied.

If a control device is used to comply with the organic HAP or VOC content limit for primers or topcoats, up-to-date records must be kept on the control device. Each owner or operator would be required to keep records of the equipment monitoring parameter measurements specified in the proposed

rule. For an incinerator other than a catalytic incinerator, continuous records must be maintained of the firebox temperature (or temperature in the ductwork immediately downstream of the firebox). For a catalytic incinerator, continuous records must be maintained of the gas stream temperature immediately before and after the catalyst bed. For both types of incinerators, records must be maintained of the overall control efficiency and all test results, data, and calculations used in determining the overall control efficiency.

For carbon adsorbers, records must be maintained of the overall control efficiency, all test results, data, and calculations used in determining the overall control efficiency, and the length of the rolling material balance period and all of its supporting data and calculations used to determine the rolling period.

For inorganic HAP emissions from primer and topcoat application operations, either particulate filters or waterwash spray booths would be used to achieve compliance. Records must be maintained of the manufacturer's recommended limits for the pressure drop and readings of the pressure drop across the filters or waterwash that are taken once each shift during which the coating processes are in operation.

*c. Depainting operation.* Each owner or operator of a depainting operation would be required to keep up-to-date records of the name of each chemical stripper used, the organic HAP content of each stripper and its supporting documentation, and the monthly volume usage of each chemical stripper that contains organic HAP.

For non-chemical depainting methods, such as media blasting, owners and operators would be required to maintain records of the type of non-chemical-based equipment used and a description of any malfunctions that occur. If a malfunction occurs, the information to be kept would be the dates the malfunction occurred and was corrected, the methods used to repaint the aerospace vehicles during the malfunction, and the dates that these methods were begun and discontinued.

The proposed standards for depainting contains exemptions for parts stripping, spot stripping, and decal removal, each of which requires certain records to be maintained. For parts stripping, records must be maintained for each model of aerospace vehicle of the parts normally removed from the vehicle. For spot stripping and decal removal, annual records must be maintained of the number of aircraft stripped, the volume of organic HAP-

containing chemical stripper used for spot stripping and decal removal, the average number of gallons of organic HAP-containing stripper used per aircraft, and all supporting data and calculations.

For inorganic HAP emissions from depainting operations, either particulate filters or baghouses (equipped with either bag or cartridge filter media) would be used to achieve compliance. Records must be maintained of the filter manufacturer's recommended pressure drop limits and the readings of the pressure drop across the filter taken once each shift during which the depainting process is in operation. Also, records must be maintained of the particulate control efficiency of each filter and all test results, data, and calculations used to determine the control efficiency.

*d. Chemical milling maskant application operation.* The EPA is proposing different levels of recordkeeping requirements depending on how the organic HAP and VOC content levels are being met. For chemical milling maskants that are individually compliant with the organic HAP and VOC content levels, records of the volume-weighted average masses of organic HAP and VOC emitted as applied must be kept. In addition, all data and calculations used to determine these values and the monthly volume of each chemical milling maskant formulation used each month must be maintained.

If averaging among compliant and non-compliant chemical milling maskants is used to achieve compliance, then the proposed standards would require that up-to-date records of daily volume-weighted average mass of organic HAP and VOC contained in the chemical milling maskants as applied be maintained. This information would include all data and calculations used in determining these daily values, such as formulation data and Method 24 test results.

As for primer and topcoat application operations, if a control device is used, up-to-date records must be kept on the control device. Each owner or operator would be required to keep records of the equipment monitoring parameter measurements specified in the proposed rule. For an incinerator other than a catalytic incinerator, continuous records must be maintained of the firebox temperature (or temperature in the ductwork immediately downstream of the firebox). For a catalytic incinerator, continuous records must be maintained of the gas stream temperature immediately before and after the catalyst bed. For both types of

incinerators, records must be maintained of the overall control efficiency and all test results, data, and calculations used in determining the overall control efficiency.

For carbon adsorbers, records must be maintained of the overall control efficiency, all test results, data, and calculations used in determining the overall control efficiency, and the length of the rolling material balance period and all of its supporting data and calculations used to determine the rolling period.

*e. Handling and storage of waste.*

Each owner or operator would be required under the proposed standards to keep an up-to-date record of each waste stream generated at the facility, identification of which wastes are subject to RCRA and which are not, and documentation supporting those determinations.

## 2. Reporting Requirements

The proposed rule would require four basic types of reports: (1) Initial notification, (2) notification of compliance status, (3) periodic reports, and (4) other reports. In addition, the proposed rule would require that the results of any performance test required under § 63.7 of the General Provisions to 40 CFR part 63, subpart A, be reported no later than 30 days after the completion of the test.<sup>8</sup> A permit application as required under 40 CFR part 70 may be used in lieu of the initial notification provided the same information is contained in the permit application as required for the initial notification.

As stated above, the proposed standards adopt the reporting requirements contained in § 63.9(a) through § 63.9(e) and § 63.9(h) through § 63.9(j) and 63.10 (a), (b), (d), and (f) of 40 CFR part 63, subpart A. However, the time period allowed for the Administrator to notify the owner or operator in writing of approval or disapproval of the request for an adjustment to a particular time period or postmark deadline submitted under § 63.9(i) has been changed to within 30 calendar days of receiving sufficient information to evaluate the request, rather than 15 calendar days as provided for in § 63.9(i)(3).

Sections 40 CFR 63.9 and 63.10 of the General Provisions identify the type of generic information to be included in the initial notification, notification of compliance status, and other reports and, therefore, this information is not repeated in this preamble. The following paragraphs summarize the

additional information specific to the aerospace rule that should be included in the notification of compliance status and the type of information to be included in the periodic reports.

*a. Cleaning operation.* The notification of compliance status should include an identification of each cleaning solvent used at the facility, a description of the procedures to be used to ensure that bags and containers are kept closed when not in use and that cleaning solvents are stored in closed containers, the name of each cleaning solvent that does not conform to the approved composition list, and the vapor pressure test results of each.

Specific to spray gun cleaning, the notification of compliance status should also contain a detailed description of all methods used to clean spray guns and an explanation as to how each cleaning method complies with the proposed standards.

Information to be included in the semiannual report covers all noncompliance situations such as using a hand-wipe cleaning solvent that does not conform to the approved composition list or vapor pressure requirements used in a non-exempt operation. In addition, the semiannual report includes information on new cleaning solvents used for hand-wipe cleaning in the previous six months, as well as previously reported cleaning solvents no longer in use. The information to be provided is a list of any new cleaning solvents used in the previous six months, a list of new non-HAP cleaning solvents, if any, used, and, for new cleaning solvents used in hand-wipe cleaning operations, the composite vapor pressure of each.

If the cleaning operation has been in compliance for the annual period, then an annual report would be required occurring every 12 months from the date of the initial report stating that the cleaning operation has been in compliance with the applicable standards.

*b. Primer, topcoat, and chemical milling maskant application operations.* For primer, topcoat, and chemical milling maskant application operations, the notification of compliance status should identify the combination of compliant coatings, averaging, and control devices that were used to demonstrate that the facility was in compliance, and, for control devices, what operating parameters were identified for continuous monitoring in order to ensure continuous compliance with the proposed standards.

Owners and operators complying with the organic HAP and VOC content levels for primer, topcoat, and chemical

milling maskant application operations would be required to report each exceedance of the organic HAP or VOC content level, as well as any time a primer or topcoat application operation was not immediately shut down when the pressure drop across the filters or waterwash was out of range. These reports would be submitted on a semiannual basis.

If control devices are used, semiannual reports would be required that contain information on all days when the average values of the parameters required to be monitored were outside the ranges established in the operating permit.

For incinerators, this would be whenever each 3-hour average temperature was below the average temperature established during the most recent performance test during which compliance was demonstrated.

If no exceedances occur, each owner and operator would submit annual statements indicating that each affected facility has been in compliance. The annual reports for primer and topcoat application operations would also identify the number of times, if any, the pressure drop limits for each filter or waterwash system were exceeded.

*c. Depainting operation.* The notification of compliance status for depainting operations should identify each chemical stripper used at the facility to repaint aerospace vehicles and the organic HAP content of each. Each chemical stripper that contains organic HAP and is used for decal removal, depainting of parts, and spot stripping would also be identified. In addition, the types of non-chemical depainting methods and techniques used at the facility and the manufacturer's recommended pressure drop across the filters for the particulate removal system, if applicable, would be identified. Finally, each owner or operator would be required to describe the depainting methods to be used during periods of malfunction of the non-chemical depainting methods.

Information to be included in the semiannual report would include the name of any new chemical strippers used during the previous six months and the organic HAP content of each. For each chemical stripper used for depainting operations that undergoes reformulation, its organic HAP content after reformulation would be submitted with the semiannual report. The report would also be required if the owner or operator used any new non-chemical depainting technique at the facility since the initial report or any subsequent semiannual report. The semiannual report would be required to

<sup>8</sup>Ibid.

identify each 24-hour period where organic HAP were emitted from the depainting operation except from the exempt operations, any periods of malfunction of non-chemical depainting methods and techniques, and any periods where the non-chemical depainting operation was not immediately shut down when the pressure drop across the filters was out of range. For each malfunction that occurs, the following information would be reported: (1) The piece of equipment that malfunctioned, (2) the date the malfunction occurred and the date it was corrected, (3) a description of the malfunction, (4) the alternate methods used to repaint the aerospace vehicles during the malfunction period, and (5) the dates that these methods were begun and discontinued.

Finally, the semiannual report would be required to identify all changes in the type of aircraft repainted at the facility and to identify the parts normally removed for repainting separate from the aircraft for each new type of aircraft repainted.

For spot stripping and decal removal, an annual report would be required whenever the average volume per aircraft of organic HAP-containing chemical strippers used exceeds the limits specified in the proposed rule for the annual period.

If the repainting operation has been in compliance for the annual period, then an annual report would be required every 12 months from the date of the initial report stating that the repainting operation has been in compliance with the applicable standards. This annual report would also detail how many times the pressure drop limits for each filter system were exceeded and report when the calculated annual average volume of organic HAP-containing strippers used per aircraft for spot stripping and decal removal exceeded the applicable limits.

*d. Handling and storage of waste.* The notification of compliance status would identify each waste stream and identify whether it is RCRA or non-RCRA regulated. The notification would also include a description of the procedures to be used to ensure that spills are minimized during handling and transfer operations. Also included would be the procedures to be used to ensure that waste is stored in closed containers.

Semiannual reports are required to identify any waste stream whose RCRA or non-RCRA classification has changed. The semiannual report would also identify any new waste streams and whether each is RCRA or non-RCRA regulated. An annual report would be required if no changes occurred in the

RCRA status to the existing waste streams and if no new waste streams were generated.

### III. Summary of Environmental, Energy, and Economic Impacts of the Proposed Standards

#### A. Emission Reductions

##### 1. Existing Facilities

For the existing aerospace OEM and rework facilities (approximately 2,869 facilities in the base year 1991), the nationwide baseline HAP emissions are estimated to be 189,000 Mg/yr (208,000 tpy). Implementation of the proposed regulation would reduce these emissions by approximately 112,600 Mg/yr (123,700 tpy), or 59 percent.

##### 2. New Facilities

For the aerospace industry, no net growth is expected over the next five years; therefore, no net emission reduction due to new facilities is anticipated during this period.

#### B. Secondary Environmental Impacts

Secondary environmental impacts are considered to be any air, water, or solid waste impacts, positive or negative, associated with the implementation of the proposed standards. These impacts are exclusive of the direct air emission reductions discussed in the previous section. All of the impacts discussed below reflect the maximum increase or decrease, as appropriate, that would occur if all of the affected sources converted to the control option described.

Some product reformulations that may be used to comply with the proposed standards for hand-wipe cleaning, primers, and topcoats may contain organic HAP or VOC not present in the original product. In these cases, different organic HAP or VOC may be emitted as a result of the proposed rule, but the overall level of these compounds that are emitted will decrease. Chemical strippers that do not contain organic HAP used for repainting may result in increased VOC emissions when used to replace methylene chloride-based chemical strippers (methylene chloride is a HAP, but not a VOC).

There is a potential for an impact on water quality resulting from some of the prescribed control measures. Under baseline conditions for chemical milling maskant operations, no wastewater is generated; however, some of the sources may install a carbon adsorber to control solvent emissions. If all affected sources use carbon adsorbers, the amount of water needed to create regenerating steam for these systems, which will add to the wastewater burden from these

sources, is estimated to be 447 million gallons per year nationwide. For repainting operations, there are two options available for meeting the proposed rule, both of which will result in a decrease in the amount of wastewater generated compared to baseline, which is 251 million gallons per year. The decrease in wastewater nationwide is estimated to be 251 million gallons and 86 million gallons if all affected sources use dry media blasting or chemical strippers that do not contain organic HAP, respectively.

Sources installing a carbon adsorption system on their chemical milling maskant operations would generate additional solid waste due to the necessity of periodically disposing of spent activated carbon. If all affected sources use carbon adsorbers, this added nationwide solid waste burden is estimated to be 4,500 tons per year, compared to the baseline of 21,200 tons per year. Rework facilities that presently use a methylene chloride-based paint stripper must dispose of 3,469 tons per year of paint/solvent sludge created by repainting. A total conversion to dry media paint removal would produce an increase in the amount of solid waste composed of dry paint chips and spent blasting media. This increase in solid waste is estimated to be 13,280 tons per year on a nationwide basis. The proposed standards for the control of inorganic HAP emissions from primer and topcoat application operations would result in the increase in solid waste generation from the disposal of used dry filter media. The increased solid waste burden is estimated to be 640 tons per year, compared to the baseline solid waste generation of 3,540 tons per year.

#### C. Energy Impacts

Some of the control measures proposed for aerospace manufacturing and rework operations would lead to increases in energy consumption. Both of the control options for chemical milling maskant operations, operation of a carbon adsorber or conversion to waterborne chemical milling maskant, would involve increased electricity usage (waterborne chemical milling maskants must be cured at elevated temperatures). The total additional energy needed if all affected sources operate new carbon adsorbers is estimated to be 1.7 billion kilowatt-hours (kWh) per year, and the energy increase for all affected sources to operate new curing ovens for waterborne chemical milling maskants is estimated at 324,700 kWh per year. Baseline energy consumption for chemical milling maskant operations is

considered to be negligible since the use of solvent-based chemical milling maskants does not directly require the use of electricity.

The dry media paint removal systems that would be installed at rework facilities consume additional energy compared to the solvent stripping method. Baseline energy consumption for solvent stripping is considered to be negligible since the use of these strippers does not directly require the use of electricity. The increase in energy consumption involved in operating dry media blasting systems is estimated to be 51 million kWh per year. The use of chemical strippers that do not contain organic HAP is essentially the same as the baseline solvent stripping operation; therefore, no energy impact will result from their use.

The proposed standards for the control of inorganic HAP emissions from primer and topcoat application operations would require some facilities to install additional spray booths. These spray booths, whether equipped with dry filters or waterwash, will increase the energy consumption of the affected sources. This increase in energy consumption is estimated to be 5.9 million kWh per year, compared to the baseline energy consumption of 117.4 million kWh per year.

#### D. Cost Impacts

The total capital and annualized control costs (1992 dollars), including recovery credits, attributable to compliance with the proposed standards have been estimated for both existing and new facilities. The following two subsections summarize the results of this cost analysis.

##### 1. Existing Facilities

a. *Capital costs.* Capital costs would be incurred with the implementation of control measures for chemical milling maskants (both solvent-based chemical milling maskants with a carbon adsorber and waterborne chemical milling maskants), dry media blasting for depainting, spray gun cleaning, and control of HAP emissions from primer, topcoat, and depainting operations. With the exception of dry media blasting for depainting, the nationwide capital costs listed below represent the maximum costs that would be incurred assuming that all facilities implemented the specific control option. For dry media blasting, it is not reasonable to assume that all commercial and military rework facilities (a total of 2,026 facilities) depaint the outer surface of aerospace vehicles. Therefore, it was assumed that only 5 percent of the small and medium size rework facilities and

all of the large rework facilities perform outer surface depainting.

For carbon adsorbers used in conjunction with solvent-based chemical milling maskants, the nationwide capital cost is estimated to be \$500 million, and for waterborne chemical milling maskants it is estimated to be \$289 million. The implementation of dry media blasting systems for depainting would require a nationwide capital cost of \$61 million. It should be noted that other control measures exist for depainting other than dry media blasting, such as chemical strippers that do not contain organic HAP, that require no capital investment. Selection of chemical strippers that do not contain organic HAP by all affected sources instead of dry media blasting would decrease the total nationwide capital investment by approximately 10 percent. The proposed rule would also require capital costs for high transfer efficiency application equipment and spray gun cleaning equipment totalling \$130 million and \$10 million, respectively. The control of inorganic HAP emissions from primer and topcoat application operations would require the installation of spray booths and filter systems at a capital cost of \$13 million.

Total nationwide capital costs range from \$503 million to \$714 million, depending on which chemical milling maskant control option is used.

b. *Annual costs.* All of the control options will result in some annual costs being incurred by the affected sources. However, the annualized cost figures presented below reflect the net cost to implement the control options after taking into account the costs that would have been incurred for baseline. This net cost (MACT cost minus baseline cost) resulted in net annual savings for primers, topcoats, and high transfer efficiency application methods; spray gun cleaning; and the use of chemical strippers that do not contain organic HAP. All other options resulted in net annual costs to the affected sources. The net cost (or savings) for all control options reflects the maximum cost (or savings) that would be incurred assuming all affected sources implemented the specific control option.

Only one cost analysis was completed for primers, topcoats, and high transfer efficiency application methods due to the interrelationship between these operations. For example, high transfer efficiency application methods will result in a lower volume of primers and topcoats being applied. In addition, the organic HAP and VOC limits on primers and topcoats will, due to higher solids

content, also result in a lower volume of the coatings being applied. The reduction in coating usage due to the lower organic HAP and VOC content had to be taken into account first, then the reduction in coating usage due to high transfer efficiency application methods was applied to this reduced coating volume to obtain the true overall reduction in coating usage. After factoring in the annualized cost of the coating equipment, the analysis showed a nationwide savings of \$71 million for commercial sources and \$18 million for military sources.

The savings for primers, topcoats, and high transfer efficiency application methods are due primarily to labor savings that would result from the reduced volume of coatings to be applied. For example, if it would have taken 15 gallons of primer under baseline conditions to coat an aircraft and only 12 gallons under MACT conditions, then the cost analysis assumes a labor savings for the 3 gallons of primer that were not applied. The EPA has received some evidence, however, that the labor stays the same or may even increase with the use of high transfer efficiency application methods (specifically HVLP spray guns). The EPA requests comments from facilities that have converted from conventional spray guns to HVLP spray guns regarding the labor hours per gallon of coating applied for each application method.

For spray gun cleaning, the proposed standards would result in a nationwide savings of approximately \$56 million. This is due primarily to reduced solvent usage and associated spent solvent disposal.

The use of chemical strippers that do not contain organic HAP would result in a nationwide savings of approximately \$2 million. While the cost of non-HAP strippers is generally higher than the cost of conventional strippers, this cost is offset by the reduced disposal costs incurred with non-HAP strippers. Since non-HAP strippers do not contain methylene chloride, they can typically be treated on-site. This eliminates the disposal costs incurred with the conventional strippers, which are typically shipped off-site for disposal.

Nationwide annual costs are estimated to be \$14 million for hand-wipe and flush cleaning, \$111 million for waterborne chemical milling maskants, \$2 million for inorganic HAP emissions from primer and topcoat application operations, and \$0.3 million for inorganic HAP emissions from blast depainting operations.

Total nationwide costs, taking into account both the savings and costs

detailed above, are estimated to be a savings of \$20 million.

Sources subject to the proposed rule would be required to perform certain monitoring, recordkeeping, and reporting tasks. These information collection requirements will create a burden on the affected sources in terms of resources needed to comply with these requirements (see section VI.D.). The total nationwide costs of the manpower requirements to complete these tasks are estimated to be \$36.7 million.

Total nationwide costs are estimated to be \$16.7 million, which is the sum of the annualized costs (a total nationwide savings of \$20 million) and the costs due to monitoring, recordkeeping, and reporting requirements (a total nationwide cost of \$36.7 million).

## 2. New Facilities

For the aerospace industry, no net growth is expected over the next five years; therefore, no net costs (or savings) due to new facilities are anticipated during this period.

## E. Economic Impacts

Due to the low total compliance costs associated with the proposed regulation, the discussion of the economic impacts is presented in a qualitative manner. The low costs of the proposed regulation are in a large part due to cost savings expected to be achieved by some model plants. The economic impact analysis discussed in a qualitative manner the primary impacts (the direction of price and output changes in the aerospace industry), as well as secondary impacts (the direction of changes in the demands for inputs such as coatings) associated with the proposed regulation.

Cost estimates indicate that the total annual compliance costs are approximately \$16.7 million. In 1990, revenue for this industry equalled approximately \$118.9 billion. Using revenue data as a proxy for production costs, the costs of the proposed regulation are only 0.01 percent of the total production costs for the industry. This increase in production cost is expected to have minimal impact on the current prices and outputs of the aerospace industry.

Secondary impacts refer to changes in factor demand by all aerospace producers. For example, while the primary impact of the regulation on spray gun cleaning is a decrease in the cost of performing this task, the actual cause of the decrease in the cost is a reduction in the use of methyl ethyl ketone and other solvents. Although compliance with the proposed

regulation is expected to reduce consumption of coatings and solvents in general and, therefore, negatively impact the producers of these products, compliance with the proposed regulation is also expected to increase product substitution so that demand for non-HAP strippers, waterborne maskants, and low vapor pressure solvents will increase. Lack of economic data on a product-specific basis prevents quantification of the indicated impacts.

## IV. Process Descriptions and Control Technologies

### A. Process Descriptions

Aerospace manufacturing and rework operations consist of the following basic operations: Chemical milling maskant application, chemical milling, adhesive bonding, cleaning (e.g., hand-wipe, spray equipment, and flush), metal finishing, electrodeposition, coating application (e.g., primers, topcoats, sealants, and specialty coatings), depainting, and composite processing. In addition, most aerospace manufacturing and rework facilities generate waste and wastewater, and some facilities have storage tanks for hand-wipe cleaning solvents. An aerospace facility may conduct all of these processes in its operations, such as an OEM facility that produces the entire aircraft. However, an aerospace facility may conduct only a subset of these operations, such as a facility that produces a single component or assembly, or a facility that provides a service such as chemical milling.

### 1. Chemical Milling Maskant Application and Chemical Milling

Chemical milling uses etchant solutions to reduce the thickness of selected areas of metal parts in order to reduce weight. The process is typically used when the size or shape of the part precludes mechanical milling or when chemical milling is advantageous due to shorter processing time or its batch capability.

Chemical milling maskants are typically rubber- or polymeric-based coatings applied to an entire part or subassembly by brushing, dipping, spraying, or flow coating. After the chemical milling maskant is cured, it is removed from selected areas of the part where metal is to be removed during the chemical milling process. The chemical milling maskant remaining on the part protects those areas from the etchant solution. Chemical milling maskants typically contain either a toluene/xylene mixture or perchloroethylene as its solvent constituents.

Organic HAP emissions occur through evaporation of the solvent as the chemical milling maskant is applied and while it cures.

### 2. Adhesive Bonding (Adhesives and Adhesive Bonding Primers)

Adhesive bonding involves the joining together of two or more metal parts, such as the parts of a honeycomb core. This process is typically performed when the joints being formed are essential to the structural integrity of the aircraft. The surfaces to be bonded are first coated with an adhesive bonding primer to promote adhesion and protect from subsequent corrosion. Structural adhesives are applied as either a thin film or as a paste, and can be oven cured or cured in an autoclave. Organic HAP emissions occur from the evaporation of solvents contained in the adhesive bonding primer and adhesive during their application, as well as during the curing step.

### 3. Cleaning Operations

a. *Hand-wipe and flush cleaning.* Aerospace components are cleaned frequently during manufacturing to remove contaminants such as dirt, grease, and oil, and to prepare the components for the next operation. Cleaning is typically performed by a hand wiping process using a wide variety of cleaning solvents. Assemblies and parts with concealed or inaccessible areas may be flush cleaned by pouring the cleaning solvent over or into the part. The cleaning solvent is then drained from the part and the procedure is repeated as many times as necessary to ensure the required cleanliness.

Organic HAP emissions from hand-wipe and flush cleaning operations occur from the evaporation of cleaning solvents during the cleaning process, including evaporation of the solvent from open containers and from solvent-soaked cloth and paper. Organic HAP emissions also occur from storage tanks used to store cleaning solvents.

b. *Spray gun cleaning.* Spray guns and other components of coating units must be cleaned when switching from one coating to another and when they are not going to be immediately reused. The cleaning of spray guns can be performed either manually or with enclosed spray gun cleaners. Manual cleaning involves disassembling the gun and placing the parts in a vat containing an appropriate cleaning solvent. The residual paint is brushed or wiped off the parts. After reassembling, the cleaning solvent may be sprayed through the gun for a final cleaning.

Enclosed spray gun cleaners are self-contained units that pump the cleaning

solvent through the gun within a closed chamber. After the cleaning cycle is complete, the guns are removed from the chamber and typically undergo some manual cleaning to remove coating residue from areas not exposed to the cleaning solvent, such as the seals under the atomizing cap.

Organic HAP emissions from spray gun cleaning occur from the evaporation of cleaning solvents during the cleaning cycle, such as while hand cleaning the guns in an open vat. Organic HAP emissions also occur from enclosed spray gun cleaners when they are opened to remove the guns.

#### 4. Metal Finishing and Electrodeposition

Metal finishing processes are used to prepare the surface of a part for better adhesion, improved surface hardness, and improved corrosion resistance. Typical metal finishing operations include conversion coating, anodizing, desmutting, descaling, and any operation that chemically affects the surface layer of a part.

Electrodeposition, or metal plating, is an additive process for metal substrates in which another metal layer is added to the substrate in order to enhance corrosion and wear resistance necessary for the successful performance of the component. The two types of electrodeposition typically used are electroplating and plasma arc spraying.

HAP emissions from metal finishing operations occur in the form of gases or vapors that evaporate from the surface of processing solutions. Evaporation of solution also occurs from the parts as they are removed from the processing tanks.

#### 5. Coating Application

A coating is a material that is applied to the surface of a part to form a decorative or functional solid film. The most common coatings are the broad categories of non-specialized primers and topcoats. There are also numerous specialty coatings ranging from temporary protective coatings to radiation effect coatings designed to shield aircraft from radar detection.

Coatings are applied to aerospace vehicles and components using several methods of application. The methods most commonly used are spraying, brushing, rolling, flow coating, and dipping. Spray application systems include conventional air spray, airless spray, air-assisted airless, electrostatic, and high volume low pressure (HVLP) spray. These latter two methods are generally accepted as having better transfer efficiency than other spraying methods and are gaining increased use

as a means of using less coating and, hence, reducing emissions.

Nearly all aerospace coatings contain a mixture of organic solvents. Organic HAP emissions from coating application occur from the evaporation of the solvents during mixing, application, and drying. Inorganic HAP emissions of metal compounds (e.g., chromium and cadmium) also occur from overspray, which is exhausted from spray booths or paint spray hangars.

#### 6. Depainting

The depainting operation involves the removal of coatings from the outer surface of aircraft. The two basic depainting methods are chemical depainting and blast depainting. Chemical depainting agents are applied to the aircraft, allowed to degrade the coating, and then scraped or washed off with the coating residue. Blast depainting methods utilize a media such as plastic, wheat starch, carbon dioxide, or high pressure water to remove coatings by physically abrading the coatings from the surface of the aircraft.

Organic HAP emissions from chemical depainting occur from evaporation of the solvents in the stripping solution. The amount of emissions from the process is directly related to the surface area being stripped, the type and thickness of coating to be removed, and the effectiveness of the stripper. Inorganic HAP emissions occur from the various blast depainting methods. The inorganic HAP are contained in the coatings being removed (trace amounts of inorganic HAP may also be found in some blast media) and are emitted as particulates.

#### 7. Composite Processing

Composite processing consists of seven basic operations: Layup, thermal forming, debulking, curing, break-out, compression molding, and injection molding. Layup is the process of assembling the layers of the composite structure by positioning composite material in a mold and impregnating the material with a resin. Thermal forming is the process of forming the layup in a mold, which usually takes place in an autoclave. During the thermal forming process, debulking also may occur, which is the simultaneous application of low-level heat and pressure to the composite structure to force out excess resin, trapped air, vapor, and volatiles from between the layers of the composite structure. The curing step, which is the process of changing the resin into a solid material through a polymerization reaction, also occurs in the autoclave. After curing and removal

from the autoclave, the break-out process removes the composite structure from the molds or curing fixtures.

Two other methods of forming composite structures are compression molding and injection molding. Compression molding is the process of filling one half of a mold with a molding compound, closing the mold, and applying heat and pressure until the material is cured. Injection molding uses a closed mold, where the molding compound is injected into the mold, maintained under pressure, and then cured by applying heat.

Organic HAP emissions from composite processing occur from volatilization of a small portion of the solvent components during curing, because the majority of these solvents are consumed in the curing reaction of the resin.

#### 8. Wastewater

Nearly every aerospace manufacturing and rework operation has the potential to generate wastewater. For example, metal finishing operations use water to rinse parts after each processing step. These rinse steps are typically carried out in large tanks with either a continuous or intermittent water flow. The wastewater generated is usually treated to some extent at the facility then discharged.

HAP emissions from wastewater result from the evaporation of volatile components in the water. Evaporation may occur in open trenches, storage tanks, and treatment operations.

#### 9. Handling and Storage of Waste

Waste is produced primarily from cleaning, coating, and depainting operations. Cleaning operations produce solvent laden cloth and paper and spent solvent which can emit organic HAP from the evaporation of the solvents. Coating operations produce waste paint and waste solvent thinner that also emit organic HAP through evaporation. Depainting operations can produce either a liquid or solid waste stream depending on the type of process used. Chemical depainting processes produce a liquid sludge that consists of the stripper solution and paint residue. Emissions occur from the evaporation of the solvent from the stripper solution. Blast depainting processes produce a solid waste stream that consists of paint chips and spent blasting media. Emissions do not directly occur from this waste stream, although particulate emissions are generated during the blasting process.

## 10. Storage of Hand-Wipe Cleaning Solvents

Many large aerospace facilities use storage tanks for hand-wipe cleaning solvents. According to data obtained through responses to EPA questionnaires under section 114 of the Act (section 114 questionnaires), these tanks are primarily above ground, fixed-roof type ranging in size from 350 to 6800 gallons in size. Emissions from these tanks occur from evaporation of the cleaning solvents, as well as breathing and working losses.

### B. Control Techniques

The principal techniques used by the aerospace industry to control organic HAP emissions are preventative measures and control devices. For the control of inorganic emissions, control devices such as filters and waterwash are used. Preventative measures are any action, product modification, process modification, or equipment change designed to eliminate or reduce the generation of emissions. Control devices do not prevent the generation of emissions, but rather capture or destroy the emissions generated by a source.

Preventative measures are usually the most desirable method to reduce emissions since they eliminate or reduce the actual generation of pollutants. Typically, the emission reduction is obtained using less energy and producing less waste than using a control device to achieve the same emission reductions. Preventative measures used by the industry are: (1) Product reformulations that replace products containing high levels of HAP and VOC with products containing less HAP and VOC or that eliminate the HAP or VOC content completely, such as chemical strippers that contain no organic HAP for depainting; (2) product reformulations, such as higher solids content coatings, that reduce the amount of the HAP- and VOC-containing product used; (3) equipment changes that result in emission reductions, such as replacing conventional spray guns with HVLP spray guns; and (4) work practice standards, such as housekeeping.

Control devices are typically used where product reformulation is not feasible or where the concentration of the exhaust stream is sufficiently high to warrant their use. Control devices may destroy the HAP and VOC, as with an incinerator, or capture the HAP and VOC, as with a carbon adsorber. Often, the compounds captured by a control device can be recovered for reuse. Control devices in predominant use by the industry for the reduction of organic

HAP emissions are: (1) Carbon adsorbers, (2) incinerators, and (3) ultraviolet oxidation. Activated carbon fiber adsorbents to concentrate VOC emissions are frequently used in conjunction with incinerators. For inorganic HAP particulate emissions, reduction is achieved predominantly through the use of filtration devices.

#### 1. Preventative Measures

a. *Product reformulation.* HAP and VOC emissions may be controlled by replacing products containing high concentrations of HAP and VOC with ones that have reduced or eliminated HAP and VOC entirely. Each individual facility must evaluate the ability of the new product to maintain standards of quality and performance. In addition, the potential overall environmental benefit of the reformulated products must be carefully evaluated.

(1) *Product reformulation—coatings.* Product reformulations for coatings can be generally classified as waterborne, higher solids, powder, and self-priming topcoats. Each category is discussed below.

(a) *Waterborne coatings.* Waterborne coatings utilize a resin system that is dispersible in water. A portion of the organic solvent is then replaced with water. The organic solvent may be 5 to 40 percent by weight of the waterborne coating, compared to a conventional organic solvent-based coating containing as much as 80 percent by weight solvent.

In addition to the lower solvent content, waterborne coatings have other advantages over solvent-based coatings. Less overspray and improved spray transfer efficiency may be achieved with waterborne coatings than with conventional coatings that utilize solvents with a density less than that of water. Additionally, because of the reduced solvent content, waterborne coatings may be less toxic and present a reduced fire hazard.

Waterborne coatings have limitations such as requiring spray guns with specific materials of construction, protection from freezing, and better control of temperature and humidity during application. In addition, waterborne coatings generally require longer drying times, are more sensitive to substrate material and cleanliness, and have lower salt spray resistance.

(b) *Higher solids.* Higher solids coatings are solvent-based coating formulations that have been modified to lower the solvent-to-solids ratio. The coatings usually contain 50 to 65 percent by volume solids, compared to conventional solvent-based coatings that may contain up to 40 percent by volume

solids. The increased solids content gives greater surface area coverage per gallon of coating, which reduces the total volume of coating required. Consequently, solvent emissions are also reduced when higher solids coatings are used to apply the same volume of solids that are applied with a conventional solvent-based coating.

Higher solids coatings generally have higher viscosities and longer drying times than conventional solvent-based coatings. The higher viscosity tends to make spray application more difficult because it is harder to control gloss and film thickness, and may require the coating to be heated before application. Higher solids coatings typically are not used as dip coatings due to the difficulty in maintaining a uniform dispersion of solids in the dip tank.

(c) *Powder.* Powder coatings are a class of coatings applied electrostatically in dry form and then baked to cure. The coatings consist of fine, dry particles of paint solids. During the curing step, the particles fuse to create a continuous film. Use of powder coatings requires that the substrate must be able to withstand the high temperatures (typically greater than 121 °C (250 °F) and frequently greater than 177 °C (350 °F)) necessary to cure the paint.

The major advantage of using powder coatings is greatly reduced solvent emissions. The lack of a solvent base also reduces fire hazard, toxicity, and the make-up air requirements of the spray booth.

Powder coatings must be applied electrostatically, so they cannot be used on non-conductive parts such as composites. Other reported disadvantages of powder coatings are the difficulty in obtaining a high quality appearance, production must be shut down for color changes, the powder must remain dry at all times prior to application, and higher energy costs. As noted above, the high curing temperatures of powder coatings precludes their use on temperature-sensitive substrates.

(d) *Self-priming topcoats.* Self-priming topcoats eliminate the need to apply a primer coat between the substrate and the topcoat. Self-priming topcoats have the adhesion and corrosion characteristics of a conventional primer and the environmental resistance and functional fluid resistance of a conventional topcoat. These coatings also eliminate the need for chrome-containing primers.

(2) *Product reformulation—hand-wipe cleaning solvents.* Product reformulations for hand-wipe cleaning that are prevalent in the aerospace

industry can be classified as aqueous, hydrocarbon-based, and non-chemical. Each category is discussed below:

(a) *Aqueous.* Aqueous cleaners contain at least 80 percent water, are non-flammable and non-combustible, and are completely soluble in water. Other components may include corrosion inhibitors, alkalinity builders, organic surfactants, and bioenzyme mixtures and nutrients depending on the desired soil removal properties. Aqueous cleaners have been used in non-critical areas where strict cleanliness requirements do not have to be met, or where there are no confined spaces that may trap residues of the cleaner.

(b) *Hydrocarbon-Based.* Hydrocarbon-based cleaners are nonsemi-aqueous cleaners that are composed of a mixture of hydrocarbons and oxygenated hydrocarbons. These cleaners have a maximum vapor pressure of 7 mm Hg at 20 °C (3.75 in. H<sub>2</sub>O at 68 °F) and contain no HAP or ozone depleting compounds.

(c) *Non-chemical.* Several aerospace facilities have demonstrated the viability of using non-chemical methods such as dry media blasting for cleaning operations. These methods are typically used to remove dry, scale-like deposits such as carbon residue on engine components. Dry media blasting can usually be used only on components that can withstand the force of blasting without deformation.

b. *Equipment changes.* The aerospace industry has implemented several equipment changes that directly reduce the level of HAP emissions. While there are equipment changes that affect emissions from every process, the three changes predominantly used in the industry are high transfer efficiency spray guns, enclosed spray gun cleaners, and proportional paint mixers. Each of these equipment changes are discussed below.

(1) *High transfer efficiency spray guns.* Emissions from spray coating operations can be reduced through the use of spraying systems with higher transfer efficiency than conventional spray guns. Transfer efficiency, expressed as a percentage, can be defined as the ratio of coating solids actually applied to the surface of the component being coated to the amount of solids released from the spray gun. Spraying systems with a higher transfer efficiency can coat the same surface area using less coating. Therefore, the HAP emissions resulting from the use of this equipment are reduced compared to applying the same coating with conventional spray equipment.

High volume low pressure (HVLP) and electrostatic spraying systems are

the primary high efficiency spray methods used by the industry. HVLP spray guns use high volumes (10 to 25 standard cubic feet per minute (scfm)) of low pressure (2 to 10 pounds per square inch gauge (psig)) air to deliver the paint. The lower air pressure creates a lower particle speed, resulting in a more controlled spray pattern with less overspray and bounce back from the substrate. With electrostatic spray systems, atomized particles of coating acquire an electric charge as they pass through a high voltage field at the end of the spray nozzle. This electric charge causes the particles to be attracted to the parts being painted, which are electrically grounded.

(2) *Enclosed spray gun cleaners.* Spray guns are typically cleaned at the end of every job, as well as between color changes. Manual cleaning of spray guns involves disassembling the gun and placing the parts in a tray containing an appropriate cleaning solvent. The residual paint is brushed or wiped off the parts, then the cleaning solvent is sprayed through the gun after it is reassembled. Enclosed spray gun cleaners, however, are completely enclosed units that spray the cleaning solvent through and over the spray gun. The enclosed unit eliminates most of the exposure of the cleaning solvent to the air, thereby greatly reducing the organic HAP emissions from evaporation.

(3) *Proportional paint mixers.* The majority of coatings used in the aerospace industry are multi-component mixtures, consisting of a base component and one or more catalyst components. The components must be thoroughly mixed in the proper ratio immediately before application. When this mixing is performed manually, a greater volume of coating is mixed than will actually be used to ensure that there is enough coating available to complete the job. In contrast, proportional paint mixers pump each component of the coating directly to the spray gun, where it is mixed and immediately applied. This results in reduced coating waste and, consequently, reduced emissions.

c. *Work practice standards.* Work practice standards are changes in the method of operation that do not affect the products used in the process or the process itself, but result in a reduction in emissions. The aerospace industry has implemented work practice standards programs for housekeeping measures and managed chemical distribution systems.

Emissions of organic HAP compounds, particularly solvents, can be reduced by limiting both the amount

of the material exposed to the atmosphere and the length of the exposure. The emission reductions can be achieved by implementing housekeeping measures whereby solvent-soaked cloth or paper used for hand-wipe cleaning are placed into bags or containers that are kept closed. This eliminates the continual evaporation of the solvent from the cloth or paper when they are not in use. The bags or containers can then be collected and disposed in such a manner (e.g., by incineration) to eliminate any further solvent emissions.

Managed chemical distribution systems centralize the distribution of solvents and coatings and control the amount of these materials allowed to be used for a particular task. In this way, waste solvent and coatings are reduced, and emissions from these waste materials are reduced.

## 2. Control Devices

a. *Carbon adsorbers.* Adsorption systems are used to remove organic compounds from gas streams when strict limits on the outlet concentration must be met, or when recovery of the compound is desired. Adsorption is effective on inlet concentrations ranging from a few parts per billion to several thousand parts per million, and a flow rate of several hundred to several hundred thousand cubic feet per minute. Carbon adsorbers typically have a removal efficiency of 95 to 99 percent.

Once the carbon reaches saturation, it can be removed from the adsorber vessel and disposed or regenerated. The carbon can also be regenerated with steam within the adsorber vessel. This option readily allows for the recovery of the organic compounds for recycling.

b. *Incinerators.* Two basic types of incinerators, thermal and catalytic, are used in the aerospace industry to remove organic contaminants. Each type is discussed below.

(1) *Thermal incinerators.* Thermal incinerators can be generally used on air streams with a wide concentration range of organics. These control devices have minimal dependence on the characteristics of the organic contaminants, so they can be used to control a wide variety of emission streams. Thermal incinerators can achieve removal efficiencies of 98 percent and higher.

The basic operation of thermal incinerators involves raising the inlet air stream to the incineration temperature of the contaminants and maintaining the temperature for a specific residence time. The waste heat content of the incinerator exhaust stream is used to preheat the inlet air stream. An

auxiliary fuel is then typically required to raise the air stream temperature to the incineration temperature.

(2) *Catalytic incinerators.* Catalytic incinerators are similar to thermal incinerators except that they use a catalyst (a substance that accelerates the rate of oxidation without undergoing a chemical change itself) to assist in the oxidation of organic compounds to carbon dioxide and water. These incinerators are typically used for air streams with a low concentration of organics. The removal efficiency of catalytic incinerators can be as high as 98 percent.

c. *Ultraviolet oxidation.* An ultraviolet light oxidation (UVOX) system has been developed as an abatement device for air streams with low concentrations of organic compounds. The air stream passes through particulate filters, then enters a reactor where it is exposed to ultraviolet light which initiates the oxidation of the organics. Ozone and other oxygen-based oxidants are injected into the reactor to react with the organics in the air stream to begin the oxidation of organics into carbon dioxide and water. A typical removal efficiency for UVOX is reported to be 95 percent.

d. *Activated carbon fiber adsorbent.* Another technology has been developed to control low concentration organic compound emissions (e.g., paint spray booths). This technology utilizes an activated carbon fiber adsorbent to initially capture the organic emissions, the concentration of which is too low to be removed by a control device such as an incinerator. The adsorbent system consists of a honeycomb structure element made of activated carbon fiber paper in corrugated form. This structure adsorbs the organics in the exhaust stream. As the activated carbon structure becomes saturated, the organics are desorbed using hot air. This concentrated air stream can then be sent to an incinerator or other control device. The portion of the activated carbon structure that was regenerated then begins the adsorption cycle again.

e. *Catalyst-coated filter media.* Low concentration organic emissions (e.g., paint spray booths) can be controlled through the use of a catalyst-coated filter media. The catalyst material is impregnated onto the fibers of a dry filter which can then be used wherever conventional dry filters are used. The catalyst material, unlike activated carbon, permanently binds the organic material into its crystalline matrix so that it will not later desorb. In addition to the coated filters, the catalyst material can be used in a granular form to control emissions.

f. *Filtration systems for inorganic HAP particulate emissions.* Coating operations and blast depainting operations emit inorganic HAP in the form of particulates. For coating operations, panel-type dry particulate filters and waterwash spray booths are used to control these emissions. For blast depainting operations, panel-type dry particulate filters are also used, as well as baghouses.

The dry filters and baghouses capture particulates by trapping them as they try to pass through the small passages in the filter media. The efficiency of the filter media is a function of the particle size, size of the passages in the filter media, air flow through and pressure drop across the filter media, and physical characteristics of the particle.

Waterwash spray booths capture particles by forcing the air stream to pass through a spray or curtain of water. The particles are trapped by the water and eventually collect as a sludge in the sump of the spray booth.

## V. Rationale for the Proposed Rule

### A. Regulatory Development Process for NESHAP

During development of a NESHAP, the EPA collects information about the industry, including information on emission source characteristics, control technologies, data from HAP emission tests at well-controlled facilities, and information on the cost, energy, and other environmental impacts of emission control techniques. The EPA uses this information in the development of possible regulatory approaches.

If the source category contains major sources, then a MACT standard is required. Section 112(d)(3) of the Act defines the minimum stringency requirements of the MACT standard for new and existing sources. This level of control is referred to as the MACT "floor," which needs to be determined as a starting point for developing the regulatory alternatives.

Once the floor has been determined for new and existing sources for a category or subcategory, the Administrator must set MACT standards that are no less stringent than the floor level. Such standards must then be met by all sources within the category or subcategory. However, in establishing standards, the Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory (section 112(d)(1) of the Act). Thus, for example, the Administrator could establish two classes of sources within a category or subcategory based on size and establish

a different emission standard for each class as long as each standard is at least as stringent as the floor. The Act also contains provisions for regulating area sources. However, except for certain recordkeeping requirements contained in the General Provisions, these are not relevant to the proposed standards for aerospace sources, which apply only to major sources.

The next step in establishing a MACT standard is the development and analysis of regulatory alternatives. First, information about the industry is analyzed to develop model plant populations for projecting national impacts, including HAP emission reduction levels, costs, and energy and secondary environmental impacts. Several regulatory alternatives (which may be different levels of emission control, different applicability criteria, or both, and one of which is the MACT floor) are then evaluated to determine the most appropriate regulatory alternative to reflect the MACT level.

In addition, although NESHAP are normally structured in terms of numerical emission limits, alternative approaches are sometimes necessary. Section 112(h) of the Act provides that if it is not feasible to prescribe or enforce an emission standard, then a design, equipment, work practice, or operational standard may be established. For example, in some cases source testing may be impossible or at least not practicable due to technological and economic limitations.

In the EPA's decision-making process, the regulatory alternatives considered for new versus existing sources may be different and each alternative must be technically achievable. In selecting a regulatory alternative to represent MACT, the EPA considers the achievable reduction in HAP emissions (and possibly other pollutants that are co-controlled), the cost of control, and economic, energy, and other nonair quality health and environmental impacts. The overall objective is the achievement of the maximum degree of emission reduction without unreasonable economic or other impacts.

The selected regulatory alternative is then translated into a proposed regulation. The regulation implementing the MACT decision typically includes sections addressing applicability, standards, test methods and compliance demonstration, monitoring, reporting, and recordkeeping. The preamble to the proposed regulation, published in the Federal Register, provides an explanation of the rationale for the decision. The public is invited to comment on the proposed regulation

during the public comment period. Following an evaluation of these comments, the EPA reaches a decision and promulgates the final standards.

#### *B. Determining Maximum Achievable Control Technology (MACT) "Floors"*

Once the EPA has identified the specific major source categories or subcategories that it intends to regulate under section 112, MACT standards are set at a level at least as stringent as the "floor." Congress has provided directives to guide the EPA in the process of determining the regulatory floor.

Congress specified that the EPA must establish standards which require "the maximum degree of reduction in emissions of the hazardous air pollutants \* \* \* that the Administrator \* \* \* determines is achievable \* \* \*" (section 112(d)(2) of the Act). In addition, Congress limited the Agency's discretion by defining the minimum baseline (floor) at which standards may be set, as follows:

(1) For new sources, the standards for a source category or subcategory "shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator," and

(2) For existing sources, the standards "may be less stringent than standards for new sources \* \* \* but shall not be less stringent, and may be more stringent than: (A) the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emissions information) \* \* \* or (B) the average emission limitation achieved by the best performing 5 sources \* \* \* for categories or subcategories \* \* \* with fewer than 30 sources" (section 112(d)(3) of the Act).

#### *C. Selection of Pollutants and Source Category(ies)*

Section 112(b) of the Act lists the HAP to be regulated with standards established under section 112. Section 112(d), as amended, requires the EPA to promulgate emission standards for each category or subcategory of major sources and area sources of the HAP listed in section 112(b). For the purpose of developing these standards, the EPA may distinguish among classes, types, and sizes of sources within a category or subcategory. The NESHAP are to be developed to control HAP emissions from both new and existing sources pursuant to section 112(c) of the Act.

The initial source category list (57 FR 31576, July 16, 1992), required by section 112(c) of the Act, identifies source categories for which NESHAP are

to be established. This list includes all major source categories of HAP known to the EPA at this time, and all area source categories for which a finding of adverse effects warranting regulation has been made.

The source category list identifies "surface coating processes—aircraft and aerospace industries" as a source category because it contains major sources emitting at least 10 tons of any one HAP or more than 25 tons of any combination of HAP annually.

The aerospace industry encompasses original equipment manufacturers of commercial, civil, and military (including space) aerospace vehicles. In addition, rework facilities, which repair and repaint aerospace vehicles, constitute a major portion of the industry. There are also many subcontractors providing support to the industry, especially to the OEM's, who subcontract out various portions of the work. These subcontractors may engage in many of the processes found at OEM or rework facilities, or in just a few. Further, subcontractors may conduct operations for non-aerospace industries at facilities at which they conduct aerospace operations.

For the purposes of this rule, the EPA has defined the source category as consisting of all facilities engaged in the manufacture or rework of any aerospace vehicle or component. This includes all OEM's, rework facilities, and subcontractors. The EPA decided to include subcontractors in the proposed rule because they perform substantial amounts of work, much of which could otherwise be carried out at an OEM or rework facility and which is virtually indistinguishable from processes at the OEM or rework facility. However, if the subcontractors' facilities are not major sources, they would not be subject to the proposed standards.

Early in the development of the proposed standards, the EPA developed model plants to correspond to the basic structure of the industry—commercial and military segments, each having OEM and rework facilities—with the intent of developing subcategories for standards development, if necessary. On the basis of the information provided, however, the EPA has found that, with one exception for depainting operations, there is no need to distinguish among these segments for the processes for which standards are being proposed under the proposed rule.

#### *D. Selection of Emission Points Covered by the Proposed Rule*

The proposed rule would limit organic HAP emissions from the following basic aerospace operations:

cleaning, primer application, topcoat application, depainting, chemical milling maskant application, and the handling and storage of waste. The proposed rule would apply to all organic HAP emission points within these operations located within aerospace manufacturing or rework facilities that are major sources. In addition, the proposed rule would require control of emissions from these operations if they are performed in any of the operations for which standards are not being proposed. For example, hand-wipe cleaning operations are performed at several stages within composite processing operations. The hand-wipe cleaning operation, a process covered by the proposed standard, would be subject to the standard, regardless of where in the facility it occurred.

Standards are being proposed for inorganic HAP emissions from primer application, topcoat application, and depainting operations.

A discussion of the rationale for including or excluding in this proposed rule the basic processes listed in Section V.A. is presented below.

#### *1. Operations for Which Standards Are Being Proposed*

*a. Organic HAP emissions.* As noted above, the EPA is proposing organic HAP emission standards for cleaning, primer application, topcoat application, depainting, and chemical milling maskant application, and the handling and storage of waste. Together, these operations are estimated to account for approximately 94 percent of the organic HAP emissions from the industry—cleaning, 87.5 percent; primers and topcoats, 2.1 percent; depainting, 2.6 percent; and chemical milling maskants, 1.5 percent.

Based on the information obtained from the section 114 questionnaires and meetings with the industry, there are many readily available techniques to achieve substantial emission reductions in each of these operations. For example, many chemical milling maskant operations were reported as using either solvent-based chemical milling maskants with control devices or waterborne chemical milling maskants. With regard to cleaning operations, many product reformulations are available for hand-wipe cleaning, and there are several equipment and work practice standards for spray gun cleaning that reduce organic HAP emissions. While methylene chloride chemical stripping is the prevalent method for depainting aerospace vehicles, many facilities are using non-HAP alternatives. These

alternatives are being used by both commercial and military facilities to reduce emissions from depainting operations. Sufficient data exist for establishing MACT based on non-HAP alternatives for both commercial and military depainting operations. Therefore, these processes are included in the proposed rule. Section 114 questionnaire data and the existence of State and local regulations identify the use of high transfer efficiency spray guns in the aerospace industry. Adequate information exists for establishing MACT for the method of application of primers and topcoats and for limiting the organic HAP content of the coatings. Based on section 114 questionnaire data, nearly all facilities employ housekeeping measures to control emissions from waste storage. Sufficient data exist, therefore, to establish MACT.

In summary, based upon their relative contribution to overall organic HAP emissions and the use of demonstrated emission control technologies and techniques to achieve emission reduction, the EPA selected these operations for regulation.

*b. Inorganic HAP emissions.* The EPA is proposing inorganic HAP emission standards for primer application, topcoat application, and depainting operations. Based on section 114 questionnaire responses, there are readily available techniques that are used extensively in the industry to control these emissions. While the inorganic HAP emissions do not represent a large percentage of overall emissions from the industry, the emissions represent potential threats to health because of the highly toxic nature of the inorganic HAP (e.g., chromium and cadmium). For these reasons, the EPA selected these operations for regulation.

## 2. Excluded Operations

The EPA is not proposing standards for four non-coating related operations—chemical milling, metal finishing, electrodeposition, and composite processing—and for four coating-related operations—adhesives, adhesive bonding primers, sealants, and specialty coatings.

Organic HAP emissions were reported from all four of the non-coating related processes. Emissions from these four operations account for less than 1 percent of the total organic HAP emissions from aerospace facilities. Most of the organic HAP emissions from these operations are due to emissions from the use of cleaning solvents, which are being proposed for regulation under the proposed rule. The EPA has

determined that requiring control of the remaining organic HAP emissions is not feasible because no demonstrated control measures could be identified. Therefore, the EPA is proposing no further control for organic HAP emissions from these four operations other than what would be achieved by the proposed standards for cleaning solvents.

The four coating-related operations—adhesives, adhesive bonding primers, sealants, and specialty coatings—are similar in many ways to primers and topcoats, for which organic HAP emission standards are being proposed. These four coating-related operations account for relatively small amounts of organic HAP emissions, and the coatings tend to be very specialized. Subcategorization can be significant, especially for specialty coatings, resulting in lower potential emission reductions. Many of the coatings in these four operations (e.g., sealants and adhesives) are already being applied using high transfer techniques, including hand application. This results in little opportunity for emission reduction through improved transfer efficiency. For spray applied sealants, there is also little opportunity to use higher transfer efficiency equipment because the viscosity of these sealants requires the use of high pressure, conventional spray guns. In terms of potential emission reduction from lower organic HAP content coatings, virtually no organic HAP content data were available to categorize these coatings. The time necessary to gather the data would have significantly delayed this proposed rule. For all of these reasons, standards are not being proposed for these operations.

Wastewater and storage tanks emit relatively small amounts of HAP and, according to the section 114 questionnaire responses, no aerospace facilities used any means to control these emissions. The EPA then considered the option of requiring applicable controls used in other industries on these types of sources. These control measures were evaluated and found to be too costly when compared to the emission reductions that would be achieved (approximately \$126,000 per ton of HAP emissions reduction for storage tanks).

Other requirements in the standards may result in a direct reduction of emissions from wastewater and storage tanks. For example, the depainting standards may eliminate the majority of the estimated 152 million gallons of HAP-containing chemical stripper usage if the majority of sources use media blasting methods. This stripper is

typically treated in wastewater treatment systems after use. Also, the hand-wipe cleaning standards will virtually eliminate the storage tanks for organic HAP-containing solvents since the use of these solvents will be significantly reduced. For these reasons, the EPA is not proposing to regulate HAP emissions from wastewater and storage tanks in the proposed rule.

## E. Selection of the Basis for the Proposed Rule

Section 112 of the Act defines a major source as any stationary source that emits 9.1 Mg/yr (10 tpy) or more of any one HAP or 22.7 Mg/yr (25 tpy) or more of total HAP. The Act states that new major sources must achieve the maximum achievable control technology (MACT), which is the level of emission control already achieved in practice by the best controlled similar source. The Act further states that emission standards promulgated for existing sources may be less stringent than standards for new sources; however, standards for existing sources must not be less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources.

For all operations being covered by the proposed rule, the EPA has determined that, taking into account cost, nonair quality health and environmental impacts, and energy impacts, MACT is equal to the MACT floors for both existing and new sources. In addition, MACT for new sources was found to be equal to MACT for existing sources. The EPA has determined that no further emission reductions can be achieved for new sources through the use of demonstrated technology than the level of reduction represented by MACT for existing sources.

To evaluate the regulatory alternatives, model plants were developed based on market segment (commercial or military), work type (OEM or rework), and size (small, medium, or large). These characteristics were examined to determine whether any technological justification existed to differentiate the proposed standards by market segment, work type, or size. Based on this examination, the EPA has determined that, other than one exception under the depainting standards, there is no justification for differentiating between these characteristics. For example, rework facilities are required to conform to OEM specifications, which dictate the processes and coatings that can be used. Consequently, rework facilities do not typically incorporate technology that is not used by the OEM's. Also, no

compelling reasons were identified as to why a facility of one size could not incorporate the technology used by a facility of another size.

### 1. Cleaning Operation

According to data obtained from the Bureau of the Census, approximately 25 percent of facilities with aerospace manufacturing SIC codes are located in California. Based on information provided by four California districts—SCAQMD, Imperial County Air Pollution Control District (APCD), Ventura County APCD, and San Diego APCD—virtually all of the California facilities are located in these districts, and more than half are located in the SCAQMD alone. Based on this information, more than 12 percent of the total number of sources are, then, subject to the rules in these four districts.

Consequently, the regulations in these four districts (i.e., SCAQMD Rule 1124, Imperial County APCD Rule 425, Ventura County APCD Rule 74.13, and San Diego APCD Rule 67.9) were examined to determine the emission limitations in these districts. These regulations specify vapor pressure limits and housekeeping measures for hand-wipe cleaning solvents. The EPA then investigated to determine if the regulations resulted in California facilities emitting less HAP from this process than facilities outside of California. Based on the section 114 questionnaire responses, California facilities emitted approximately 48 percent less HAP than non-California facilities in ozone nonattainment areas for hand-wipe cleaning operations. These emissions were calculated on a pounds of HAP emitted per employee basis, using the total number of employees at the facilities (the number of employees for hand-wipe cleaning only was not available). The conclusion made from these data was that the California regulations are an effective means of producing permanent and quantifiable emission reductions, and that the sources subject to these regulations are the best-performing sources in this source category. Since these sources also comprise more than 12 percent of the sources in the category, the MACT floor was based on their control levels.

It was impossible to distinguish the separate effects of housekeeping and vapor pressure limits on the emission rates from hand-wipe cleaning operations. Consequently, both were assumed to be necessary to achieve the calculated emission reductions. While one cannot "average" housekeeping measures, based on common aspects

among the four rules, housekeeping measures of maintaining closed containers for the storage of fresh solvent, spent solvent, and solvent-soaked cloth and paper were established as one part of the MACT floor.

The second part of the MACT floor for hand-wipe cleaning is a vapor pressure limitation on the solvents being used. The SCAQMD, the San Diego AQMD, and the Imperial County APCD specify a maximum vapor pressure of 45 mm Hg at 20 °C. Ventura County APCD specifies 25 mm Hg at 20 °C. However, the EPA believes that it is inappropriate to give equal weight to the Ventura rule in determining the MACT floor because this district contains only three aerospace facilities compared to the hundreds located in the South Coast and San Diego districts. Furthermore, industry comments suggested that these three facilities are not representative of the industry and do not constitute a similar source as required by the Act. The EPA did, however, consider a weighted average vapor pressure limitation, but the vapor pressure value obtained did not correspond to any demonstrated technology. Since more than half, and possibly as much as 90 percent, of the aerospace facilities in California are located in the South Coast district, the EPA has determined that the 45 mm Hg vapor pressure is more representative of the "average" limitation on cleaning solvents among the best performing facilities and represents the MACT floor for both new and existing sources. More stringent levels (e.g., a weighted average vapor pressure value) were not considered to be achievable by all sources. Therefore, the EPA has selected the 45 mm Hg at 20 °C (24.1 in. H<sub>2</sub>O at 68 °F) as the basis for the standards for hand-wipe cleaning solvents.

Information collected on cleaning solvents also showed that some hand-wipe cleaning solvents have both a very low vapor pressure and a very low evaporation rate. Available data indicate that low evaporation rates also contribute to minimizing emissions. These cleaning solvents are demonstrated technology for limited applications and their use would reduce organic HAP emissions as much as or more than the proposed vapor pressure limit. Therefore, the EPA is proposing to encourage their use by including an approved composition list for cleaning solvents in the proposed rule. The EPA welcomes comments on this list and proposals for adding to the list before final promulgation of the rule.

Based on data provided by aerospace facilities in response to the section 114 questionnaires, spray guns used to

apply coatings are cleaned either manually or in enclosed gun cleaners. Based on information obtained during plant visits, enclosed gun cleaners are demonstrated to reduce emissions.

Each of the 61 facilities that reported a spray gun cleaning method was classified as to whether the spray guns were cleaned manually or with an enclosed cleaner. Eighteen of the 61 facilities (29 percent) reported using enclosed gun cleaners; therefore, enclosed gun cleaners were considered to represent the MACT floor level of control. The EPA also received information from the industry on the use of cleaning methods other than enclosed gun cleaners. After review of this information, the EPA determined that adequate technical justification was presented to show that the alternate cleaning methods were as effective as enclosed spray gun cleaners in controlling organic HAP emissions. Consequently, in addition to enclosed spray gun cleaners, the EPA is proposing to allow the use of: (1) Unatomized discharge of solvent into a waste container that is kept closed when not in use, (2) hand cleaning in a vat that is kept closed when not in use, and (3) the use of atomized spray into a waste container fitted with a device designed to capture atomized solvent emissions.

Based on information received from the responses to the section 114 questionnaires, plant visits, and industry meetings, the EPA learned that there are certain cleaning operations for which low VOC, low HAP, or low vapor pressure cleaning solvents do not have widespread use that would constitute a demonstrated technology. The EPA, therefore, is proposing to exempt these cleaning operations from the requirements to use cleaning solvents that conform to the approved composition list and the proposed vapor pressure limit of 45 mm Hg at 20 °C (24.1 in. H<sub>2</sub>O at 68 °F). These operations are listed in § 63.744(e) of the proposed rule.

The use of cleaning solvents that conform to the approved composition list is not yet demonstrated for the proposed exempt cleaning operations. However, there are many new cleaning solvents being developed, some of which are very close to being used within the industry for some of these proposed exempt cleaning operations. To encourage the use of available compliant cleaning solvents and the ones being developed, the EPA considered imposing a limit on the annual usage of non-compliant cleaning solvents for exempt operations.

However, no data were available for use in establishing this limit.

## 2. Primer and Topcoat Application Operations

As noted above, over 12 percent of the aerospace industry is located in four districts in California. The SCAQMD, Ventura County APCD, Imperial County APCD, and Sacramento Metropolitan AQMD rules all require high transfer efficiency coating application methods. The application methods specified in these rules were adopted as the MACT floor. The specified methods are electrostatic application, flow coat application, dip coat application, roll coating, brush coating, and HVLP spraying.

The EPA recognizes that there may be other application methods that achieve a level of emissions equivalent to the application methods allowed in the proposed rule. Therefore, the EPA is requesting comments identifying these other application methods. These comments should include test data demonstrating that, in actual production conditions, the application method achieves a level of emissions at least equivalent to the level of emissions achieved by HVLP or electrostatic spray application methods. The EPA will review these comments and, where adequate technical justification exists, amend the list of approved application methods.

The EPA also examined whether or not there are demonstrated low organic HAP content primers or topcoats that could be used in conjunction with high transfer application methods to establish the MACT floor to reduce emissions. To this end, the EPA examined State and local regulations and the data obtained through the section 114 responses.

State and local regulations for aerospace coatings use VOC content as the means of regulating coating emissions. Consequently, no directed effort has been made to control the organic HAP content of these coatings. Data on coating VOC content are readily available from both the coating manufacturers and the coating users, but no comprehensive data exist for coating organic HAP content.

The data obtained from the section 114 responses showed that the organic HAP content varies widely and randomly with the VOC content. This is not surprising since, as noted above, there have been efforts to limit only the VOC content in the coatings and not the organic HAP content. However, the data show that the organic HAP content is typically 50 percent less than the VOC content. Where the organic HAP content

was higher than the VOC content, the EPA found that this was the result of the use of exempt solvents (those solvents determined by the EPA to have negligible photochemical reactivity) that are also organic HAP.

There are a number of chemicals commonly found in coatings that are not on the list of 189 HAP (section 112(b) of the Act) including methyl amylketone (2-heptanone), cyclohexanone, and isopropyl alcohol. Currently, the EPA does not have adequate health data to determine the relative toxicity of these organic HAP substitutes and, therefore, does not want to establish a requirement that would encourage their use as substitutes in coatings. Since these potential substitutes are also VOC, the proposed standards would limit both organic HAP and VOC content, rather than organic HAP only. The effect of this dual limit will be to reduce the total amount of organic emissions from coating operations, eliminate the use of the few very high organic HAP content primers and topcoats, and establish a cap on the organic HAP content of primers and topcoats that will be developed in the future.

The organic HAP and VOC limits were determined by ranking the facilities that reported usage of primers or topcoats from the lowest to the highest weighted average VOC content of all primers or topcoats used at the facility. The weighted average VOC content that represented the average of the best 12 percent was selected as the VOC limit. This value was 350 g/l (2.9 lb/gal) for primers and 420 g/l (3.5 lb/gal) for topcoats. As discussed earlier, the limited data available to the EPA indicate that organic HAP content is typically lower than VOC content. However, no reasonable limit could be identified. Therefore, the EPA is proposing an organic HAP content limit at the same level as for VOC. The proposed limits for organic HAP are, therefore, 350 g/l (2.9 lb/gal) for primers and 420 g/l (3.5 lb/gal) for topcoats.

The section 114 questionnaire responses showed that the inorganic HAP emissions from nearly all primer and topcoat application operations were controlled by dry particulate filters or waterwash spray booths. Since no other technology was identified that can be used to control inorganic HAP emissions, the use of filters and waterwash was adopted as the MACT floor.

## 3. Depainting Operation

The information obtained on depainting operations showed the pervasive use of organic HAP-containing chemical strippers to remove

paint. However, information was also obtained showing that many aerospace depainting operations are using alternative methods that do not utilize organic HAP, including organic HAP-free chemical strippers and dry media blasting techniques. The information also showed that not all commercial aerospace vehicles are fully coated. In these instances, the amount of organic HAP emissions from depainting is less than it would be if the same vehicle were fully coated.

The quantity of organic HAP emissions from depainting operations at several commercial rework facilities was readily available. However, very limited emissions data were obtained through the section 114 questionnaire responses for military aircraft depainting operations. The EPA considered several parameters to establish which facilities were the best performing ones. The most simple method would be to determine the pounds of organic HAP emissions per aircraft. This would not, however, take into account the difference in outer surface area from one model of aircraft to another and, hence, the difference in stripper volume required for each aircraft. Another basis would be to determine the organic HAP emissions per square foot of outer surface area actually painted. This method would not distinguish between the total emissions for stripping an aircraft that has only a portion of the outer surface area painted, and the total emissions for stripping the same aircraft with the entire outer surface area painted. Therefore, both methods were rejected.

Another basis for determining the best performing operations relates the pounds of organic HAP emissions to the total outer surface area of the aircraft. This effectively takes into account the effectiveness of all methods used to repaint aerospace vehicles and distinguishes the lower emissions achieved when only a portion of the outer surface area is painted from the emissions when a larger portion is painted. However, insufficient data were obtained through the section 114 questionnaire responses to develop an emission rate for military aircraft depainting operations.

A fourth consideration was to identify the basic techniques being used and rank them according to their relative effectiveness in reducing organic HAP emissions. The EPA elected to use this as the measure for identifying the best performing facilities. The different depainting techniques were also evaluated as to their applicability throughout the industry.

Three basic depainting techniques are used by the facilities for which the EPA

has information: Methylene chloride based chemical strippers, chemical strippers that contain no organic HAP, and blasting methods. (Although blasting methods are very effective in reducing and essentially eliminating organic HAP emissions from depainting operations, they do produce particulate inorganic HAP emissions. However, these emissions are typically well-controlled with particulate filters, which are almost always integral to the blasting systems. In addition, the proposed standards would require such control on inorganic HAP emissions, as discussed in section II.B. of this preamble.)

Based on section 114 questionnaires, site visits, and information provided by the industry, the EPA has information on depainting methods at 20 facilities. Of these facilities, 14 were identified as using either a blasting method (i.e., wheat starch or plastic media) or chemical strippers that contain no organic HAP.

The EPA then determined the aircraft models being stripped at each of these 14 facilities. This analysis showed that military fighters and transports, military and commercial helicopters, civil aircraft, and nearly all models of commercial airliners are currently being stripped with one or more of these non-HAP methods. Given the wide applicability of these processes throughout the industry, the EPA determined the MACT floor to be equivalent to the use of either media blasting or chemical strippers that do not contain organic HAP.

This analysis also showed, however, that some organic HAP emissions from depainting still occurred at facilities using blast methods or chemical strippers that contain no organic HAP. This is due to the fact that certain parts (e.g., wing flaps, engine nacelles, and radomes) are removed from the aircraft and depainted separately. This is primarily due to the fragile nature or specific depainting needs of these parts. Due to the wide range of parts removed and the inconsistency in the type of parts removed from one model of aircraft to another, the applicability of using blast techniques or chemical strippers that contain no organic HAP on these parts could not be determined. Consequently, these parts are exempted from the proposed standards.

In addition, the EPA determined that a small portion of the aircraft cannot be stripped with blasting methods. For example, some areas of the aircraft are masked to prevent intrusion of the blast media. The edge of the masking will often cover coated areas and, thus, prevent the blasting media from

removing the coating from these areas. This coating must then be removed (referred to as spot stripping), usually with an organic HAP-containing chemical stripper. Another example of spot stripping is the removal of coatings from a small area of the outer surface of the aircraft in order to perform testing and inspection of the bare metal. Also, blasting methods may have difficulty removing some decals. Consequently, organic HAP solvents may be used to soften or remove these decals. For these reasons, exemptions for spot stripping and decal removal are necessary in order to allow the use of blast depainting methods to meet the proposed standards.

The EPA did, however, seek to limit the amount of organic HAP-containing chemical strippers used for radome, parts and spot stripping and decal removal. Data provided in the section 114 questionnaire responses were used to establish the amount of stripper used for these operations. Data were not available for radome and parts depainting; however, usage of chemical strippers for spot stripping and decal removal was available from commercial airlines for a limited number of aircraft types. Since information was not available for all aircraft types, the stripper usage for the largest commercial aircraft was used as the basis for the usage exemption.

The usage information was, however, limited to commercial aircraft. Military sources within the aerospace industry provided additional data to the EPA that established a technical justification for a higher usage limitation for military aircraft. This information was used as the basis for the usage limitation for spot stripping and decal removal for military aircraft.

The section 114 questionnaire responses showed that all facilities (7 respondents) that use media blasting to depaint use either dry particulate filters or baghouses to control particulate emissions from blast depainting methods. While electrostatic precipitators were identified as a possible control technology, the cost of the precipitators was believed to be considerably higher than the filtration methods already in use. Therefore, particulate filters and baghouses were used as the basis for developing the MACT floor for operations that use media blasting.

#### 4. Chemical Milling Maskant Application Operation

Not all aerospace facilities perform chemical milling maskant operations. Of those responding to the section 114 request, twelve reported chemical

milling operations. To identify the best performing twelve percent of the sources, the emission rate for each source was calculated by dividing the organic HAP emissions by the total usage of chemical milling maskants to obtain pounds of organic HAP emitted per gallon of chemical milling maskant (less water) as applied. The emissions value took into account control measures such as carbon adsorbers or waterborne chemical milling maskants. The sources were then ranked from the lowest emission rate to the highest.

For this operation, the best performing 12 percent of the sources is represented by the two sources with the lowest emission rates. One of these sources utilized a carbon adsorber to abate the emissions from a solvent-based chemical milling maskant. The other source utilized a waterborne chemical milling maskant with no abatement. Each of these two facilities had the same organic HAP emission rate of 1.3 lb/gal. Therefore, this was selected to represent the MACT floor.

#### 5. Handling and Storage of Waste

Based on the section 114 questionnaire responses, 181 non-wastewater waste streams were reported. Every stream was controlled by housekeeping measures such as keeping the waste material in closed drums. Thus, housekeeping measures were established as the MACT floor for handling and storage of waste.

While no data were available for the effect on emissions from the housekeeping measures, it is expected that emissions will be reduced based on the data from California facilities for keeping cleaning solvents in closed containers. Consequently, housekeeping measures were used as the basis for the proposed standard.

In addition, existing RCRA regulations govern handling and storage practices for certain types of wastes. Since the EPA did not want to create a situation where possible conflicts with the RCRA regulations could arise, the proposed rule exempts wastes covered under the RCRA regulations.

#### F. Selection of the Format of the Proposed Rule

Several formats could be used to implement the control techniques selected as the basis for the proposed standards. Section 112(d) of the Act requires that emission standards for control of HAP be prescribed unless, in the judgment of the Administrator, it is not feasible to prescribe or enforce emission standards. Section 112(h) of the Act defines two conditions under which it is not feasible to prescribe or

to enforce emission standards. These conditions are: (1) If the HAP cannot be emitted through a conveyance device or (2) if the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations. If emission standards are not feasible to prescribe or enforce, then the Administrator may instead promulgate equipment, work practice, design or operational standards, or a combination thereof.

### 1. Cleaning Operation

The cleaning operation for which the EPA is proposing standards emits a variety of organic HAP. For many of these organic HAP, emission measurement methods either do not exist or would be very expensive to implement. In addition, the nature of some cleaning operations (e.g., hand-wipe cleaning) makes collection through a conveyance device difficult if not impossible. Therefore, the EPA determined that emission standards are not feasible for these operations.

The EPA then considered design, equipment, work practice, and operational standards for these operations. The EPA examined the California regulations, which had been determined to represent the floor level of control, to identify the specific types of measures adopted for hand-wipe cleaning, flush cleaning, and spray gun cleaning. An analysis by the EPA of the aerospace facilities' data showed that facilities subject to the California requirements emitted approximately 48 percent less organic HAP from their operations than non-California operations in ozone nonattainment areas. The EPA concluded that the formats of the California regulations are effective in providing quantifiable and achievable emission reductions. Therefore, the same formats are being proposed for the NESHAP as follows: (1) For hand-wipe cleaning operations, use of solvents that conform to the approved composition list or vapor pressure limits, and housekeeping measures, (2) for spray gun cleaning, an equipment standard and housekeeping measures, and (3) for flush cleaning, housekeeping measures.

The EPA is also proposing standards to limit the organic HAP emissions that may occur from leaks from enclosed spray gun cleaners. A format based on emission limits was not possible, since there were no data to determine the emissions from leaks. Also, no design, equipment, or work practice standards were identified that would prevent leaks from occurring. Consequently, the EPA determined that the only format that

would ensure a minimum of organic HAP emissions from leaks was an operational standard that required leaks to be repaired within a certain amount of time.

### 2. Primer and Topcoat Application Operations

The formats selected by the EPA for the proposed organic HAP emission limits for primer and topcoat application operations are: (1) A limitation on both the VOC and organic HAP content, (2) a percent reduction and performance standard for control devices, and (3) an equipment standard for the application of primers and topcoats.

The EPA considered a format based on actual emissions from the primer and topcoat application operations. However, the EPA has information that many larger facilities have several hundred spray booths in which primer or topcoat application operations could take place. Monitoring of that many individual emission sources would not be feasible for either the facility or for enforcement of the standards by the EPA or state agencies. In addition, actual emissions would have to be linked to the production rate and the product produced at the facility. The EPA does not have adequate data to quantify emissions based on production or the product produced. Therefore, the EPA rejected this format.

The EPA then considered a limitation on the organic HAP and VOC content (mass of organic HAP and VOC per unit volume) of coating as applied. This format would essentially impose an emission limitation on each source, but allow flexibility in the manner of compliance. Each source would have the choice of using compliant coatings and averaging between compliant and non-compliant coatings. This format will reduce the amount of total organics, is easily enforced with Method 24 for VOC content and manufacturer's data for organic HAP content, and will cap the total amount of organic HAP that a primer or topcoat can contain.

The EPA is also allowing the use of control devices to reduce organic HAP and VOC emissions from primer and topcoat application operations. The format of the standards must ensure that as much of the emissions as practicable are being controlled. The EPA chose a format that specifies the overall control efficiency (capture efficiency multiplied by the removal efficiency) because overall control efficiency is the best representation of the control effectiveness of control devices. It is also easily enforceable since the EPA

has published test methods for both capture and removal efficiency.

The EPA is proposing to set an equipment standard to reduce HAP emissions from the application of primers and topcoats. This format requires the use of certain specified coating application equipment or coating methods that result in higher transfer efficiencies than conventional spray equipment, thus reducing emissions. This format allows facilities the flexibility to choose the method of application most appropriate to the coating and substrate being coated.

The EPA first considered the data presented in the section 114 questionnaire responses to determine the format of the standards for inorganic HAP emissions from primers and topcoats. The level of control (expressed as a percentage) of dry particulate filters and waterwash spray booths was reported in the section 114 questionnaire responses. However, the basis for the reported control efficiency was primarily engineering judgement and manufacturer's data, which could not be verified through standardized testing. While the Act specifies that emission standards be developed whenever possible, the EPA determined that the available data were not of sufficient quality to develop such a standard.

The EPA then considered an equipment standard that described physical characteristics of high efficiency particulate filters and waterwash systems. However, due to the number of different filter and waterwash systems and variety of designs available, no concise description could be developed.

The EPA then developed a format that specified that all primer and topcoat application operations must be conducted in a ventilated booth or hangar equipped with filters or waterwash systems. The selection of the actual filters and waterwash systems would be left to the individual facilities.

### 3. Depainting Operation

The demonstrated technologies for depainting that represent the best performing 12 percent of sources are blast methods (e.g., plastic media and wheat starch blasting) and chemical strippers that contain no organic HAP. The EPA considered an operational format for the proposed standards that would require one of these methods to be used. However, many other alternative depainting methods are under development that have the potential to reduce organic HAP emissions as effectively as blasting or chemical strippers that contain no

organic HAP. The EPA did not want to limit the development of these alternative depainting methods, so the operational format was rejected.

The EPA then considered the level of organic HAP emissions from blasting, chemical strippers that contain no organic HAP, and other alternative depainting methods. With the exception of spot, decal, radome, and parts depainting, all of these methods have the potential to emit no organic HAP. The EPA, therefore, chose an emission standard format that specifies no organic HAP emissions from depainting, with exemptions for spot, decal, radome, and parts depainting. This format would allow the currently demonstrated depainting methods, as well as alternative methods that may be developed in the future.

While spot stripping and decal removal have been exempted from the proposed standards, the EPA, in selecting the format of the exemption, intends to limit the use of organic HAP-containing stripper to the lowest amount necessary. The EPA selected a limitation on the annual average amount (in gallons) of organic HAP-containing stripper used per aircraft.

The format for the proposed standards for inorganic HAP emissions from depainting operations was developed from the section 114 questionnaire responses. The seven facilities that reported blast depainting operations were ranked according to control efficiency of the filtration methods (particulate filters or baghouses) used to control particulate emissions. The best performing 12 percent of these sources are represented by the one facility with the highest control efficiency. This facility achieved a reported control efficiency of 99 percent and was chosen to represent the MACT floor.

The control efficiency data reported in the section 114 questionnaire responses consisted of engineering judgement estimates and information obtained from the filter manufacturers. No test data were reported. Due to this lack of quantifiable test data, the EPA is requesting comments on whether the 99 percent level of control represents the demonstrated level of technology for the control of particulate emissions from blast depainting. These comments should contain a technical justification, including test data where possible, for any recommended level of control.

#### 4. Chemical Milling Maskant Application Operation

An emission limitation based on the mass of organic HAP and VOC per unit volume applied was selected for chemical milling maskants. There are

essentially two means of complying with the proposed standards: (1) Solvent-based chemical milling maskant with a carbon adsorber to reduce emissions or (2) a waterborne chemical milling maskant with an organic HAP content equal to or less than the proposed standard. This format allows facilities to choose either method (or develop an equivalent method) without giving preference to either solvent-based or waterborne chemical milling maskants.

#### 5. Handling and Storage of Waste

The rationale for the format of the proposed standards for handling and storage of waste is essentially the same as that for housekeeping measures for cleaning solvents. Since no data were available to establish an emission limitation and control equipment was not technically feasible, a work practice format requiring housekeeping measures was selected as the most appropriate means of reducing emissions.

#### G. Selection of Emission Test Methods and Monitoring Requirements

##### 1. Emission Test Methods

In addition to the specific test methods described below for each affected source, the proposed rule adopts the provisions specified in § 63.7 of the General Provisions, 40 CFR part 63, subpart A.<sup>9</sup>

a. *Cleaning operation.* For hand-wipe cleaning, the proposed standards would allow owners or operators to use either a cleaning solvent that conforms to an approved composition list or a cleaning solvent with a vapor pressure less than or equal to 45 mm Hg. Procedures are, therefore, necessary for determining whether a cleaning solvent conforms to the approved composition list or meets the vapor pressure limitation.

The other portion of the proposed standards for cleaning operations (including spray gun cleaning) includes housekeeping measures, equipment standards, or work practice standards, for which no test methods or procedures are required to demonstrate compliance.

Those facilities that use cleaning solvents that conform to the approved composition list would have to demonstrate how the solvents comply. The EPA is proposing that data supplied by the manufacturer of the cleaning solvent be used to show compliance. The data must show all components of the cleaning solvent and demonstrate that one of the approved composition definitions is met.

To determine the composite vapor pressure of a cleaning solvent, the EPA

is proposing that for single-component cleaning solvents data supplied by the manufacturer or from standard engineering reference texts be used. This information is readily available and, for single component cleaning solvents, should be readily acceptable.

For multi-component cleaning solvents, it is necessary to determine the composite vapor pressure of the cleaning solvent. This requires determining the amount of each organic compound in the cleaning solvent and each one's vapor pressure. Once these are known, then a procedure to combine the information must be followed to calculate the composite vapor pressure.

The EPA is proposing that gas chromatographic analysis, following the procedures outlined in E 260-85, be used to quantify the amount of each organic compound. The vapor pressure of each organic compound would then be determined, again, either by the manufacturer's data or from standard engineering reference texts, as discussed above. For combining these data to calculate the composite vapor pressure, the EPA is proposing that the blend be assumed to be an ideal solution where Raoult's law applies. While more accurate methods are available, the cost and time to conduct those methods and the small gain in accuracy are not justifiable when compared to the ease of calculating composite vapor pressure assuming an ideal solution where Raoult's law applies. Further, the composite vapor pressure of any blend changes with the conditions under which it is applied. This normal variability would cause some cleaning solvents to meet the composite vapor limit under certain conditions, but not others, if the vapor pressure test methods were used instead of the calculation.

b. *Primer and topcoat application operations.* One part of the proposed standards for primer and topcoat application operations requires the use of specified high transfer efficiency application equipment, or equivalent.

As long as this equipment is installed, operated, and maintained according to manufacturer's specifications, it should perform with high transfer efficiency. Therefore, the EPA is not proposing any test methods or procedures for this part of the primer and topcoat standards.

Owners or operators who want to use application equipment other than that specified in the proposed rule must demonstrate that it is equivalent in reducing organic HAP and VOC emissions. To make an equivalency determination, the owner or operator must demonstrate that the organic HAP and VOC emissions generated by the

<sup>9</sup> *Ibid.*

alternative method are equal to or less than the emissions generated by HVLP or electrostatic spray guns under the actual production conditions in which the alternative method is intended to be used. This level of emissions is equivalent to the emissions demonstrated by California facilities that are subject to similar rules.

Before implementing the alternative application method, the facility must determine the organic HAP and VOC emissions that were generated by the process over the 90-day period immediately preceding the implementation of the alternative application method. During this initial 90-day period, only HVLP or electrostatic spray guns could be used. These emissions would be compared to the organic HAP and VOC emissions generated by the same process using the alternative application method to coat an equivalent amount of parts and assemblies as coated during the initial 90-day period using identical coatings. The organic HAP and VOC emissions generated during the use of the alternative application method must be equal to or less than the emissions generated during the initial 90-day period.

In determining compliance with the organic HAP and VOC content levels, an owner or operator would have the flexibility to use compliant coatings or to average uncontrolled compliant and non-compliant coatings. (Averaging between primers and topcoats would not be allowed, nor would averaging between controlled and uncontrolled coatings.) Test methods and procedures are, therefore, necessary to determine the organic HAP and VOC content of each primer and topcoat as applied.

The EPA is proposing that Method 24 be used for determining the VOC content. This is a long-standing method for such determinations. Sources may, at their discretion, use manufacturer's data for determining the VOC content rather than Method 24. However, if there is found to be a difference in the VOC content as determined from the manufacturer's data and that determined using Method 24, then the value obtained using Method 24 will always take precedence in compliance determinations. Since there are no generally available methods for testing organic HAP content, the EPA is proposing that the organic HAP content level be determined by each facility based on the formulation of each coating. The formulation data would be supplied to the facility by the coating manufacturer. This would reduce the burden to the industry and promote consistent identification of the total

organic HAP content among all users. Several coating manufacturers have indicated to the EPA that they are willing to supply such information.

As noted above, the proposed standards would require the organic HAP contents to be determined on a "less water as applied" basis and VOC contents on a "less water and exempt solvents as applied" basis. Thus, unless the coating is applied as received, procedures must be adopted to change "as received" organic HAP and VOC content levels to "as applied" levels. This could be accomplished by analyzing a sample of the coating as applied using Method 24 or through a calculation. The calculations to do this are well known and established (see A Guideline for Surface Coating Calculations, EPA-340/1-86-016, July 1986) and, thus, the EPA did not consider it necessary to include the basic calculation formulas in the proposed rule. A determination of what is added to the coating before it is applied must be made so that the "as applied" levels can be calculated. The EPA is proposing that each owner or operator make such determinations on the basis of records kept at the facility. These are records that will be required by the proposed rule and will be readily available to the owner or operator for making the necessary calculations. The pertinent information (i.e., density, organic HAP content, and VOC content) of the additives would be based on manufacturer supplied information. If that information is not available, then the owner or operator would be required to develop a procedure for determining the missing information for approval by the Administrator.

Since the proposed standards for organic HAP and VOC content levels would allow each owner or operator to average organic HAP or VOC content levels across uncontrolled primers and across uncontrolled topcoats, the procedures provide the necessary formulas to calculate the volume-weighted average organic HAP or VOC across all primers or topcoats. For compliant coatings, the EPA is proposing less complicated procedures for demonstrating compliance. This is appropriate because each coating by itself as applied meets the organic HAP (or VOC) content level, and daily calculations of the volume-weighted average HAP and VOC content as applied are not necessary. The proposed rule does, however, require monthly determination of usage and HAP and VOC content as applied.

If control devices (e.g., incinerators, carbon adsorbers) are used, the proposed standards require them to

achieve an overall control efficiency of at least 81 percent. For control devices other than carbon adsorbers, it is necessary, therefore, to identify the capture efficiency of the capture system, the destruction efficiency of the control device, and, where feasible, operational parameters that would be monitored to ensure continuous compliance. The proposed standards also include provisions for determining the capture and removal efficiencies. The test methods and procedures being proposed for determining the capture and removal efficiencies are those that are typical for control devices.

The EPA is proposing that capture efficiency be determined by one of two methods depending on whether the capture system is totally enclosed or not. A total enclosure would be verified according to the provisions specified in § 52.741, appendix B, Procedure T of 40 CFR part 52 (and, thus would have a capture efficiency of 100 percent). The capture efficiency of all other systems would be determined according to the procedures specified in § 52.741(a)(4)(iii) of 40 CFR part 52.

The EPA is proposing that the removal efficiency of a control device be determined based on three runs, each run lasting one hour. For control of organic compounds, Method 1 or 1A of 40 CFR part 60, appendix A, as appropriate, would be used for selection of the sampling sites, and the gas volumetric flow rate would be determined using Methods 2, 2A, 2C, or 2D of 40 CFR part 60, appendix A, as appropriate. Method 18 of 40 CFR part 60, appendix A, would then be used to measure either TOC minus methane and ethane or total organic HAP. Alternatively, any other test method or data that has been validated according to the applicable procedures in Method 301 of 40 CFR part 63, appendix A, may be used.

Where a carbon adsorber is used, the EPA is proposing to use a mass balance procedure for determining the overall control efficiency. The proposed rule contains procedures as specified in 40 CFR 60.433 for using a mass balance approach that would calculate the amount of organic HAP and VOC applied and the amount recovered. This information would then be used to calculate the overall control efficiency of the carbon adsorber.

In addition, Method 309 is being proposed for determining the number of consecutive 24-hour periods in the rolling material balance period for carbon adsorbers.

Each owner or operator using a control device would be required to conduct an initial performance test. For

control devices other than carbon adsorbers, this test would consist of 3 one-hour runs. For carbon adsorbers, the test would span the number of days specified for the rolling material balance period as calculated by proposed Method 309. In addition, it is necessary to establish, during the initial performance test, operating parameters that would be continuously monitored in order to show continuous compliance. For incinerators other than catalytic incinerators, the operating parameter would be the firebox temperature. For catalytic incinerators, the operating parameters would be the temperature of the gas stream immediately before and after the catalyst bed. No operating parameters are required to be monitored on carbon adsorbers since the material balance calculations provide a continuous check of proper operation.

c. *Depainting operation.* The proposed standards for the depainting of aerospace vehicles requires, in part, no organic HAP emissions, which will be achieved through the use of chemical strippers that do not contain any organic HAP or the use of non-chemical depainting methods or techniques. Since all of the known non-chemical depainting methods/techniques do not contain any organic HAP, the only test method or procedures needed are those associated with determining whether a chemical stripper contains any organic HAP. For the reasons noted earlier under the discussion on test methods for primers and topcoats, the EPA is proposing that the organic HAP content be determined based on information supplied by the manufacturer of the chemical stripper.

In order to demonstrate compliance with the organic HAP-containing chemical stripper usage limitation for spot stripping and decal removal, the source must calculate an average annual usage per aircraft. Since there is only one method to calculate this average (i.e., dividing the total gallons of organic HAP-containing chemical stripper used for spot stripping and decal removal by the number of aircraft stripped), the EPA is proposing to use this method to determine compliance. The information needed for this calculation would be obtained from company records.

Particulate inorganic HAP emissions are generated by blast depainting methods. Therefore, the EPA is proposing that Method 5 of 40 CFR part 60, appendix A, be used to determine the control efficiency of particulate filtration systems used on this process.

d. *Chemical milling maskant application operation.* The proposed standards for chemical milling maskants

limits the organic HAP content to the equivalent of 160 grams per liter (1.3 pounds/gallon) less water as applied and limits the VOC content to the equivalent of 160 grams per liter (1.3 pounds per gallon) less water and exempt solvents as applied. In determining compliance with the organic HAP and VOC content levels, an owner or operator would have the flexibility to use compliant chemical milling maskants or averaging uncontrolled compliant and non-compliant maskants. As for primers and topcoats, averaging uncontrolled and controlled chemical milling maskants together would be prohibited. Test methods and procedures are, therefore, necessary to determine the organic HAP and VOC content of each chemical milling maskant as applied. If control devices are used, it is also necessary to determine the overall control efficiency of the control device. The test methods selected and the rationale for the selection are identical to those presented above for primers and topcoats.

e. *Handling and Storage of Waste.* For those wastes subject to the proposed rule, no test methods or procedures are required to demonstrate compliance with the proposed housekeeping measures.

## 2. Monitoring Requirements

In accordance with paragraph (a)(3) to section 114 of the Act, enhanced monitoring of stationary sources is required to determine the compliance status of the sources, and whether compliance is continuous or intermittent. For affected sources complying with the proposed standards through the use of control devices, initial compliance is determined through the initial compliance test, and ongoing compliance through continuous monitoring. The EPA has proposed the parameters to be monitored for certain types of control devices now used in the industry. The values of these parameters that correspond to compliance with the proposed standards are set by the owner or operator during the initial compliance test. If future monitoring indicates that control equipment is operating outside of the range of values established during the initial performance test, then the owner or operator is out of compliance with the proposed standards, except as specified for malfunctions in § 63.6(e)(3) of 40 CFR part 63, subpart A.<sup>10</sup>

a. *Cleaning operation.* For cleaning operations, the only portion of the standards for which monitoring

requirements are being proposed is for enclosed spray gun cleaner systems. These systems are stationary sources that have the potential to emit organic HAP from around ill-fitting or worn seals or from leaking pumps or piping connections. The effectiveness of these systems thus depends on their being "vapor-tight" and that there are no leaks from the pumps or piping of these systems. Therefore, the EPA is proposing that such systems be visually inspected for leaks. Since most of the systems are used to clean paint spray guns, leaks would be easily spotted by visual inspection as the result of solvent or paint residue escaping around the source of the leak. The EPA does not believe that monitoring with leak detection equipment would provide a significant increase, if any, in the detection of leaks from these systems. Therefore, the EPA is proposing to require visual inspection only.

The EPA then considered how frequently the enclosed cleaners should be inspected. The EPA considered daily, weekly, monthly, and yearly frequencies. The nature of the systems being inspected is not expected to result in sudden failure, but rather failure due to wear and tear. Thus, the EPA considered it unnecessary to require daily or even weekly inspection. On the other hand, one year was considered too long for a leak to go unrepaired. Therefore, the proposed standards would require a monthly inspection of the systems. The EPA believes that this is a reasonable period between inspections, without overburdening the industry and not allowing leaks to go unrepaired for an extended period of time.

Similarly, the proposed work practice and equipment standards require that containers used to store solvents and solvent laden cloth and paper be closed when not in operation. The EPA could not identify any operating parameter that would monitor whether this was being done. Nor could the EPA identify a parameter to monitor when atomized cleaning is used. The proposed standards require the use of a device designed to capture the atomized solvent emissions. No monitoring parameters were identified to indicate periods when the device may not be functioning or when it may have been removed. Rather, the determination would be made during enforcement inspections as to whether the proper procedures were being followed.

b. *Primer, topcoat, and chemical milling maskant application operations.* The proposed monitoring requirements for primer, topcoat, and chemical milling maskant application operations

<sup>10</sup>Ibid.

concern the operation of control devices that may be used in demonstrating compliance with the organic HAP content levels. For control devices, the parameters to be monitored are those that have been typically used in other standards. For example, where catalytic incinerators are used to control organic HAP and VOC emissions, the proposed standards require that the temperature of the air stream be monitored immediately before and after the catalyst bed. The rationale for selecting the various control device parameters in this proposed rule is long standing, and for more information see the proposal notice for the SOCOMI reactor processes NSPS (55 FR 26966 through 26969, June 29, 1990). The EPA is, therefore, simply proposing to adopt the same monitoring parameters as have been required for previous standards.

For inorganic HAP emissions from primers and topcoats, the proposed standards would require the use of particulate filters or waterwash systems. Two parameters were identified that could be monitored that directly relate to the performance of the system—air flow and pressure drop. The proposed rule, however, would require monitoring of only the pressure drop across the filter or waterwash since the air flow is directly related to the pressure drop. Monitoring of both parameters was considered to be redundant.

*c. Depainting operation.* The nature of the proposed standards for depainting operations is such that no meaningful monitoring requirement was identified for the proposed organic HAP emission standards. The organic HAP content (less water as applied) of the chemical strippers used must be calculated or determined. But once identified, there are no requirements concerning their application.

The rationale for the pressure drop monitoring requirements proposed for inorganic HAP emissions from depainting operations is identical to that for primers and topcoats.

*d. Handling and storage of waste.* For those wastes subject to the proposed rule, the EPA could not identify any operating parameters that would monitor whether housekeeping measures were being performed. Therefore, no monitoring requirements are being proposed.

#### H. Selection of Recordkeeping and Reporting Requirements

##### 1. Recordkeeping

In addition to the specific recordkeeping requirements described below for each affected source, the

proposed rule adopts the provisions specified in § 63.10 (a), (b), (d), and (f) of the General Provisions, 40 CFR part 63, subpart A.<sup>11</sup> These were the only paragraphs from § 63.10 that were considered to be applicable to the proposed rule.

*a. Cleaning operation.* The proposed standards for hand-wipe cleaning operations require cleaning solvents to be used that either comply with the approved composition list or have a composite vapor pressure less than or equal to 45 mm Hg at 20 °C (24.1 in. H<sub>2</sub>O at 68 °F). In order to determine whether these requirements are being complied with, it is necessary to keep data on the cleaning solvents being used in these operations. Therefore, the EPA is proposing that each owner or operator keep for each cleaning solvent used at the facility, a record of the name of the cleaning solvent and documentation that shows the organic HAP content and organic HAP constituents. In addition, the EPA is proposing the following records for specific cleaning operations be kept.

For each cleaning solvent used in hand-wipe cleaning operations that conforms to the approved composition list, the records that would be maintained are the name of each cleaning solvent, documentation demonstrating compliance to the approved composition list, and annual purchasing records showing the annual volume purchased of each. For each cleaning solvent used in hand-wipe cleaning operations that does not conform to the approved composition list, but does conform to the vapor pressure requirement, the information required to be recorded would be the name of each cleaning solvent, the monthly usage of the cleaning solvent at each operation, the composite vapor pressure, the manufacturer's data sheets or other documentation of the vapor pressure, and any test reports and calculations performed to determine the composite vapor pressure (in order to assess compliance with the vapor pressure limit).

The proposed standards would allow certain hand-wipe cleaning operations to be exempt; that is, cleaning solvents that do not comply with the approved composition requirements or with vapor pressure greater than 45 mm Hg at 20 °C (24.1 in. H<sub>2</sub>O at 68 °F) can be used for these exempt cleaning operations. Therefore, affected facilities will have both compliant and non-compliant cleaning solvents in use. The EPA, therefore, believes it is necessary to ensure that cleaning solvents with vapor

pressures greater than 45 mm Hg at 20 °C (24.1 in. H<sub>2</sub>O at 68 °F) are only used for the exempted cleaning operations. To this end, the EPA is proposing that each owner or operator keep daily records of the name and volume of each cleaning solvent used in each exempt hand-wipe cleaning operation, as well as the parts, assemblies, or subassemblies on which it is used. The EPA is requiring daily recordkeeping for these non-compliant solvents so that adequate records exist to determine that the solvents are used only in the exempt operations.

The EPA is also proposing that records be kept of each leak found when visually inspecting enclosed spray gun systems. These records would consist of source identification, the date of discovery of the leak, and the date of repair in order to ensure that repairs are completed within 15 days as required by the proposed standard.

For those portions of the cleaning operation standards that require containers to be closed when not in use, the EPA is not proposing any recordkeeping requirements. Nor is the EPA proposing any recordkeeping requirements for the cleaning of spray guns (other than for enclosed spray gun cleaners) or flush cleaning.

*b. Primer and topcoat application operations.* For all primer and topcoat application operations, regardless of which methods are used to comply with the proposed standards, the EPA is proposing that each owner or operator keep records of the name of each coating and its organic HAP and VOC content as received. In addition, the EPA is proposing different levels of recordkeeping requirements depending on how the organic HAP and VOC content levels are being met. If an owner or operator is using compliant coatings to meet the organic HAP or VOC content levels, the EPA is proposing that the owner or operator keep records that identify for each coating (primer, topcoat) used each calendar month, the volume of each coating formulation used each month, the masses of organic HAP and VOC emitted per unit volume as applied, and the manufacturer's data, calculations, and test results (including Method 24 results taken during an enforcement inspection) used to determine organic HAP and VOC content of each as applied. Daily records are not necessary since, if the coatings are compliant, the emissions from the coatings will not exceed the emission limitation in the proposed standards on a daily basis. Monthly records, however, are necessary to maintain a check that compliance is being maintained.

<sup>11</sup> Ibid.

If an owner or operator elects to meet the organic HAP or VOC content level by averaging, the EPA is proposing that records of the daily volume-weighted average organic HAP and VOC contents for primers and topcoats be kept as well as all of the data and calculations used to calculate these values. This would include the volume, organic HAP content as applied, and VOC content as applied of each coating. This level of information is required for an inspector to determine whether the facility was in compliance and whether the proper data and calculations were being used.

If a control device is used, each owner or operator would be required to keep a record (or, where allowed in the proposed standards, daily averages) of the various control device operating parameters being monitored. Since for some control devices compliance with the proposed standards is dependent on the control device being operated properly, these records are necessary to determine compliance. Specifically, a source would be out of compliance if the recorded parameters were out of range. As noted earlier, for incinerators, this would be continuous records of the operating temperature(s), while no operating parameters are required for carbon adsorbers. Thus, the EPA is requiring these records for compliance determinations.

The recordkeeping requirements for inorganic HAP emissions from primers and topcoats, which require recording of the pressure drop across the filters or waterwash once per shift during which coating operations occur, were included to provide a means of obtaining data that can be used to verify that the pressure drop limits are not being exceeded. The records can also be used by the facility to determine when preventative maintenance should be performed on the filter or waterwash system. The proposed rule would also require that the log include the pressure drop operating range as specified by the manufacturer so that the compliance information is readily available at all times.

*c. Depainting operation.* For compliance with the standard of no organic HAP emissions through the use of chemical strippers that contain no organic HAP, the minimum records identified were the name of each chemical stripper used in depainting operations, the organic HAP content of each stripper, and its supporting documentation.

The proposed standards contain an exemption for spot stripping and decal removal that is based on an annual average volume of organic HAP-containing stripper per aircraft. To

ensure that this exemption is being complied with, the EPA is proposing that the owner or operator of an affected source record these annual averages. Consequently, records must be maintained of the number of aircraft depainted, the volume of organic HAP-containing stripper used for spot stripping and decal removal, the average number of gallons of organic HAP-containing chemical stripper used per aircraft, and all supporting data and calculations.

Similarly, the proposed standards have an exemption for radomes and parts depainting. While radomes are self-evident, the parts normally removed are not. Therefore, the EPA is proposing that each owner or operator keep an up-to-date list of all aircraft depainted at the facility and a list of all parts normally removed prior to depainting from each aircraft model.

The EPA believes that it is necessary to ensure that, if a depainting facility uses organic HAP-containing chemical strippers, they only be used on spot stripping, decal removal, radomes and parts. Tracking the daily use of the organic HAP-containing chemical strippers by volume would indicate whether or not these strippers are being used on the aircraft body. The amount of stripper required to depaint an aircraft body is substantially higher than for the exempted operations. Therefore, an accounting of stripper usage is necessary to ensure organic HAP-containing stripper is not being used on the aircraft body. The EPA considered requiring records of the usage of both strippers that contain organic HAP and those that do not contain organic HAP be maintained. However, the EPA believes that requiring records of both types of stripper usage would be overly burdensome to the industry and that adequate accounting would be obtained from the usage of organic HAP-containing chemical stripper. In addition, records of the usage of organic HAP-containing strippers are already being required for spot stripping and decal removal. Consequently, the EPA is proposing that records be kept only of the organic HAP-containing chemical stripper usage.

Daily recordkeeping of the usage of these strippers was considered to be unnecessary since the intent of the records is to show long-term trends. Annual records, on the other hand, would require too long of a period to establish these trends. Consequently, the EPA is requiring monthly records of the organic HAP-containing stripper usage.

Whenever non-chemical depainting techniques are being used, the proposed

standards would require that during periods of malfunction, alternate depainting methods be used for no more than 14 consecutive days unless the alternative method contains no organic HAP. In order to determine compliance with these requirements, records must be kept on the dates the malfunction occurred and was corrected, the methods used to repaint the aerospace vehicles during the malfunction, and the dates that these methods were begun and discontinued.

For inorganic HAP emissions, records of the daily pressure drop readings are necessary to ensure that the requirements of the proposed standards are being met. The rationale for this requirement is identical to that presented for primers and topcoats. In addition, records must be maintained of the manufacturer's recommended pressure drop limits, the particulate filter control efficiency, and all test results, data, and calculations used in determining the control efficiency so that compliance determinations can be made.

*d. Chemical milling maskant operation.* For the organic HAP and VOC content levels, the EPA is proposing different levels of recordkeeping requirements depending on how the organic HAP and VOC content levels are being met. The selection of and rationale for these recordkeeping requirements are identical to those presented above for primers and topcoats. In addition, where carbon adsorbers are used to control organic HAP and VOC emissions from chemical milling maskants, the same recordkeeping requirements as discussed for primer and topcoat application operations are being proposed, and the rationale is the same.

*e. Handling and storage of waste.* Since the proposed standards would exempt RCRA wastes, it is necessary to identify which wastes are subject to RCRA and which are subject to the proposed rule. Therefore, the EPA is proposing that each owner or operator keep an up-to-date list of which wastes are subject to RCRA requirements and which are subject to the proposed rule, and to keep on file the documentation supporting these determinations.

The EPA received a comment requesting that records be maintained of the quantity and type of solvents stored and disposed, as well as the disposal facility (if applicable). The purpose of these records would be to ensure that the wastes are not improperly disposed since the wastes may not be RCRA listed wastes (and, thus, not subject to applicable RCRA recordkeeping requirements). The EPA is requesting

additional comments concerning the addition of these recordkeeping requirements. The comments should address whether there are any wastes that contain HAP that are not subject to RCRA and, if so, whether the recordkeeping requirements under these standards should apply to all affected waste streams or only non-RCRA listed waste streams. In addition, the comments should address what burden these requirements would impose.

## 2. Reporting Requirements

In addition to the specific reporting requirements described below for each affected source, the proposed rule adopts the provisions specified in § 63.9(a) through § 63.9(e) and § 63.9(h) through § 63.9(j) and § 63.10 (a), (b), (d), and (f) of the General Provisions, 40 CFR part 63, subpart A.<sup>12</sup> However, certain time periods specified in these sections were changed as detailed in Section II.F of this preamble. These time periods were changed in order to provide additional time for the EPA to review requests for changes to time periods for submittal of reports and for owners or operators to respond to EPA requests. These were the only paragraphs from these sections (i.e., § 63.9 and § 63.10) that were considered to be applicable to the proposed rule.

The proposed rule would require an owner or operator to submit the following four types of reports:

- (1) Initial notification,
- (2) Notification of compliance status,
- (3) Periodic reports, and
- (4) Other reports.

The purpose and contents of each of these reports are described in this section. The wording of the proposed rule requires all reports to be submitted to the "Administrator." The term Administrator refers either to the Administrator of the EPA, an EPA regional office, a state agency, or another authority that has been delegated the authority to implement this rule. In most cases, reports will be sent to state agencies. Addresses are provided in the General Provisions of 40 CFR part 63, subpart A.<sup>13</sup>

Records of reported information and other information necessary to document compliance with the regulation are required to be kept for 5 years. Per the General Provisions, the 2 most recent years must be kept on-site; the other 3 years may be kept off-site. Records pertaining to the design and operation of the control and monitoring equipment must be kept for the life of the equipment.

a. *Initial Notification.* The proposed standards would require owners or operators who are subject to this subpart to submit an initial notification. As outlined in the General Provisions, 40 CFR 63.9, this report serves two basic purposes: (1) Notifies the EPA that an existing facility is subject to the proposed standards and (2) notifies the EPA of the construction of a new facility.<sup>14</sup> A respondent must also report any facility modifications as defined in § 63.5. This report will establish an early dialogue between the source and the regulatory agency, allowing both to plan for compliance activities. The notice is due no later than 12 months before the final compliance date as specified in the proposed standards. Under the proposed rule, the initial notification is not required from any source that has submitted a permit application under title V of the Act, provided that the permit application has been submitted by the same due dates as for the initial notification and that the state to which the permit application has been submitted has a permit program in place and has received delegation of authority from the EPA.

As called for by the General Provisions, each owner or operator of an affected source would be required to submit a start-up, shut-down, and malfunction plan. This plan would be submitted with the initial notification.

b. *Notification of Compliance Status.* As adopted through the General Provisions, owners or operators who are subject to this subpart would be required to submit a notification of compliance status. This report contains the information necessary to demonstrate that compliance has been achieved, such as the results of performance tests, Method 24 tests, and design analyses, as well as the methods that will be used for determining continuing compliance as outlined in the General Provisions, 40 CFR 63.9.<sup>15</sup> Another type of information to be included in the notification of compliance status is the specific range of each monitored parameter for each affected source, the rationale for why this range indicates compliance with the emission standard, and whether each source has operated within its designated operating parameters. The report would be due within 150 days after the final compliance date as specified in the General Provisions.

Although not specified in the proposed rule, a description of information specific to the aerospace industry that should be contained in the

initial compliance notification for each of the affected sources was presented earlier in this preamble (see Section II.B.2, Reporting Requirements). The information presented in that section is not necessarily exhaustive.

c. *Periodic Reports.* The EPA is proposing to adopt a standard basis for submitting periodic reports for each of the operations for which standards are being proposed. Semiannual reports would be required whenever an operation was found to be in non-compliance or whenever a monitored parameter exceeded its value. For example, for a primer application operation where averaging is used, a semiannual report would be triggered for any daily period covered by the semiannual report in which the daily primer volume-weighted average organic HAP content limit was exceeded.

Semiannual reports would also be required whenever a change occurred at a facility that might affect a source's compliance status or that introduces a new element to the operation that was required to be reported in the notification of compliance status. For example, reformulation of a chemical milling maskant may change the organic HAP content of the maskant. If the HAP content increases, then the owner or operator may have to average different or additional chemical milling maskants together, or add a control device in order to maintain compliance. This change in compliance status would trigger a semiannual report.

For operations that did not experience any exceedances or changes, the EPA is proposing that annual reports be submitted to this effect. In addition, annual reports are required where compliance is determined on an annual basis and exceedances of these annual limits occur.

The EPA is proposing to adopt the above schedule of reporting because it provides a fair balance between the need to know certain information in a timely fashion and reduces the burden to industry and provides consistency within this regulation. The following paragraphs discuss in more detail the specific types of information to be included in these various periodic reports. The information being requested is that which the EPA believes is necessary in the enforcement of the proposed rule.

(1) *Cleaning operation.* Periods of non-compliance would be transmitted to the EPA in a semiannual report. An example of non-compliance for hand-wipe cleaning is the use of a cleaning solvent with a vapor pressure greater than 45 mm Hg (24.1 in. H<sub>2</sub>O at 68 °F)

<sup>12</sup>Ibid.

<sup>13</sup>Ibid.

<sup>14</sup>Ibid.

<sup>15</sup>Ibid.

and does not conform to the approved composition list in a nonexempt cleaning operation. In addition, any instance where a leaking enclosed spray gun cleaner is not repaired within 15 days would be considered an instance of non-compliance that would trigger a semiannual report.

The EPA is also proposing a semiannual reporting requirement if changes, such as the use of new cleaning solvents, previously reported cleaning solvents no longer in use, or new cleaning techniques for spray guns, are made to the cleaning operations at the facility. Where a new or reformulated cleaning solvent is used, the semiannual report would include documentation of its vapor pressure or documentation that it conforms to the approved composition list.

If the cleaning operation has been in compliance for the annual period, then an annual report would be required occurring every 12 months from the date of the initial report stating that the cleaning operation has been in compliance with the applicable standards.

(2) *Primer, topcoat, and chemical milling maskant application operations.* A semiannual report would be required whenever an exceedance of organic HAP or VOC content levels occurred, as well as any time a primer or topcoat application operation was not immediately shut down when the pressure drop across the filters or waterwash was out of range. Where control devices are used to comply with the organic HAP or VOC content levels, the EPA is also proposing to require semiannual reporting whenever a monitored parameter falls outside its appropriate range. Such situations indicate noncompliance with the proposed standards.

If no exceedances occur, each owner and operator would submit annual statements indicating that each affected facility has been in compliance. The annual reports for primer and topcoat operations would also identify the number of times, if any, the pressure drop limits for each filter or waterwash system were exceeded.

(3) *Depainting Operations.* If new non-chemical depainting techniques are introduced to the facility since the filing of the notification of compliance status or any subsequent semiannual report, the EPA is proposing semiannual reports to identify these techniques. The semiannual report would be required to identify any period of malfunction of non-chemical depainting methods and techniques and any period where the non-chemical depainting operation was not immediately shut down when the

pressure drop across the filters was out of range.

For periods of malfunction of non-chemical depainting methods, semiannual reports would be required that identify the method or technique that malfunctioned, the date that the malfunction occurred and was corrected, a description of the malfunction, the alternative method(s) used for depainting during the period of malfunction, and the date(s) that the methods were begun and discontinued. This information is necessary so that adequate documentation is available to ascertain whether malfunctions were repaired within the 15 day limit.

In addition, the facility would be required to report on a semiannual basis any new chemical strippers or changes to existing formulations and the organic HAP content of each. A semiannual report would also be required for each 24-hour period where organic HAP were emitted from the depainting operation, other than from spot, radome, or parts stripping or decal removal.

Finally, the semiannual report would be required to identify all changes in the type of aircraft depainted at the facility and to identify the parts normally removed for depainting separate from the aircraft for each new type of aircraft depainted. This is important because of the exemption being proposed for radomes and parts that are normally removed prior to depainting the aircraft.

If the depainting operation has been in compliance for the annual period, then an annual report would be required stating that the depainting operation has been in compliance with the applicable standards. An annual report would also be required whenever the calculated annual average volume of organic HAP-containing strippers used per aircraft for spot stripping and decal removal exceeded the applicable limits. The annual report would also report the number of times the pressure drop across the particulate filters used for the control of inorganic HAP emissions from non-chemical depainting operations exceeded the limits specified by the manufacturer.

(4) *Handling and storage of waste.* As discussed earlier, since an exemption exists for RCRA-regulated wastes, it is important to know which wastes are subject to RCRA and which are not. Since facilities undergo change over time, it is possible that these designations may change. Further, new waste streams may be created. Therefore, semiannual reports are being proposed to track changes in the RCRA status of existing wastes and new wastes. An annual report would be required if no changes occurred in the

RCRA status to the existing waste streams and if no new waste streams were generated.

d. *Other Reports.* The only "other reports" in the proposed rule are those that are required under the General Provisions, subpart A of 40 CFR part 63.<sup>16</sup> Of particular note is the report required in response to periods of startup, shutdown, and malfunction. When the procedures used during such periods are completely consistent with the plan, a report stating such is to be delivered or postmarked by the thirtieth (30th) day following the end of each calendar half. If the procedures are not completely consistent with the plan, an owner or operator is to report the actions taken within 2 working days after commencing actions inconsistent with the plan, followed by a letter within 7 working days after the end of the event. The EPA is proposing that for non-chemical depainting malfunctions only, that the owner or operator report any plan inconsistency for dealing with the malfunction within 24 hours after the inconsistent depainting technique is actually utilized. This is different from "after the end of the event" because owners or operators may be able to adjust their depainting schedule to accommodate the time to repair a malfunction without the need to implement their malfunction plan.

#### I. Selection of Compliance Deadlines

The EPA proposes to allow affected sources the following time periods after promulgation for compliance, as provided for in section 112(i) of the Act. All sources, whether uncontrolled or having in place control systems or measures requiring upgrading to meet the new rule, would be required to reach full compliance within 3 years after promulgation of the rule. In addition, all affected sources must comply with the compliance dates specified in § 63.6 (b) and (c) of the General Provisions, 40 CFR part 63, subpart A.<sup>17</sup>

The EPA considered requiring earlier compliance to some parts of the proposed standards. However, comments received from state agencies indicated that there would be far less burden enforcing the standards if there was a single compliance date. Multiple compliance dates would make it difficult for agencies in states with numerous sources to keep track of which standards applied to each facility and when compliance would have to begin.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

The EPA recognizes the need for the full three-year period for facilities to come into compliance due to the nature of testing and qualification necessary for sources such as hand-wipe cleaning solvents, primers, topcoats, and chemical milling maskants. For all these reasons, the EPA is proposing that all sources be allowed up to three years after the date of promulgation of the rule to achieve compliance.

The EPA is requesting comments, however, concerning alternative compliance dates for certain pollution prevention and housekeeping measures. Specifically, the EPA is considering a compliance date of 90 days after the effective date of the proposed standards for the cleaning operation housekeeping measures in § 63.744(a) of the proposed rule, the use of enclosed containers for flush cleaning solvents in § 63.744(d), and the provisions for handling and storage of waste in § 63.748. The EPA is also considering a compliance date of 180 days after the effective date of the proposed standards for the spray gun cleaning provisions in § 63.744(c).

#### J. Operating Permit Program

Under 40 CFR part 70, all major sources of HAP will be required to obtain an operating permit. Emission limits, monitoring, and reporting and recordkeeping requirements are typically scattered among numerous provisions of State implementation plans (SIP's) or Federal regulations. As discussed in the rule for the operating permit program, this new permit program would include in a single document all of the requirements that pertain to a single source. Once a state's permit program has been approved, each aerospace facility that is a major source within that state must apply for and obtain an operating permit. If the state wherein the aerospace facility is located does not have an approved permitting program, the owner or operator of an aerospace facility must submit a part 71 permit application if requested under 40 CFR part 71.

#### K. Solicitation of Comments

The Administrator welcomes comments from interested persons on any aspect of the proposed standards, and on any statement in the preamble or the referenced supporting documents.

The proposed standards were developed on the basis of information available. The Administrator is specifically requesting factual information that may support either the approach taken in the proposed standards or an alternate approach. To receive proper consideration,

documentation or data should be provided.

### VI. Administrative Requirements

#### A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards in accordance with section 307(d)(5) of the Act. Persons wishing to make an oral presentation on the proposed standards for aerospace manufacturing and rework should contact the EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air and Radiation Docket and Information Center address given in the ADDRESSES section of this preamble, and should refer to Docket No. A-92-20.

A verbatim transcript of the hearing and any written statements will be available for public inspection and copying during normal working hours at the EPA's Air and Radiation Docket and Information Center in Washington, DC (see ADDRESSES section of this preamble).

#### B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review materials) (section 307(d)(7)(A) of the Act).

#### C. Executive Order 12866

Under Executive Order 12866 (58 FR 61736 (October 4, 1993)), the EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

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

(3) Materially affect the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof, or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has made the determination that this action is not a "significant regulatory action" within the meaning of the Executive Order. For this reason, this action was not submitted to OMB for review.

#### D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request (ICR) document has been prepared by the EPA (ICR No. 1687.01) and a copy may be obtained from Ms. Sandy Farmer, Information Policy Branch, EPA, 401 M St., SW, (2136), Washington, DC 20460 or by calling (202) 260-2740.

The public reporting burden for this collection of information is estimated to average 366 hours per respondent for the first year after the date of promulgation of the rule, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2136, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for the EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

#### E. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires the EPA to consider potential impacts of proposed regulations on small "entities." Since the proposed rule applies only to major sources as defined in section 112(a) of the Act, the EPA certifies that there would not be a significant impact on a substantial number of small entities. Consequently, a regulatory flexibility analysis is not required.

### F. Clean Air Act Section 117

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator welcomes comment on all aspects of the proposed regulation, including health, economic, technological, or other aspects.

### G. Regulatory Review

In accordance with sections 112(d)(6) and 112(f)(2) of the Act, this regulation will be reviewed within 8 years from the date of promulgation. This review may include an assessment of such factors as evaluation of the residual health risk, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

### List of Subjects in 40 CFR Part 63

Air pollution control, Environmental protection, Hazardous substances, Reporting and recordkeeping requirements.

### VII. Statutory Authority

The statutory authority for this proposal is provided by sections 101, 112, 114, 116, and 301 of the Clean Air Act, as amended; 42 U.S.C., 7401, 7412, 7414, 7416, and 7601.

Dated: May 25, 1994.

Carol M. Browner,  
Administrator.

[FR Doc. 94-13561 Filed 6-3-94; 8:45 am]

BILLING CODE 6560-01-P

### 40 CFR Part 372

[OPPTS-400085; FRL-4765-8]

### Copper Monochlorophthalocyanine Pigment; Toxic Chemical Release Reporting; Community Right-To-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

**SUMMARY:** EPA is proposing to grant a petition to delete Color Index (C.I.) Pigment Blue 15:1 from the "copper compounds" category of the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). C.I. Pigment Blue 15:1 is a mixture of C.I. Pigment Blue 15 (copper phthalocyanine) and copper monochlorophthalocyanine. C.I. Pigment Blue 15 has already been

deleted from the chemical category "copper compounds"; therefore, the Agency is treating this petition as a request to remove copper monochlorophthalocyanine from the chemical category "copper compounds." This proposed rule is based on EPA's belief that the copper ion from copper monochlorophthalocyanine will not become available. In addition, EPA requests comment on the alternative of exempting all copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine or chlorine from the reporting requirements under the "copper compounds" category in EPCRA section 313.

**DATES:** Written comments on this proposed rule should be received by EPA on or before August 5, 1994.

**ADDRESSES:** Written comments should be submitted in triplicate to: OPPT Docket Clerk, TSCA Document Receipt Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NE-B607, 401 M St., SW., Washington, DC 20460. Comments should include the document control number for this proposal, OPPTS-400085.

### FOR FURTHER INFORMATION CONTACT:

Maria J. Doa, Petitions Coordinator, 202-260-9592, for specific information on this proposed rule, or for more information on EPCRA section 313, the Emergency Planning and Community Right-to-Know Hotline, Environmental Protection Agency, Mail Code 5101, 401 M St., SW., Washington, DC 20460, Toll free: 1-800-535-0202, in Virginia and Alaska: 703-412-9877 or Toll free TDD: 1-800-553-7672.

### SUPPLEMENTARY INFORMATION:

#### I. Introduction

##### A. Statutory Authority

This proposed rule is issued under section 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA) (Pub. L. 99-499).

##### B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities must also report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C.

13106). When enacted, section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add chemicals to or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e)(1), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has added and deleted chemicals from the original statutory list.

EPA issued a statement of petition policy and guidance in the *Federal Register* of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA issued a statement of policy and guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories. Pursuant to EPCRA section 313(e)(1), EPA must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition has been denied.

#### II. Description of Petition

On March 5, 1993, the Agency received a petition from the Color Pigments Manufacturers Association (CPMA) to delete Color Index (C.I.) Pigment Blue 15:1 from the chemical category "copper compounds" subject to EPCRA reporting requirements. C.I. Pigment Blue 15:1 is a mixture of C.I. Pigment Blue 15 (copper phthalocyanine) and copper monochlorophthalocyanine. C.I. Pigment Blue 15 has already been deleted from the chemical category "copper compounds" (56 FR 23650); therefore, the Agency is treating this petition as a request to remove copper monochlorophthalocyanine from the chemical category "copper compounds."

The copper monochlorophthalocyanine pigment, which is the subject of this petition, exists as two isomers. One isomer is substituted with a single chlorine atom at the 1-position. The second isomer is substituted with a single chlorine atom at the 2-position. The copper monochlorophthalocyanine pigment is described by three CAS numbers. CAS number 15975-60-7 describes the copper 1-chlorophthalocyanine pigment. CAS number 147-13-7 describes the copper 2-chlorophthalocyanine pigment. CAS number 12239-87-1 describes the copper monochlorophthalocyanine pigment with the position of a single

chlorine atom unspecified. EPA is proposing to delete both isomers and hence all three CAS numbers from the copper compounds category.

In the statement of policy and guidance on the metal compound categories of section 313 of EPCRA (56 FR 23703, May 23, 1991), EPA articulated the view that the toxicity of a metal-containing compound that dissociates or reacts to generate the metal ion can be expressed as a function of the toxicity induced by the intact species and the availability of the metal ion. Therefore, the degree of dissociation, bioaccumulation, and the level at which toxicity is induced by the metal ion will be considered in making any delisting decision under EPCRA section 313. Thus, for petitions to exempt individual metal-containing compounds from the reporting requirements under EPCRA section 313, EPA has decided to base its decisions on the evaluation of all chemical and biological processes that may lead to metal ion availability as well as on the toxicity of the intact species. These decisions will continue to be based on information provided by the petitioner, Agency documents, and available literature. EPCRA section 313(d)(3) requires EPA to determine that none of the criteria in EPCRA section 313(d)(2) are met before a chemical may be deleted from the EPCRA section 313 list. Under the policy for metal compound categories, this means that the effects induced by both a metal ion and the intact species described by the metal compound category must be considered in light of the EPCRA section 313(d)(2) criteria. The effects induced by each metal ion described by the metal compound categories meet the criteria under EPCRA section 313(d)(2). To delete a metal compound from the EPCRA section 313 list, EPA must conclude that the metal ion will not become available at a level that can be expected to induce toxicity of a type described in EPCRA section 313(d)(2), and that the intact species does not meet the criteria of EPCRA section 313(d)(2). Accordingly, EPA will generally deny petitions to delete chemicals if: (1) The intact species meets the EPCRA section 313(d)(2) criteria, (2) the chemical will dissociate or react to generate the metal ion at levels which can reasonably be anticipated to cause adverse effects as described in EPCRA section 313(d)(2), or (3) EPA does not possess and the petitioners failed to provide information to properly characterize the metal ion availability.

### III. Technical Review

The Agency has previously addressed the transformation processes that may generate copper ion from copper phthalocyanine compounds in its review of a petition to delete three copper phthalocyanine pigments (Pigment Blue 15, copper phthalocyanine; Pigment Green 7, copper poly(14)chlorophthalocyanine; and Pigment Green 36, copper hexabromodecachlorophthalocyanine) from EPCRA section 313 reporting requirements. These three copper phthalocyanine pigments were deleted from EPCRA section 313 on May 23, 1991 (56 FR 23650), because copper ion could not reasonably be expected to become available from these pigments and because there was no indication from the available data that the intact pigments could reasonably be anticipated to cause acute, chronic, or environmental toxicity. No data on the specific copper monochlorophthalocyanine compounds which are the subject of this petition were found. However, in its analysis of the three previously deleted compounds, the Agency used data on both brominated/chlorinated copper phthalocyanine and copper phthalocyanine. This information was selected because Pigment Blue 15, Pigment Green 7, and Pigment Green 36 ranged in degree of bromination/chlorination from zero (Pigment Blue 15) to 100 percent (Pigment Green 36). The transformation potential of many organic compounds is dependent, in part, on the number of bromine or chlorine atoms present in the molecule. Although there are exceptions, generally, the more highly brominated or chlorinated an organic compound is, the less likely it is to undergo biotic or abiotic transformations. Once the transformation potential for copper phthalocyanine pigments at the extremes of the range of possible bromination/chlorination had been assessed, the transformation potential for those copper phthalocyanine pigments with bromination/chlorination greater than zero and less than 100 percent, including copper monochlorophthalocyanine, could be inferred. The transformation processes reviewed included, hydrolysis, photolysis, abiotic and biotic aerobic degradation, abiotic and biotic anaerobic degradation, bioavailability of the ion when the compounds are ingested or inhaled, and bioaccumulation. The following discussion summarizes the information reviewed.

1. *Copper ion* (Refs. 2 and 7). Copper is recognized as an essential element. It is essential to a number of normal physiological processes including erythropoiesis, connective tissue metabolism, bone development, and nervous system function. The National Academy of Sciences' recommended daily allowance (RDA) for adults is 2.0 to 3.0 milligrams (mg) copper/day. Copper is also used as a hematinic (to stimulate red blood cell production) in adults at a dose of 3.8 to 7.6 mg/day.

a. *Human health effects.* Copper poisoning has been demonstrated in animals and identified in humans. The liver is the main storage depot for copper, and hepatic damage is associated with the accumulation of high levels of copper. Hepatic toxicity is characterized by hepatocellular necrosis, regenerative activity, and cirrhosis. Kidney necrosis and elevated levels of serum copper occur only after the liver begins to accumulate high levels of copper. These elevated serum copper levels can progress to sudden hemolytic anemia and jaundice.

The types of neurological effects associated with copper poisoning can include demyelination and cerebral degeneration. These effects are thought to be related to defects in catecholamine metabolism. Alterations in brain neurotransmitter systems have been observed in rats following intraperitoneal injections of 2 milligrams/kilogram/day (mg/kg/day) for 21 days. There are two groups that are at a particularly increased risk from copper exposure. These include individuals with Wilson's disease, which is an inborn error in copper metabolism. The metabolic error in Wilson's disease allows copper to accumulate in the liver, brain, kidney, and cornea, causing hemolytic anemia, neurological abnormalities, and corneal opacity. In addition, individuals with glucose-6-phosphate dehydrogenase deficiencies may also be at greater risk of experiencing toxic effects from copper exposure.

Copper is classified in EPA's Group D (insufficient data) for carcinogenic potential. Copper is generally negative in mutagenicity bioassays. Oral bioassays using copper were negative; subcutaneous injection of copper compounds has been reported to induce tumor formation in one sex and strain of mice.

The maximum contaminant level (MCL) established for copper under the Safe Drinking Water Act is 1.3 milligrams/liter (mg/L) (3.6 mg/day).

b. *Ecological effects.* Copper is very toxic to aquatic life. It is sometimes used as a biocide to control undesirable

aquatic plants. EPA has issued Water Quality Criteria for copper to protect aquatic life. The acute criterion in fresh water at a hardness of 50 mg/L is 9.2 micrograms/liter (ug/L). The chronic criterion in fresh water is 6.5 ug/L at a hardness of 50 mg/L. In salt water at a hardness of 50 mg/L, the acute criterion is 2.9 ug/L. At a hardness of 100 mg/L, the freshwater acute criterion is 18 ug/L, the freshwater chronic criterion is 12 ug/L, and the salt water acute criterion is 2.9 ug/L.

2. *Availability of copper ion.* The copper monochlorophthalocyanine pigments are expected to be extremely stable to chemically and biologically induced transformations.

a. *Thermal stability.* Based on their structural analogy to other copper phthalocyanine pigments, copper monochlorophthalocyanine pigments are expected to be extremely stable thermally. Copper phthalocyanine pigments only begin to show signs of decomposition at temperatures above 500 °C (Ref. 6).

b. *Hydrolysis.* Copper phthalocyanine pigments have very low solubilities in water and are not expected to dissociate or hydrolyze in water under environmental conditions. Hydrolysis of copper phthalocyanine pigments does not occur in basic and nonoxidizing acidic media (Ref. 3). By structural analogy to copper phthalocyanine pigments for which data are available, hydrolysis of the copper monochlorophthalocyanine pigments is not expected to be a significant environmental transformation process.

c. *Photolysis.* Based on studies carried out to determine the light fastness of structurally similar copper phthalocyanine pigments, it appears that photolysis of copper monochlorophthalocyanine pigments with resultant release of copper ion will not occur (Ref. 4).

d. *Abiotic oxidation.* Data indicate that under ambient environmental conditions, abiotic oxidation of copper phthalocyanine pigments does not occur. More rigorous conditions are required to effect the oxidation of copper phthalocyanine pigments and subsequent release of copper ion. These pigments can be chemically oxidized to yield phthalimides and copper nitrate by boiling in dilute nitric acid (Ref. 3). Oxidation of the pigments can also occur by treatment with ceric sulfate in dilute sulfuric acid at 25 °C, or by reaction with potassium permanganate (Ref. 1). Because rigorous conditions are required to oxidize copper phthalocyanine pigments, abiotic oxidation of copper monochlorophthalocyanine pigments

under ambient environmental conditions is not likely to occur.

e. *Microbial transformations.* No data on the anaerobic or aerobic biodegradability of the copper monochlorophthalocyanine pigments were found. However, based on their extremely low solubility in water, their large cross-sectional diameter, and, with the exception of the chlorine, the lack of substituent groups associated with facile primary degradation, copper monochlorophthalocyanine pigments are expected to be very resistant to degradation processes (Ref. 5).

f. *Bioavailability.* On the basis of molecular weight, extremely low solubility in water, and data from subchronic toxicity tests on other copper phthalocyanine pigments (Ref. 7), copper monochlorophthalocyanine is not expected to be appreciably absorbed by any route of exposure or metabolized to yield copper ion.

g. *Bioaccumulation.* Because copper ion does not appear to be available from the copper phthalocyanine pigments, bioaccumulation of copper ion is not a concern for copper monochlorophthalocyanine pigments.

h. *Summary.* By virtue of their structural analogy to other copper phthalocyanine pigments, EPA believes that the availability of copper ion from the copper monochlorophthalocyanine pigments by hydrolysis, photolysis, and aerobic and anaerobic transformations is negligible. Copper ion is not expected to be bioavailable from the copper monochlorophthalocyanine pigments. The copper monochlorophthalocyanine pigments are not expected to be appreciably absorbed by any route of exposure or metabolized to yield the copper ion.

3. *Manufacturing, use, and release.* Phthalocyanine blue pigments, such as copper monochlorophthalocyanine, are generally manufactured using one of two methods. Copper monochlorophthalocyanine is manufactured by a phthalonitrile baking process or a solvent process. The phthalonitrile baking process yields a range of 70 to 85 percent of product. The solvent process is more popular and yields a purer form with a yield of 85 to 95 percent of product. Following the synthesis the crude product is isolated. Finishing of the crude pigment can involve any of a number of processes such as dissolution in acid followed by controlled precipitation, intensive milling with urea and sulfuric acid, milling with sodium chloride, or milling with sodium chloride and solvent.

Copper monochlorophthalocyanine is often used in combination with other colorants. The primary uses of copper

monochlorophthalocyanine mixtures are as colorants for coatings, paints, printing inks, and plastics.

The EPCRA section 313 reported releases of copper from three facilities which were identified as manufacturers of copper monochlorophthalocyanine were 2,354 pounds in 1990 and 491 pounds for 1991. Facilities that process or use copper monochlorophthalocyanine pigment could not be identified and therefore releases from these facilities could not be estimated.

#### IV. Explanation for Proposed Action To Delete Copper Monochlorophthalocyanine

EPA is granting the petition and proposing to delete copper monochlorophthalocyanine from the copper compounds category of the EPCRA section 313 list of toxic chemicals. As stated in Unit II. of this preamble, petitions for delisting a member of a metal compound category will be denied unless EPA can conclude that the intact species does not meet the criteria of section 313(d)(2) and the metal ion will not be available at a level that can reasonably be anticipated to induce toxicity. This decision to propose to delist copper monochlorophthalocyanine is based on EPA's belief that: (1) The intact species does not meet the EPCRA section 313(d) criteria and (2) the copper ion from copper monochlorophthalocyanine will not become available.

After reviewing the petition and available information, EPA has concluded that copper monochlorophthalocyanine is not known to cause or cannot reasonably be anticipated to cause acute or chronic toxicity in humans or adverse effects in the environment, and thus does not meet the criteria of EPCRA section 313(d)(2).

#### V. Request for Public Comment

EPA requests public comment on this proposed rule to delete copper monochlorophthalocyanine from the category "copper compounds" on the EPCRA section 313 list of toxic chemicals. In addition, EPA requests comment on the alternative of exempting all copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine or chlorine from the reporting requirements under the "copper compounds" category on the EPCRA section 313 list. As stated in Unit III. of this preamble, EPA has previously reviewed brominated/chlorinated copper phthalocyanine compounds as well as the parent compound, copper

phthalocyanine, and believes that its conclusions regarding the availability of soluble copper from these compounds apply to all copper phthalocyanine compounds that are substituted with only hydrogen and/or bromine or chlorine. Comments should be submitted to the address listed under the ADDRESSES unit. All comments must be received by EPA on or before August 5, 1994.

#### VI. Rulemaking Record

The record supporting this proposed rule is contained in docket number OPPTS-400085. All documents, including an index of the docket, are available in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office from noon to 4 p.m., Monday through Friday, excluding legal holidays. TSCA NCIC is located at EPA Headquarters, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

#### VII. References

- (1) Dent, C.E., Linstead, R.P., and Lowe, A.R., *Journal of the Chemical Society* 1033-1039 (1934).
- (2) IRIS. 1992. Integrated Risk Information System. U.S. Environmental Protection Agency, Washington, DC.
- (3) Lever, A.B.P. "The Phthalocyanines." In: *Handbook of Pigments* J. Wiley and Sons, New York, NY (1975):27-114.
- (4) USEPA, OPPTS, EED. Memorandum from D. Lynch to J. Rovinski, ETD entitled "Exposure Report for Copper Phthalocyanine Petition," dated October 7, 1988.
- (5) USEPA, OPTS, EED. Memorandum from D. Lynch to M. Doa, ETD entitled "Anaerobic Biodegradation of Copper Phthalocyanine Pigments," dated October 5, 1990.
- (6) USEPA, OPTS, ETD. Memorandum from R. Raksphal to K. Moss, ETD entitled "Section 313(e) Petition on Three Phthalocyanine Pigments," dated June 28, 1988.
- (7) USEPA, OPTS, HERD. Memorandum and attachments from L. Randecker to R. Kent, HERD entitled "Petition to Delist Three Copper Phthalocyanine Pigments," dated October 3, 1988.
- (8) USEPA, OPPT, EETD. Darling, D., "Chemistry Report for the Proposed Deletion of Monochlorophthalocyanine Blue (C.I. Pigment 15:2) from the EPCRA Section 313 List of Toxic Chemicals," dated February 9, 1994.
- (9) USEPA, OPPT, EETD. "Economic Analysis of the Proposed Deletion of Monochlorophthalocyanine Blue from the EPCRA Section 313 List of Toxic Chemicals," dated January 19, 1994.

(10) USEPA, OPPT, EETD. Memorandum from J. Jon to D. Lynch, EETD entitled "Engineering Report for Monochlorophthalocyanine Blue," dated February 2, 1994.

#### VIII. Regulatory Assessment Requirements

##### A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Section 3(f) of the Order defines a "significant regulatory action" as an action likely to lead to a rule (1) Having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, it has been determined that this proposed rule is not "significant" and therefore not subject to OMB review.

##### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980, the Agency must conduct a small business analysis to determine whether a substantial number of small entities would be significantly affected by the proposed rule. Because the proposed rule eliminates an existing requirement, it would result in cost savings to facilities, including small entities.

##### C. Paperwork Reduction Act

This proposed rule does not have any information collection requirements subject to the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

##### List of Subjects in 40 CFR Part 372

Environmental protection, Chemicals, Community right-to-know, Reporting and recordkeeping requirements, and Toxic chemicals.

Dated: May 23, 1994.

Lynn R. Goldman,

Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 372 be amended as follows:

1. The authority citation for part 372 would continue to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

#### § 372.65 [Amended]

2. In § 372.65(c) by adding the following language to the copper compounds listing "(except copper monochlorophthalocyanine known by the following CAS numbers 15975-60-7, 147-13-7, and 12239-87-1)."

[FR Doc. 94-13677 Filed 6-3-94; 8:45 am]

BILLING CODE 6560-50-F

#### 40 CFR Part 721

[OPPTS-50612B; FRL-4750-4]

RIN 2070-AB27

#### Aromatic Amino Ether; Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

**SUMMARY:** EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for the chemical substance described generically as an aromatic amino ether which is the subject of premanufacture notice (PMN) P-90-1840 and which is subject to a TSCA section 5(e) consent order issued by EPA. This proposal would require certain persons who intend to manufacture, import, or process this substance for a significant new use to notify EPA at least 90 days before commencing any manufacturing, importing, or processing activities for a use designated by this SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it can occur. **DATES:** Written comments must be received by EPA by July 6, 1994. **ADDRESSES:** Each comment must bear the docket control number OPPTS-50612B. All comments should be sent in triplicate to: TSCA Document Receipt Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-201, 401 M St., SW., Washington, DC 20460. All comments which are claimed confidential must be clearly marked as

such. Three additional sanitized copies of any comments containing confidential business information (CBI) must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection.

**FOR FURTHER INFORMATION CONTACT:** Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543B, 401 M St., SW., Washington, DC 20460. Telephone: (202) 554-1404, TDD: (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** This proposed SNUR would require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of P-90-1840 for the significant new uses designated herein. The required notice would provide EPA with information with which to evaluate an intended use and associated activities.

### I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. Section 26(c) of TSCA authorizes EPA to take action under section 5(a)(2) with respect to a category of chemical substances.

Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices under section 5(a)(1) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUR notice, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the *Federal Register* its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section

12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707.

### II. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. On July 27, 1988 (53 FR 28354), and July 27, 1989 (54 FR 31298), EPA promulgated amendments to the general provisions which apply to this SNUR. In the *Federal Register* of August 17, 1988 (53 FR 31252), EPA promulgated a "User Fee Rule" (40 CFR part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting significant new use notices to submit certain fees to EPA are discussed in detail in that *Federal Register* document. Interested persons should refer to these documents for further information.

### III. Background

EPA published a direct final SNUR for the chemical substance, which was the subject of PMN P-90-1840 and a TSCA section 5(e) consent order issued by EPA, in the *Federal Register* of October 4, 1993 (58 FR 51672). EPA received adverse comments following publication for this chemical substance. Therefore, as required by § 721.160, the final SNUR for P-90-1840 is being withdrawn elsewhere in this issue of the *Federal Register* and this proposed rule on the substance is being issued.

EPA is not soliciting and will not respond to comments on any of the other SNURs that were published in the October 4, 1993, *Federal Register* because those rules became final effective rules on December 3, 1993, or are being withdrawn and proposed in a separate action. The supporting rationale and background to this proposal are more fully set out in the preamble to the direct final SNUR for this substance and in the preamble to EPA's first direct final SNURs published in the *Federal Register* of April 24, 1990 (55 FR 17376). Consult that preamble for further information on the objectives, rationale, and procedures for the proposal and on the basis for significant new use designations including provisions for developing test data.

### IV. Substance Subject to This Rule

EPA is proposing significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721.

#### PMN Number P-90-1840

*Chemical name:* (generic) Aromatic amino ether.

*CAS number:* Not available.

*Effective date of section 5(e) consent order:* November 5, 1992.

*Basis for section 5(e) consent order:* The order was issued under section 5(e)(1)(A)(i) and (ii)(I) of TSCA based on a finding that this substance may present an unreasonable risk of injury to health and the environment.

*Toxicity concern:* The PMN substance and similar chemicals have been shown to cause mutagenicity, carcinogenicity, neurotoxicity (retinopathy), hepatotoxicity, reproductive effects, and aquatic toxicity at concentrations as low as 1 ppb (part per billion) in test animals.

*Recommended testing:* A 90-day subchronic rodent study (oral or inhalation route) with special attention given to hepatotoxicity, histopathological exam of the male and female reproductive organs, and retinopathy is needed to help characterize the neurotoxic, hepatotoxic, and reproductive effects of the PMN substance. The 90-day study must also include for each treatment group a satellite group of exposed animals to be retained for an additional 90-day recovery period to evaluate the possible reversibility of retinopathy. Light and electron microscopy should be utilized to examine the ocular tissue (40 CFR 798.2650, modified). A 2-year two-species bioassay (40 CFR 798.3300) is also necessary to characterize the carcinogenic potential of the PMN substance. The consent order contains two production volume limits. The PMN submitter has agreed not to exceed the first production limit without performing the 90-day subchronic study. The PMN submitter has also agreed not to exceed the second, higher production volume limit without performing the 2-year, two-species bioassay. In addition, an early life stage toxicity study (40 CFR 797.1600), a *Daphnia* chronic toxicity study (40 CFR 797.1330), an algal acute toxicity study (40 CFR 797.1050), and a coupled units test (40 CFR 796.3300) would characterize the potential aquatic toxicity effects.

*CFR citation:* 40 CFR 721.3390.

### V. Applicability of SNUR to Uses Occurring Before Effective Date of the Final SNUR

EPA has decided that the intent of section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of proposal rather than as of the effective date of the rule. Because this SNUR was first published on October 4, 1993, as a direct final rule, that date will serve as the date after which uses will be considered to be new uses. If uses which had commenced

between that date and the effective date of this rulemaking were considered ongoing, rather than new, any person could defeat the SNUR by initiating a significant new use before the effective date. This would make it difficult for EPA to establish SNUR notice requirements. Thus, persons who begin commercial manufacture, import, or processing of the substance for uses regulated through this SNUR after October 4, 1993, will have to cease any such activity before the effective date of the rule. To resume their activities, such persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA, not wishing to unnecessarily disrupt the activities of persons who begin commercial manufacture, import, or processing for a proposed significant new use before the effective date of the SNUR, has promulgated provisions to allow such persons to comply with this proposed SNUR before it is promulgated. If a person were to meet the conditions of advance compliance as codified at § 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities. If persons who begin commercial manufacture, import, or processing of the substance between proposal and the effective date of the SNUR do not meet the conditions of advance compliance, they must cease that activity before the effective date of the rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires.

#### VI. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance at the time of the direct final rule. The analysis is unchanged for the substance in this proposed rule. The Agency's complete economic analysis is available in the public record for this proposed rule (OPPTS-50612B).

#### VII. Comments Containing Confidential Business Information

Any person who submits comments claimed as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the

procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a nonconfidential public version in triplicate of the comments that EPA can place in the public file.

#### VIII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS-50612B). The record includes basic information considered by the Agency in developing this proposed rule. EPA will supplement the record with additional information as it is received.

EPA will accept additional materials for inclusion in the record at any time between this proposal and designation of the complete record. EPA will identify the complete rulemaking record by the date of promulgation.

A public version of the record, without any CBI, is available in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office, from 12 noon to 4 p.m., Monday through Friday, except legal holidays. NCIC is located in Rm. E-G102, 401 M St., SW., Washington, DC 20460.

#### IX. Regulatory Assessment Requirements

##### A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) Having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order. Pursuant to the terms of this Executive Order, EPA has determined that this proposed rule is not "significant" and is therefore not subject to OMB review.

#### B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this proposed rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this proposed rule would likely be small businesses. However, EPA expects to receive few SNUR notices for the substance. Therefore, EPA believes that the number of small businesses affected by the rule would not be substantial, even if all of the SNUR notice submitters were small firms.

#### C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this proposed rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and has assigned OMB control number 2070-0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (2131), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information requirements contained in this proposed rule.

#### List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: May 24, 1994.

Lynn R. Goldman,  
Assistant Administrator for Prevention,  
Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

#### PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

2. By adding new § 721.1640 to subpart E to read as follows:

**§ 721.1640 Aromatic amino ether.**

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as aromatic amino ether (PMN P-90-1840) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The requirements of this section do not apply once the substance has been incorporated into a final product with residual monomer 50 ppm (parts per million) by weight.

(2) The significant new uses are:

(i) *Protection in the workplace.*

Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(ii), (a)(2)(iii), (a)(3), (a)(4), (a)(5)(i), (a)(6)(i), (b)(concentration set at 0.1 percent), and (c). The demonstration of an impervious barrier for gloves required under paragraph (a)(3) of this section will require testing of the gloves as follows. There must be no permeation of the PMN substance greater than 2 ppm after 8 h of testing in accordance with the American Society for Testing and Materials (ASTM) F739 "Standard Test Method for Resistance of Protective Clothing Materials to Permeation by Liquids and Gases" and ASTM F1194 "Guide for Documenting the Results of Chemical Permeation Testing of Protective Clothing Materials." The employer must submit all test data to the Agency and must receive the Agency's written approval of the test results for each type of glove tested prior to use of such gloves. Gloves may not be used for a time period longer than they are actually tested and must be replaced at the end of the work shift. As an alternative to the respiratory requirements in this section, manufacturers, importers, and processors may use the new chemical exposure limits provisions, including sampling and analytical methods which have previously been approved by EPA for this substance, found in the 5(e) consent order for this substance.

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (g)(1)(vi), (g)(1)(vii), (g)(2)(i), (g)(2)(ii), (g)(2)(iii), (g)(2)(iv), (g)(2)(v), (g)(3)(i), (g)(3)(ii), (g)(4), and (g)(5). The following additional statements shall appear on each label and MSDS as required by this paragraph: This substance may cause liver damage. This substance may cause retinopathy.

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(l) and (q).

(iv) *Release to water.* Requirements as specified in § 721.90(a)(4), (b)(4), and (c)(4) (where N = 1 ppb). When calculating the surface water concentrations according to the instructions in § 721.91(a)(4), the statement that the amount of the substance that will be released will be calculated before the substance enters control technology does not apply. Instead, if the waste stream containing the PMN substance will be treated before release, the amount of the PMN substance reasonably likely to be removed from the waste stream by treatment may be subtracted in calculating the number of kilograms released. No more than 45 percent removal efficiency may be attributed to such treatment.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements as specified under § 721.125(a) through (i) and (k) are applicable to manufacturers, importers, and processors of this substance.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) Determining whether a specific use is subject to this section. The provisions of § 721.1725(b)(1) apply to this section.

[FR Doc. 94-13681 Filed 6-3-94; 8:45 am]  
BILLING CODE 6560-50-F

**40 CFR Part 721**

[OPPTS-50575E; FRL-4745-8]

**Substituted Ethylenediamine, Methyl Sulfate Quaternized; Revocation of a Significant New Use Rule**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

**SUMMARY:** EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for substituted ethylenediamine, methyl sulfate quaternized, based on receipt of new data. The data indicate that for purposes of TSCA section 5, the substance will not present an unreasonable risk to the environment. **DATES:** Written comments must be received by EPA by July 6, 1994.

**ADDRESSES:** All comments must be sent in triplicate to: TSCA Document Receipt Office (7407), Office of Pollution

Prevention and Toxics, Environmental Protection Agency, Rm. E-G99, 401 M St., SW., Washington, DC 20460.

Comments that are confidential must be clearly marked confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS-50575. Unit III. of this preamble contains additional information on submitting comments containing CBI.

**FOR FURTHER INFORMATION CONTACT:**

Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E-543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554-1404, TDD: (202) 554-0551. **SUPPLEMENTARY INFORMATION:** In the Federal Register of April 24, 1990 (55 FR 17376), EPA issued a SNUR establishing significant new uses for substituted ethylenediamine, methyl sulfate quaternized. Because of additional data EPA has received for this substance, EPA is proposing to revoke this SNUR.

**I. Proposed Revocation**

EPA is proposing to revoke the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for the substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS number (if assigned), basis for the revocation of the section 5(e) consent order for the substance, and the CFR citation removed in the regulatory text section of this proposed rule. Further background information for the substance is contained in the rulemaking record referenced below in Unit IV. of this preamble.

**PMN Number P-89-650**

**Chemical name:** (generic) Substituted ethylenediamine, methyl sulfate quaternized.

**CAS number:** Not available.

**Effective date of revocation of section 5(e) consent order:** July 28, 1993.

**Basis for revocation of section 5(e) consent order:** The order was revoked based on test data submitted under the terms of the consent order. Based on the Agency's analysis of the submitted data, EPA has sufficient information to

determine, for purposes of TSCA section 5, that the manufacture, processing, distribution in commerce, use, or disposal of the PMN substance will not present an unreasonable risk to the environment. Accordingly, EPA has determined that further regulation under section 5(e) is not warranted at this time.

*Toxicity testing results:* Algal toxicity study: 96-h EC50 = 320.0 mg/L  
Daphnid acute toxicity study: 48-h NEC = 390.0 mg/L  
Fish acute toxicity study: 96-h NOEC = 1,000.0 mg/L  
*CFR citation:* 40 CFR 721.3580.

## II. Objectives and Rationale for Proposed Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the environmental effects of the substance, and that the substance is expected to be produced in substantial quantities and there may be significant or substantial environmental exposure. EPA identified the tests necessary to make a reasoned evaluation of the risks posed by the substance to the environment. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated.

EPA reviewed testing conducted by the PMN submitter pursuant to the consent order for the substance and determined that the information available was sufficient to make a reasoned evaluation of the environmental effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and consequently revoked the section 5(e) consent order. The proposed revocation of SNUR provisions for this substance designated herein is consistent with the revocation of the section 5(e) order.

In light of the above, EPA is proposing a revocation of SNUR provisions for this chemical substance. When this revocation becomes final, EPA will no longer require notice of any company's intent to manufacture, import, or process this substance. In addition, export notification under section 12(b) of TSCA will no longer be required.

## III. Comments Containing Confidential Business Information

Any person who submits comments claimed as confidential business information must mark the comments as "confidential," "trade secret," or other

appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

## IV. Rulemaking Record

The record for the rule which EPA is proposing to revoke was established at OPPTS-50575 (P-89-650). This record includes information considered by the Agency in developing the rule and includes the test data that formed the basis for this proposal.

## V. Regulatory Assessment Requirements

EPA is proposing to revoke the requirements of the rule. Any costs or burdens associated with the rule will be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

### List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: May 25, 1994.

**Lynn R. Goldman,**  
*Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

### PART 721—[AMENDED]

1. The authority citation for part 721 will continue to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, and 2625(c).

#### § 721.3580 [Removed]

2. By removing § 721.3580.  
[FR Doc. 94-13682 Filed 6-3-94; 8:45 am]

BILLING CODE 6560-50-F

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 46 CFR Part 40 and 154

[CGD 82-058]

### Safety Standards for Self-Propelled Vessels Carrying Bulk Liquefied Gases

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to amend its regulations concerning safety standards for self-propelled vessels carrying bulk liquefied gases. These amendments are necessary because the International Maritime Organization (IMO) Code on which many of these regulations are based has been amended. This proposal would make the changes necessary to align these regulations with the IMO Code and to clarify certain provisions in the existing regulations.

**DATES:** Comments must be received on or before August 5, 1994.

**ADDRESSES:** Comments may be mailed to the Executive Secretary, Marine Safety Council, (G-LRA/3406) (CGD 82-058), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477. Comments on collection-of-information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters between 8 a.m., Monday through Friday, except Federal holidays.

A copy of the material listed in "Incorporation by Reference" of this preamble is available for inspection at room 1218, U.S. Coast Guard Headquarters.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas J. Felleisen, Hazardous Materials Branch, Office of Marine Safety, Security and Environmental Protection, (202) 267-1217.

#### SUPPLEMENTARY INFORMATION:

##### Requests for Comments

The Coast Guard encourages interested persons to participate in this

rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 82-058) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that two copies of all comments and attachments be submitted in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

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

#### Drafting Information

The principal persons involved in drafting this document are Mr. Thomas J. Felleisen, Project Manager, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

#### Background and Purpose

On November 12, 1975, the Inter-Governmental Maritime Consultative Organization (now the International Maritime Organization or IMO) adopted the "Code for Construction and Equipment of Ships Carrying Liquefied Gases in Bulk" (Gas Carrier Code), Resolution, A.328 (IX) without amendments. Coast Guard regulations based on this code were put into effect May 3, 1979 (44 25986). Since 1975, the Gas Carrier Code has been amended four times: April 19, 1978 (see Maritime Safety Committee (MSC) XXXVIII/22), May 8, 1979 (see MSC XL/26), May 20, 1980 (see MSC/Cir. 284), and June 14, 1983 (see MSC/Cir. 356).

IMO's amendments to the Gas Carrier Code include corrections and clarifications, incorporation of standards for new or novel containment systems, improvement of the carriage requirements for several of the more hazardous cargoes, expansion of the list of chemicals to which the code applies, and revisions to align the Gas Carrier Code with the "International Code for the Construction and Equipment of

Ships Carrying Dangerous Chemicals in Bulk" (IBC) and the "International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk" (IGC).

These amendments were developed by the IMO Subcommittee on Bulk Chemicals, the body responsible for maintenance of the Code. The Coast Guard actively participated in the development of these changes to the Gas Carrier Code by submitting position papers when the amendments were proposed. This rulemaking would revise the Coast Guard regulations in 46 CFR part 154 to reflect these amendments.

One of the most notable revisions would be the inclusion of standards for internal insulation tanks in new §§ 154.454 through 154.458, as well as in several existing sections. These standards would be included in order to bring the U.S. regulations for liquefied gas vessels in line with the Gas Carrier Code.

Part 154 would be revised to include carriage requirements for seven cargoes previously regulated only under 46 CFR part 153. The cargoes are diethyl ether, a mixture of ethylene oxide and propylene oxide containing not more than 30% ethylene oxide, isoprene, isopropylamine, monoethylamine, propylene oxide, vinyl ethyl ether, and vinylidene chloride. These cargoes are being added in order to bring the U.S. regulations for liquefied gas vessels in line with the Gas Carrier Code.

Several sections of part 154 would be revised to clarify misinterpreted provisions. These are in §§ 154.630, 154.901, 154.1831, 154.1832, and 154.1834. See "Section-by-Section Discussion of Proposed Changes" for the details of each clarification.

#### Section-by-Section Discussion of Proposed Changes

The following is a section by section explanation of the proposed changes.

1. 46 CFR part 40 would be removed. See the discussion in this section of the preamble on § 154.1745.

2. Existing § 154.1, Incorporation by reference, would be moved to new § 154.8 and revised to conform to current formatting practices.

3. The following sections would be revised to include requirements from the amended Gas Carrier Code applicable to internal insulation tanks: §§ 154.7, 154.235, 154.350, 154.454 through 154.459, 154.468, 154.615, and 154.902.

4. The following sections would be revised to update references to other sections of this chapter and to incorporated material and to correct spelling errors: §§ 154.12, 154.15,

154.151, 154.174, 154.176, 154.188, 154.195, 154.420, 154.439, 154.440, 154.448, 154.471, 154.1005, 154.1020, 154.1115, 154.1135, 154.1735, 154.1800, 154.1803, and 154.1820.

5. Section 154.19 would be revised to refer to the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk and to correct the date on the Gas Carrier Code for Existing Ships. The correct date is 1976.

6. Section 154.170 would be revised in accordance with an amendment to the Gas Carrier Code which sets the design temperature of the primary and secondary cargo tank barriers. Also, paragraph (a) would be revised to comply with present procedures for incorporating material by reference.

7. Table 1 (§ 154.172) would be revised to align it with the Gas Carrier Code by including higher tensile steel grades AH, DH, and EH for vessels designed for prolonged exposure to low service temperatures. The revisions to this table also would allow the use of grade A steel for design temperatures of down to -5 °C for thicknesses of up to 15mm. The reference in the table to an American Bureau of Shipping (ABS) standard would be updated.

8. Section 154.300 would be revised to allow category A machinery spaces, for example spaces for bow thruster machinery, to be located forward of hold spaces if specially approved by the Commandant (G-MTH).

9. Section 154.315 would be revised to allow the Coast Guard to accept arrangements where the cargo pump room or cargo compressor room is located outside of the cargo area, as "cargo area" is defined in § 154.7, if the limits of the cargo area are extended to include the cargo pump or compressor room and the areas below those spaces. The Coast Guard has accepted these arrangements in the past, but only on a case by case basis. In granting those acceptances, the Coast Guard used the same criteria that is contained in the amendments to the Gas Carrier Code which this notice proposes to adopt. Proposed § 154.315 continues to exceed the Gas Carrier Code in that the Gas Carrier Code allows cargo pump and compressor rooms to be located below the weather deck. The Coast Guard takes the position that locating the cargo pump and cargo compressor rooms on the weather deck reduces the likelihood of permitting vapor accumulation in those rooms. Of course, such arrangements would be considered under the provisions of § 154.32 on equivalents. This is consistent with the amendments to the Gas Carrier Code which require special approval for

specified locations of the cargo pump and cargo compressor rooms.

Section 154.315 also would be revised to require that personnel wearing protective clothing have complete access to cargo pump and compressor rooms and are able to operate all valves necessary for cargo handling.

10. Section 154.320 would be revised to align it with the Gas Carrier Code by specifying allowable openings for cargo control stations not having access to accommodation, service, or control spaces.

11. Section 154.330 would be revised to align it with the Gas Carrier Code by allowing less stringent requirements for openings to accommodation, service, or control spaces on vessels dedicated to cargoes which are neither toxic nor flammable.

12. Section 154.340 would be revised to clarify what is considered to be an acceptable access to gas-dangerous spaces, such as duct keels and ballast compartments, and also to clarify that entry into fuel oil tanks must not be necessary in order to perform inspections of the inner hull in the cargo area. These revisions correspond to amendments made to the Gas Carrier Code.

13. Section 154.345 would be revised to make it clear when airlocks are required. The proposal also would prohibit essential electrical equipment which is non-explosion proof from being in a space protected by an airlock. This is necessary because non-explosion proof electrical equipment in such a space must be automatically deenergized upon pressure loss in the space.

14. Section 154.350 would be revised, as was the Gas Carrier Code, to waive the requirement for liquid leak detection for certain spaces in internal insulation cargo containment systems, provided that those spaces are completely filled with approved insulation.

15. Section 154.407 would be revised to designate the liquid height as "Z<sub>B</sub>" and to clarify that the definition of Z<sub>B</sub> does not include small tank domes which are not considered part of the accepted total volume of the cargo tank. This amendment is consistent with the Gas Carrier Code.

16. As discussed earlier, §§ 154.454 through 154.458 would be added to address the use of internal insulation tanks, as allowed by the amended Gas Carrier Code. The design of each of these tanks would be required to be approved by the Coast Guard.

17. As stated earlier, table 3 in § 154.459 would be revised to include requirements for internal insulation tanks.

18. Under § 154.468, information on certain properties of the insulation material used in internal insulation tanks would be required to be submitted to the Coast Guard for approval. These properties were added to the list of insulation properties required to be tested for internal insulation tanks under the Gas Carrier Code.

19. Section 154.519 would be revised to clarify that any cargo piping component capable of being isolated in the liquid full condition must be fitted with a relief valve.

20. Section 154.522 would be revised in accordance with the amended Gas Carrier Code to allow relaxations approved by the Commandant (G-MTH) of the minimum design temperature of open ended piping inside cargo tanks.

21. The table in § 154.610 would be revised to raise the required test temperature for material in the thickness range of 30 to 40mm from -40 °C to -20 °C, in accordance with the amended Gas Carrier Code.

22. Section 154.630 would be revised to clarify that the minimum yield strength used in the specified calculations must be the yield strength of the aluminum alloy in the annealed condition. This section currently makes reference only to the minimum tensile strength.

23. Section 154.901 would be revised to clearly state that the cargo tank atmosphere is never permitted to be in the flammable range. It is necessary to prevent a flammable atmosphere from developing on a liquefied gas vessel because there are no requirements prohibiting sources of ignition from being present. These vessels are designed and operated based on the assumption that a flammable atmosphere will never be present.

24. Section 154.1110 would be revised to include storerooms containing high fire risk items in the area to be protected by the water spray system and to clarify that each area listed is required to be covered by at least two jets of water. These amendments are in line with the amended Gas Carrier Code.

25. Section 154.1115 would be revised to include guidance for determining the required capacity of the water spray systems. This revision is based on amendments to the Gas Carrier Code.

26. Section 154.1320 would be revised to indicate that the pressure referred to is the design vapor pressure and not the MARVS. This was also clarified in the amendments to the Gas Carrier Code.

27. New § 154.1327 would provide a formula for determining the maximum

acceptable shutdown time once the emergency shutdown valve is activated. This maximum would represent the time until the tank becomes liquid full. This is consistent with amendments to the Gas Carrier Code.

28. Section 154.1343 would be added to require the installation of detectors, as required in the amended Gas Carrier Code, for determining when a leak has occurred in the primary barrier. The detectors need only indicate that there is a leak. They need not be able to pinpoint that leak.

29. Existing § 154.1400 would be revised and §§ 154.1401 and 154.1402 added to clearly indicate the required safety equipment for all vessels and the additional equipment required for vessels carrying flammable and toxic cargoes. These revisions correspond to amendments to the Gas Carrier Code.

30. Section 154.1405 would be revised, as was the Gas Carrier Code, to clearly indicate that respiratory and eye protection equipment intended for use as emergency escape equipment be so marked and never be used for fire fighting or cargo handling. This section also would prohibit the use of filter-type respiratory equipment.

31. Section 154.1705 would be updated to include requirements for cargoes added to bring these regulations in line with the Gas Carrier Code.

32. Section 154.1718 would be added to require that cargo spaces with submerged electric cargo pumps be inerted when any of the sever high vapor pressure cargoes are carried. This is required by the amended Gas Carrier Code.

33. Section 154.1720 would be updated to include the new cargoes for which indirect refrigeration is required. This is based on amendments to the Gas Carrier Code.

34. Sections 154.1721 through 154.1724 would be added to include requirements for separate piping systems for toxic products, flame screens on vent outlets, cargo tank quantity limitations, and vapor return connections. These requirements are based on the amended Gas Carrier Code.

35. Section 154.1745 would be revised to include all of the requirements from 46 CFR part 40 for vinyl chloride transfer operations. Existing § 154.1745 references part 40, but there is no reason to have part 40's requirements contained in a separate part. As part 50 addresses only vinyl chloride, this proposal would remove all of part 40 and transfer its requirements to part 154.

36. Section 154.1760 would be revised to address the problem of stress

corrosion cracking as it is addressed in the Gas Carrier Code.

37. Section 154.1765 would be added to set forth the requirements for the carriage of diethyl ether and vinyl ethyl ether in accordance with the amended Gas Carrier Code.

38. New §§ 154.1770 and 154.1775 would be added to set forth the requirements for the carriage of propylene oxide and mixtures of ethylene oxide and propylene oxide which contain no more than 30% ethylene oxide by weight. These requirements are consistent with the amended Gas Carrier Code.

39. Section 154.1818 would be revised to add new products to the list of products which may be carried if the shipper certifies that they are inhibited. This revision is in accordance with the amended Gas Carrier Code.

40. Section 154.1831 would be revised to list the qualifications of the person in charge of cargo transfer operations. Section 155.710 of 33 CFR, as referenced in proposed paragraph (a), was amended by a separate Coast Guard rulemaking (CGD 86-034; "Hazardous Materials Pollution Prevention") applying § 155.710 to hazardous materials transfers as well as to oil transfers.

41. Section 154.1832 would be added to clarify the necessary separation of cargo containment systems for incompatible cargoes. This section is being proposed to ensure that incompatible cargoes are not allowed to come in contact with each other on the vessel.

42. Section 154.1834 would be revised to clarify the responsibilities of the person in charge of cargo transfer operations to ensure that the proper piping is used and to ensure that cargo vapors are properly handled.

43. Section 154.1850 would be revised to focus attention on the special problems caused by the gas absorbing qualities of internal insulation materials. This is in accordance with the amended Gas Carrier Code.

44. Section 154.1870 would be revised to update the list of cargoes which are prohibited from being transferred via bow or stern loading piping. This revision is based on the amendments to the Gas Carrier Code.

45. Section 154.7 and the table 4 following existing § 154.1872 would be revised to include the minimum requirements for the new cargoes added in accordance with the amended Gas Carrier Code and to update existing requirements and references.

#### Incorporation by Reference

The following material would be incorporated by reference in § 154.8:

American Bureau of Shipping (ABS) Rules for Building and Classing Steel Vessels, 1992.

American National Standards Institute (ANSI) Z87.1-1989 Practice for Occupational and Educational Eye and Face Protection, 1989.

ANSI Z89.1-1986 Protective Headwear for Workers, 1986.

American Society for Testing and Materials (ASTM) A 20/A 20M-92a Standard Specifications for General Requirements for Steel Plates for Pressure Vessels, 1992.

ASTM F1017-92 Standard Specification for Flashlights on Vessels, 1992.

International Maritime Organization (IMO) Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1975, as amended (1983 edition).

IMO Code for Existing Ships Carrying Liquefied Gases in Bulk, 1976.

IMO International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1983.

IMO Medical First Aid Guide for Use in Accidents Involving Dangerous Goods.

IMO Resolution A.328, Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1975.

Underwriters Laboratories, Inc. (UL)-No. 783, Standard for Electric Flashlights and Lanterns for Use in Hazardous (Classified) Locations, 1993.

Copies of the material are available for inspection where indicated under ADDRESSES. Copies of the material are available from the sources listed in § 154.8.

Before publishing a final, the Coast Guard will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

#### Regulatory Evaluation

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

These proposed regulations would apply only to "new gas vessels", as the term is defined in § 154.7. No currently operating "new gas vessels" would be affected. There are presently no U.S. flag "new gas vessels", and currently operating foreign "new gas vessels" already meet the similar requirements of the Gas Carrier Code.

The impact of this proposal on U.S. flag vessels constructed in the future is also anticipated to be minimal, because the major part of this proposal allows for the carriage of cargoes previously required to be carried on chemical tankers and for the addition of an alternative, less expensive, cargo containment system.

As stated above, the impact on foreign flag vessels built in the future will continue to be minimal because these vessels will already comply with the requirements of the Gas Carrier Code.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 501 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

These proposals would apply only to liquefied gas vessels, all of which are large in size and owned by large corporations.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposal will have a significant economic impact on your business or organization, please submit a comment (see ADDRESSES) explaining why you think it qualifies and in what way and to what degree this proposal will economically affect it.

#### Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule that contains a collection-of-information requirement to determine whether the practical value of the information is worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This proposal contains collection-of-information requirements in the following section: § 154.15. The following particulars apply:

DOT No: 2115.

OMB Control No: 2115-0113.

Administration: U.S. Coast Guard.

Title: Safety Standards for Self-Propelled Vessels Carrying Bulk Liquefied Gases.

Need for Information: To prevent the uncontrolled release of cargo by liquefied gas carriers.

Proposed Use of Information: To verify compliance with safety regulations.

Frequency of Response: 1 per respondent per year.

Burden Estimate: 10 hours per year.

Respondents: Designers of cargo containment systems; eight worldwide

Form(s): No specific forms. Information supplied from existing plans and drawings used for designing a cargo containment system.

Average Burden Per Respondent: 10 hours per year.

The Coast Guard has submitted the requirements to OMB for review under section 3504(h) of the Paperwork Reduction Act. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under ADDRESSES.

**Federalism**

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

**Environment**

The Coast Guard considered the environmental impact of this proposal and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. There is no environmental impact associated with these expanded safety requirements. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

**American Bureau of Shipping (ABS):**

Two World Trade Center, 106th Floor, New York, NY 10048. Rules for Building and Classing

Steel Vessels, 1992 .....	154.170;	154.172;	154.174;
	154.176;	154.188;	154.195;
	154.420;	154.421;	154.439;
	154.440.		

**List of Subjects**

**46 CFR Part 40**

Cargo vessels, Hazardous materials transportation, Marine safety, Occupational safety and health, Seamen, Vinyl chloride.

**46 CFR Part 154**

Cargo vessels, Gases, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard proposes to amend 46 CFR parts 40, and 154 as follows:

**PART 40—[REMOVED AND RESERVED]**

1. Part 40 is removed and reserved.

**PART 154—SAFETY STANDARDS FOR SELF-PROPELLED VESSELS CARRYING BULK LIQUEFIED GASES**

2. The authority citation for part 154 continues to read as follows:

Authority: 46 U.S.C. 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

**§ 154.1 [Removed]**

3. Section 154.1, Incorporation by reference, is removed.

4. In § 154.7, revise the section heading, and the introductory text and paragraph (a) of the definition for "Gas-dangerous space"; remove from the list under the definitions of "Flammable cargoes" and "Toxic cargoes" the word "Ethylamine"; add, in alphabetical order, to the list under "Flammable cargoes", the cargoes "Diethyl ether", "Propylene oxide-ethylene oxide mixture", "Isoprene", "Isopropylamine", "Monoethylamine", "Propylene oxide", "Vinyl ethyl ether", and "Vinylidene chloride"; add, in alphabetical order, to the list under "Toxic cargoes", the cargoes "Diethyl ether", "Propylene oxide-ethylene oxide mixture", "Isopropylamine", "Monoethylamine", "Propylene oxide", "Vinyl ethyl ether", and "Vinylidene chloride"; and add definitions for the words "Boil-off gas", "Category A machinery space", "Internal insulation tank", "Membrane", and "Oil fuel unit" to read as follows:

**§ 154.7 Definitions and abbreviations.**

\* \* \* \* \*

*Boil-off gas* means the vapor produced by cargo evaporation at ambient temperatures of 45 °C still air and 32 °C still water.

\* \* \* \* \*

*Category A machinery space* means Category A machinery space as defined in § 30.10-6a of this chapter.

\* \* \* \* \*

*Gas-dangerous space* means a space where gas may be present and includes the following spaces:

- (a) A space in the cargo area which is not arranged or equipped in a manner to ensure that the space's atmosphere is maintained at all times in a gas safe condition.

\* \* \* \* \*

*Internal insulation tank* means a non-self supporting cargo tank consisting of thermal insulation materials which contribute to cargo containment and which are supported by the structure of the adjacent inner hull or of an independent tank.

\* \* \* \* \*

*Membrane* means a non-self supporting metallic, nonmetallic or composite material that is liquid tight and no thicker than 10 mm (0.394 in).

\* \* \* \* \*

*Oil fuel unit* means a unit as defined in § 30.10-48a of this chapter.

\* \* \* \* \*

5. Section 154.8 is added to read as follows:

**§ 154.8 Incorporation by reference.**

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the Federal Register, and the material must be available to the public. All approved material is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC, and at U.S. Coast Guard, Marine Technical and Hazardous Materials Division, room 1218, 2100 Second Street SW., Washington, DC 20593-0001, and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the sections affected are as follows:

*American National Standards Institute (ANSI):*

- 1430 Broadway, New York, NY 10018.
- ANSI Z87.1-1989, Practice for Occupational and Educational Eye and Face Protection, 1989 ..... 154.1400; 154.1401; 154.1402.
- ANSI Z89.1-86, Protective Headwear for Workers, 1986 ..... 154.1400; 154.1401; 154.1402.

*American Society for Testing and Materials (ASTM):*

- 1916 Race Street, Philadelphia, PA 19103.
- A 20/A 20M-92a, Standard Specification for General Requirements for Steel Plates for Pressure Vessels, 1992. .... 154.610.
- ASTM F 1014-92, Standard Specification for Flashlights on Vessels, 1992 ..... 154.1400.

*International Maritime Organization:*

- 4 Albert Embankment, London SE1 75R, U.K.
- Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1975, as amended (1983 edition). .... 154.19.
- Code for Existing Ships Carrying Liquefied Gases in Bulk, 1976 ..... 154.19; 154.24.
- International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1983. .... 154.19.
- Medical First Aid Guide for Use in Accidents Involving Dangerous Goods ..... 154.1435; 154.1440.
- Resolution A. 328, Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1975. .... 154.24.

*Underwriters Laboratories, Inc.:*

- 333 Pfingsten Rd., Northbrook, IL 60062.
- UL No. 783 Standard for Electric Flashlights and Lanterns for Use in Hazardous (Classified) Locations, 1993. .... 154.1400; 154.1401; 154.1402.

6. In § 154.12, paragraphs (e)(2), (4), (7), and (26) are revised to read as follows:

**§ 154.12 Existing gas vessel: Endorsements and requirements.**

- \* \* \* \* \*
- (e) \* \* \*
- (2) Section 154.320 (b) and (d).
- \* \* \* \* \*
- (4) Section 154.340(e).
- \* \* \* \* \*
- (7) Section 154.519(b)(2).
- \* \* \* \* \*
- (26) Sections 154.1110 through 154.1130, except §§ 154.1115(c), 154.1120(b), and 154.1125 (c) and (f).
- \* \* \* \* \*

7. In § 154.15, paragraph (b)(1) is revised to read as follows:

**§ 154.15 U.S. flag vessel; Endorsement application.**

- \* \* \* \* \*
- (b) \* \* \*
- (1) Calculations for hull design required by part 172, subpart G, of this chapter;
- \* \* \* \* \*

8. In § 154.19, paragraph (a) is revised to read as follows:

**§ 154.19 U.S. flag vessel: IMO certificate issuance.**

(a) The Coast Guard Officer in Charge, Marine Inspection, issues an IMO Certificate to a U.S. flag vessel, when requested by the owner or representative, if the vessel meets the requirements of this part and—

(1) For a gas vessel the construction of which began on or after July 1, 1986, meets the International Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk;

(2) For a gas vessel contracted for construction on or after October 31, 1976 and constructed before July 1, 1986, meets the Code for the Construction and Equipment of Ships Carrying Liquefied Gases in Bulk, 1975, as amended (1983 edition); or

(3) For a gas vessel constructed before October 31, 1976, meets the Code for Existing Ships Carrying Liquefied Gases in Bulk.

\* \* \* \* \*

**Subpart B [Amended]**

9. The heading to subpart B is revised to read "Subpart B—Inspections".

**§ 154.151 [Amended]**

10. In § 154.151(c) introductory text, remove "§ 154.5(b)" and add, in its place, "§ 154.22(b)".

11. In § 154.170, in paragraph (a), remove the words after "material standards" and add, in their place, the words "in Rules for Building and Classing Steel Vessels"; and revise paragraphs (b)(3)(ii) and (b)(3)(iii) to read as follows:

**§ 154.170 Outer hull steel plating.**

- \* \* \* \* \*
- (b) \* \* \*
- (3) \* \* \*
- (ii) For cargo containment systems with secondary barriers, the temperature of the secondary barrier is the cargo boiling temperature at atmospheric pressure; and
- (iii) For cargo containment systems without secondary barriers, the temperature of the primary barrier is the cargo carriage temperature.

12. Following § 154.172, by revising table 1 to read as follows:

**§ 154.172 Contiguous steel hull structure.**

\* \* \* \* \*

TABLE 1.—MINIMUM TEMPERATURE, THICKNESS, AND STEEL GRADES IN CONTIGUOUS HULL STRUCTURES

Minimum temperature (°C)	Maximum thickness (mm) for steel grades						
	A	B	D	3	AH	DH	EH
0 and above	"Rules for Building and Classing Steel Vessels"						
-5 and below -0	15	25	30	50	25	45	50
-10 and below -5	X	20	25	50	20	40	50
-20 and below -10	X	X	20	50	X	30	50
-30 and below -20	X	X	X	40	X	20	40
Below -30	In accordance with § 154.615 of this part						

"X" means steel grade is not used.

**§§ 154.174, 154.176, 154.188, and 154.195**  
**[Amended]**

13. In §§ 154.174(a), 154.176(a), 154.188, and 154.195(b), remove the words "of the American Bureau of Shipping published in "Rules for Building and Classing Steel Vessels", 1981" and add, in their place, the words "in Rules for Building and Classing Steel Vessels".

14. In § 154.235, redesignate paragraph (d) as paragraph (e) and add a new paragraph (d) to read as follows:

**§ 154.235 Cargo tank location.**

\* \* \* \* \*

(d) In vessels having internal insulation tanks, the extent of damage must be measured to the supporting tank plating.

\* \* \* \* \*

15. In § 154.300, redesignate the introductory text and paragraphs (a), (b), and (c) as paragraphs (a), (a)(1), (a)(2), and (a)(3), respectively, and add a new paragraph (b) to read as follows:

**§ 154.300 Segregation of hold spaces from other spaces.**

\* \* \* \* \*

(b) Hold spaces must be located forward of Category A machinery spaces, unless specially approved by the Commandant (G-MTH).

16. In § 154.315, revise paragraph (a); redesignate paragraph (b) as paragraph (f); and add new paragraphs (b), (c), (d), (e), (g), and (h) to read as follows:

**§ 154.315 Cargo pump and cargo compressor rooms.**

(a) Cargo pump rooms and cargo compressor rooms must be located above the weather deck.

(b) Cargo pump rooms and cargo compressor rooms must be located between the after end of the aftermost hold space and the forward end of the forwardmost hold space, unless otherwise permitted by the Commandant (G-MTH).

(c) When cargo compressor rooms are permitted under paragraph (b) of this section to be located at the after end of the aftermost hold space or at the forward end of the forwardmost hold space, the limits of the cargo area must be extended to include the cargo pump rooms and the cargo compressor rooms for the full beam and depth of the ship.

(d) Where the limits of the cargo area are extended under paragraph (c) of this section, the bulkhead which separates the cargo pump rooms or cargo compressor rooms from accommodation, service, or control spaces or Category A machinery spaces must be located so as to prevent gas from entering these spaces through a single failure of a bulkhead.

(e) For the purposes of fire protection, cargo compressor rooms are treated as cargo pump rooms.

(f) \* \* \*

(g) Cargo pump rooms and cargo compressor rooms must be arranged to allow unrestricted access by personnel wearing protective clothing and, in the event of injury, to allow unconscious personnel to be removed.

(h) All valves necessary for cargo handling must be readily accessible to personnel wearing protective clothing.

17. In § 154.320, redesignate paragraph (c) as paragraph (d) and add a new paragraph (c) to read as follows:

**§ 154.320 Cargo control stations.**

\* \* \* \* \*

(c) If a cargo control station has no access to an accommodation, service or control space, the openings from the cargo area must comply with § 154.345.

\* \* \* \* \*

18. In § 154.330, paragraph (g) is added to read as follows:

**§ 154.330 Openings to accommodation, service, or control spaces.**

\* \* \* \* \*

(g) Vessels dedicated to cargoes which are neither toxic nor flammable may have openings to accommodation, service, or control spaces which do not meet the requirements of paragraphs (a) through (f) of this section, if specially approved by the Commandant (G-MTH).

19. In § 154.340, revise the introductory text of paragraph (b); redesignate paragraphs (c), (d), (e), and (f), as paragraphs (d), (e), (f), and (g), respectively; revise redesignated paragraph (f); and add a new paragraph (c) to read as follows:

**§ 154.340 Access to tanks and spaces in the cargo area.**

\* \* \* \* \*

(b) Each access into or through a void space or other gas-dangerous space in the cargo area, except for spaces separated by a single gastight boundary from a hold or a space with a secondary barrier, must — \* \* \*

(c) Spaces separated by a single gastight boundary from a hold or a space with a secondary barrier must be provided with either a direct access from the weather deck or an indirect access from the weather deck which does not include an enclosed gas-safe space.

\* \* \* \* \*

(f) The inner hull in the cargo area must be accessible for inspection from at least one side without the removal of any fixed structure or fitting. If a visual inspection is possible only at the outer

face of the inner hull, the inner hull must not be a fuel oil tank boundary wall.

\* \* \* \* \*

20. In § 154.345, revise paragraph (a) and add paragraph (d) to read as follows:

**§ 154.345 Air locks.**

(a) Access through doors, gas tight or otherwise, is not permitted from a gas-safe space to a gas-dangerous space; except that, access to service spaces forward of the cargo area through air locks, under this section, which open on the weatherdeck, may be permitted when accommodation spaces are aft.

\* \* \* \* \*

(d) Emergency fire pumps and non-explosion proof electrical equipment for maneuvering, anchoring, or mooring the vessel must not be located in spaces protected by air locks.

21. In § 154.350, revise the section heading; redesignate paragraph (d) as paragraph (e); add new paragraphs (d) and (f); and revise redesignated paragraph (e) to read as follows:

**§ 154.350 Bilge, ballast, and fuel oil systems in the cargo area.**

\* \* \* \* \*

(d) For internal insulation tanks, paragraphs (a), (b), and (c) of this section do not apply to the following spaces, provided that the spaces are completely filled with insulation approved under § 154.467:

- (1) Interbarrier spaces.
- (2) Spaces between the secondary barrier and the inner hull.
- (3) Spaces between the secondary barrier and independent tank structures.
- (e) Spaces in the cargo containment portion of the vessel, except ballast spaces and gas-safe spaces, must not connect to pumps in the main machinery space. Pump vents must not be open to machinery spaces.

(f) Duct keels may be connected to pumps in the machinery space if—

- (1) The connections are led directly to the pumps;
- (2) The discharge from the pumps is led directly overboard; and
- (3) There are no valves or manifolds in either line which could connect the line from the duct keel to lines serving gas-safe spaces.

22. In § 154.407(a), remove "Z<sup>s</sup>" wherever it appears and add, in its place, "Z<sub>B</sub>" and revise the definition of "Z<sub>B</sub>" to read as follows:

**§ 154.407 Cargo tank internal pressure head.**

(a) \* \* \*

"Z<sub>B</sub>" = largest liquid height (m) above the point where the pressure is to be

determined in the  $\beta$  direction (see figure 2). Small tank domes not considered to be part of the accepted total volume of the cargo tank need not be considered when determining "Z<sub>B</sub>";

\* \* \* \* \*

**§§ 154.420 and 154.439 [Amended]**

23. In § 154.420(a) and § 154.439 introductory text, remove the words "of the American Bureau of Shipping published in "Rules for Building and Classing Steel Vessels", 1981" and add, in their place, the words "in Rules for Building and Classing Steel Vessels."

**§ 154.421 [Amended]**

24. In § 154.421, remove ", 1981".

25. In 154.440, paragraph (c) is revised to read as follows:

**§ 154.440 Allowable stress.**

\* \* \* \* \*

(c) For an internal pressure head that meets § 154.439(a), tank plating must meet the deep tank standards in Rules for Building and Classing Steel Vessels.

**§ 154.448 [Amended]**

26. In § 154.448(b), remove the word "its" before the word "support".

27. Before the undesignated heading "SECONDARY BARRIER", add a new undesignated heading and §§ 154.454 through 154.458 to read as follows:

**Internal Insulation Tanks**

**§ 154.454 General.**

(a) The design of an internal insulation tank and its supporting hull structure or independent tank structure must be specially approved by the Commandant (G-MTH).

(b) Internal insulation tanks must be made of materials that withstand the combined strains calculated under § 154.457(a).

**§ 154.455 Design vapor pressure.**

The design vapor pressure (P°) of an internal insulation tank must not exceed 25.4 kPa gauge (3.55 psig). For internal insulation tanks supported by the hull structure, the Commandant (G-MTH) may specially approve a P° between 24.5 kPa gauge (3.55 psig) and 69 kPa gauge (10 psig). For internal insulation tanks supported by independent tank structures, the Commandant (G-MTH) may specifically approve a P° greater than 69 kPa gauge (10 psig).

**§ 154.456 Internal insulation tank system design.**

An internal insulation tank must be designed for the following:

(a) Any static and dynamic loads with respect to—

- (1) Fatigue failure;
- (2) Crack propagation from both free and supported surfaces;
- (3) Adhesive and cohesive strength;
- (4) Compressive, tensile, and sheer strength; and
- (5) Water ballast in spaces adjacent to the inner hull forming the supporting structure of the internal insulation tank.

(b) Combined strains from static, dynamic, and thermal loads.

(c) Compatibility of the tank insulation material with the deflections of the vessel's inner hull or independent tank structures.

**§ 154.457 Calculations.**

The tank design load calculations for an internal insulation tank must include the following:

(a) The combined strains from static, dynamic, and thermal loads.

(b) The response of the internal insulation tank, its cargo, its supporting structures, and any ballast adjacent to the supporting structure of the internal insulation tank to the vessel motion and acceleration under worst weather conditions. Calculations for a similar vessel may be submitted to meet the requirements of this paragraph.

(c) Plastic deformation and fatigue life resulting from static and dynamic loads in the insulation and in the supporting hull structure or independent tank structure.

**§ 154.458 Model test.**

(a) A test must be performed to determine whether the primary and secondary barriers of an internal insulation tank, including corners, joints, pump mounts, piping penetrations, and other critical areas, are capable of withstanding the combined strains from the static, dynamic, and thermal loads calculated under § 154.457(a).

(b) Combined tension and fatigue tests must be performed to evaluate crack behavior of the insulation material in the event a through crack develops in the inner hull or independent tank structure.

(c) Analyzed data from the tests under paragraphs (a) and (b) of this section must be submitted to the Commandant (G-MTH) for acceptance.

28. In § 154.459, add a new entry and new footnotes to table 3 to read as follows:

**§ 154.459 General.**

\* \* \* \* \*

TABLE 3.—SECONDARY BARRIERS FOR TANKS

Tank type	Cargo temperature (T) at atmospheric pressure		
	T ≥ -10°C (14°F)	T < -10°C (14°F) ≥ -55°C (-67°F)	T < -55°C (-67°F)
Internal insulation:			
Type 1 <sup>2</sup> .....	do .....	Complete secondary barrier .....	Complete secondary barrier.
Type 2 <sup>3</sup> .....	do .....	Complete secondary barrier is incorporated.	Complete secondary barrier is incorporated.

<sup>2</sup>Type 1 tanks are tanks in which insulation or a combination of the insulation and one or more liners\* function as a primary barrier. The inner hull or independent tank structure functions as the secondary barrier when required.

<sup>3</sup>Type 2 tanks are tanks in which the insulation or a combination of the insulation and one or more liners\* function as both the primary and secondary barrier, and where these barriers are clearly distinguishable.

\*A liner, as used in footnotes 2 and 3, means a thin, non-self supporting metallic, nonmetallic or composite material which forms part of an internal insulation tank in order to enhance its fracture resistance or other mechanical properties. A liner differs from a membrane in that a liner is not intended by itself to function as a liquid barrier.

29. Before the undesignated heading "SUPPORT SYSTEM", add § 154.464 to read as follows:

**§ 154.468 Submission of insulation information for internal insulation tanks.**

(a) In addition to the information required in § 154.467, information on

the following properties of the insulation materials which contribute to cargo containment in internal insulation tanks must be submitted to the

Commandant (G-MTH) for special approval:

- (1) Bonding (adhesive and cohesive strength).
- (2) Resistance to cargo pressure.
- (3) Fatigue and crack propagation.
- (4) Compatibility with cargo constituencies and with any other agency normally expected to come in contact with the insulation.
- (5) Gas desorbing.
- (b) The influence of the presence of water and water pressure on the insulation properties must be taken into account.
- (c) The properties listed in paragraph (a) of this section must be—

- (1) Obtained after simulation of aging and thermal cycling; and
- (2) Tested for in the temperature range between the expected maximum temperature in service and 5 °C (8 °F) below the minimum design temperature, but no lower than -196 °C (-321 °F).

30. Section 154.471(a)(3) is revised to read as follows:

**§ 154.471 Design criteria.**

- (a) \* \* \*
- (3) To withstand a collision force, in the forward direction, equal to at least one-half of the weight of the cargo tank and cargo, in the aft direction, equal to at least one-quarter of the weight of the cargo tank and cargo; and

31. In § 154.519, paragraph (c) is added to read as follows:

**§ 154.519 Piping relief valves.**

- (c) All pipelines or components which may be isolated in a liquid full condition must have a relief valve.

32. In § 154.522(a), revise the introductory test to read as follows:

**§ 154.522 Materials for piping.**

(a) The materials for piping systems must meet § 154.625 for the minimum design temperature of the piping; except that, the material for open-ended vent piping, open-ended piping inside the cargo tanks (excluding discharge piping), and all piping inside membrane and semimembrane tanks may be specially approved by the Commandant (G-MTH) if—

33. In § 154.610, in paragraph (c), remove "ASTM A-20-75" and add, in its place, "ASTM A 20/A 20 M-83" and, in paragraph (i), revise the table to read as follows:

**§ 154.610 Design temperature not colder than 0°C (32°F)**

(i) \* \* \*

Material thickness	Test temperature
t ≤ 20 mm (0.788 in.) .....	0°C (32°F)
20 < t ≤ 40 mm (1.576 in.) ....	-20°C (-4°F)

34. In § 154.615, designate the text as paragraph (a) and add a new paragraph (b) to read as follows:

**§ 154.615 Design temperature below 0°C (32°F) and down to -55°C (-67°F).**

- (b) Insulation materials forming a secondary barrier must be approved under § 154.468.

35. In § 154.630, paragraph (b) is revised to read as follows:

**§ 154.630 Cargo tank material.**

- (b) For aluminum alloy cargo tanks with welded connections, the minimum yield strength ( $\sigma_Y$ ) and the minimum tensile strength ( $\sigma_B$ ) for the calculations under §§ 154.440, 154.447, and 154.450 must be the minimum respective value of the alloy in an annealed condition.

36. In § 154.901(c), add a sentence at the end of the paragraph to read as follows:

**§ 154.901 Atmospheric control within cargo tanks and cargo piping systems.**

- (c) \* \* \*. No flammable mixture is permitted at any time within the cargo tank.

37. In § 154.902, paragraph (e) is added to read as follows:

**§ 154.902 Atmospheric control within hold and interbarrier spaces.**

- (e) For internal insulation tanks, atmospheric control is not required for interbarrier spaces and spaces between the secondary barrier and the inner hull or independent tank structures which are completely filled with insulation approved under § 154.468

38. In § 154.1005, paragraphs (c) and (d) are revised to read as follows:

**§ 154.1005 Equipment approval.**

- (c) Electrical equipment that is required to be intrinsically safe under § 154.1010 must comply with § 111.105-11 of this chapter.
- (d) Electrical equipment that is required to be explosion proof under § 154.1010 must comply with § 111.105-9 of this chapter.

**§ 154.1020 [Amended]**

39. In § 154.1020, remove "§ 154.230(a)" and add, in its place "§ 154.200".

40. In § 154.1110, redesignate the introductory text and paragraphs (a) through (h) as paragraphs (a) and (a)(1) through (a)(8), respectively; revise redesignated paragraphs (a)(6) and (a)(7); and add paragraphs (b) and (c) to read as follows:

**§ 154.1110 Areas protected by system.**

- (a) \* \* \*
- (6) Each boundary facing the cargo area of each superstructure that contains storerooms containing high fire risk items or accommodation, service, or control spaces;
- (7) Each boundary facing the cargo area of each deckhouse that contains storerooms containing high fire risk items or accommodation, service, or control spaces; and

(b) Every area under paragraph (a) of this section also must be covered by at least two jets of water from the fire main system.

(c) Boundaries of unmanned forecastle structures not containing high fire risk items or equipment do not require water spray protection

41. In § 154.1115, redesignate paragraph (b) as paragraph (c); add a new paragraph (b); and revise redesignated paragraph (c) to read as follows:

**§ 154.1115 Discharge.**

(b) For structures not having clearly defined horizontal or vertical surfaces, the capacity of the water spray system must be determined by the greater of the following:

- (1) The projected horizontal surface multiplied by 10,000 cm<sup>3</sup>/m<sup>2</sup>/min (0.25 gpm/ft.<sup>2</sup>).
- (2) The actual surface multiplied by 4,000 cm<sup>3</sup>/m<sup>2</sup>/min (0.10 gpm/ft.<sup>2</sup>).

(c) The water spray protection under § 154.1110 (a)(4) and (a)(5) must cover an area in a horizontal plane extending at least 0.5 m (19 in.) in each direction from the pipes, fittings, and valves or must cover the area of the drip tray, whichever is greater.

42. In § 154.1135, paragraphs (d)(1) and (d)(2) are revised to read as follows:

**§ 154.1135 Pumps.**

- (d) \* \* \*
- (1) The areas in §§ 154.1110 (a)(6) through (a)(8) and 154.1115(c); and
- (2) The largest section that includes the required protection under § 154.1110(a)(1), (a)(2), and (a)(3).

43. In § 154.1320, paragraph (a)(1) is revised to read as follows:

**§ 154.1320 Sighting ports, tubular gauge glasses, and flat plate type gauge glasses.**

(a) \* \* \*

(1) The tank has a design vapor pressure that is less than 69 kPa gauge (10 psig);

\* \* \* \* \*

44. Section 154.1327 is added to read as follows:

**§ 154.1327 Valve closing time.**

(a) The closing time (i.e. the time from shutdown signal initiation to complete valve closure) of valves under § 154.1325 must not be greater than—

$$\frac{3600U}{LR} \text{ seconds}$$

U=ullage volume at operating signal level m<sup>3</sup>.

LR=maximum loading rate agreed on m<sup>3</sup>/h.

(b) The loading rate must be adjusted to limit the surge pressure on valve closure to an acceptable level.

45. Section 154.1343 is added to read as follows:

**§ 154.1343 Leak detection.**

(a) All cargo containment systems requiring a secondary barrier must be provided with permanently installed instrumentation to detect—

(1) Failure of the primary barrier to be liquid tight at any location; or

(2) Contact of liquid cargo with the secondary barrier at any location.

(b) The instrumentation required in paragraph (a) of this section must be the appropriate gas detection equipment under § 154.1345 and need not be capable of detecting the exact location of the leak.

46. Section 154.1400 is revised to read as follows:

**§ 154.1400 Safety equipment; All vessels.**

(a) Instead of the equipment under § 35.30-20 of this chapter, each vessel must have two fireman's outfits and two sets of personnel safety equipment on board.

(b) Each fireman's outfit must consist of the following:

(1) A pressure-demand, open circuit, self-contained breathing apparatus approved by the Mining Safety and Health Administration (MSHA) and by the National Institute for Occupational Safety and Health (NIOSH), and having at a minimum a 30 minute air supply and a full facepiece.

(2) A steel-cored lifeline.

(3) A three-cell, explosion proof flashlight manufactured to UL No. 783-79 with an Underwriters' Laboratories

label for Class I, Division 1, and the Electrical Hazard Group listed in table 4 of this part for each cargo carried.

(4) A fire axe.

(5) A helmet that meets ANSI Z89.1-86.

(6) A set of boots and gloves that are made of rubber or other electrically non-conductive material.

(7) A set of goggles that meets ANSI Z87.179.

(8) An outfit that protects the skin from scalding steam and the heat of fire and that has a water resistant outer surface.

(c) Each set of personnel safety equipment must consist of the following:

(1) A pressure-demand, open circuit, self-contained breathing apparatus approved by the Mining Safety and Health Administration (MSHA) and by the National Institute for Occupational Safety and Health (NIOSH), and having at a minimum a 30 minute air supply and a full facepiece.

(2) A steel-cored lifeline.

(3) A three-cell, explosion proof flashlight manufactured to UL No. 783-79 with an Underwriters' Laboratories label for Class I, Division 1, and the Electrical Hazard Group listed in table 4 of this part for each cargo carried.

(4) A helmet that meets ANSI Z89.1-86.

(5) A set of boots and gloves that are made of rubber or other electrically non-conductive material.

(6) A set of goggles that meets ANSI Z87.179.

(7) A chemically protective outfit that protects the wearer from the particular personnel hazards presented by the cargo vapor.

(d) Each vessel must have a spare air supply consisting of at least one of the following:

(1) One fully-charged air cylinder unit for each self-contained breathing apparatus required under paragraph (b) or (c) of this section, each air cylinder unit having at least a thirty minute supply of air with—

(i) An air compressor capable of supplying high pressure air of the proper purity for recharging the cylinders; and

(ii) A charging manifold capable of recharging two air cylinder units simultaneously.

(2) Ten fully-charged air cylinder, units, each with at least a thirty minute supply of air.

(3) A low pressure-supplied air line system with—

(i) Hose connections compatible with the self-contained breathing apparatus;

(ii) Sufficient high pressure air capacity to supply, through pressure

reduction devices, low pressure air to two persons for at least one hour; and

(iii) An air compressor capable of supplying high pressure air of the purity for recharging the self-contained breathing apparatus and all fixed air bottles, if any.

47. Section 154.1401 is added to read as follows:

**§ 154.1401 Safety equipment: Vessels carrying flammable cargoes.**

(a) Each vessel that has a cargo capacity of from 2,000 m<sup>3</sup> through 5,000 m<sup>3</sup> and that is carrying a cargo designated with an "I" or "I&T" in the "Vapor detection" column of table 4 of this part must have the safety equipment required under § 154.1400 and two additional fireman's outfits as described in § 154.1400(b).

(b) Each vessel that has a cargo capacity of 5,000 m<sup>3</sup> or more and that is carrying a cargo designated with an "I" or "I&T" in the "Vapor detection" column of table 4, this part must have the safety equipment required under § 154.1400 and three additional fireman's outfits as described in § 154.1400(b).

48. Section 154.1402 is added to read as follows:

**§ 154.1402 Safety equipment: Vessels carrying toxic cargoes.**

(a) Each vessel that has a cargo capacity of greater than 2,000 m<sup>3</sup> and that is carrying a cargo designated with an "T" in the "Vapor Detection" column of table 4 of this part must have the safety equipment required under § 154.1400 and, in addition, must have the following:

(1) Two sets of personnel safety equipment as described in § 154.1400(c).

(2) One spare fully-charged air cylinder unit for each breathing apparatus required under paragraph (a)(1) of this section.

(b) Each vessel that has a cargo capacity of greater than 2,000 m<sup>3</sup> and that is carrying a cargo designated with an "I&T" in the "Vapor detection" column of table 4 of this part must have the safety equipment required under §§ 154.1400 and 154.1401. In addition, the vessel must have the following:

(1) One fully-charged air cylinder unit for each breathing apparatus required under § 154.1401.

(2) Two chemical protective outfits that protect the wearer from the particular personnel hazards presented by the cargo vapor.

49. Section 154.1405 is revised to read as follows:

**§ 154.1405 Respiratory and eye protection.**

(a) When table 4 of this part references this section, a vessel carrying the listed cargo must have—

(1) Respiratory protection and eye protection equipment for each person on board that protects the person from the cargo vapor for at least five minutes; and

(2) Two additional sets of respiratory protection and eye protection equipment that are stowed in the wheel house and protect the wearer from the cargo vapor for at least five minutes.

(b) The equipment in paragraph (a) of this section must be used for emergency escape purposes only and must be marked to indicate that it is not suitable for, and must not be used for, fire fighting or cargo handling.

(c) Filter type respiratory protection equipment is unacceptable for the purposes of this section.

50. Section 154.1705 is revised to read as follows:

**§ 154.1705 Independent tank.**

(a) The following cargoes must be carried in an independent tank:

- (1) Diethyl ether.
- (2) Monoethylamine.
- (3) Propylene oxide.
- (4) Vinyl ethyl ether.

(b) The following cargoes must be carried in an independent tank type C that meets § 154.701(a):

- (1) Ethylene oxide.
- (2) Methyl bromide.
- (3) Sulfur dioxide.

51. Section 154.1718 is added to read as follows:

**§ 154.1718 Submerged electric cargo pumps.**

The vapor space of cargo tanks equipped with submerged electric cargo pumps must be inerted to a positive pressure before loading, during carriage, and during unloading of high vapor pressure flammable liquids.

52. Section 154.1720 is revised to read as follows:

**§ 154.1720 Indirect refrigeration.**

A refrigeration system that is used to cool acetaldehyde, ethylene oxide, methyl bromide, propylene oxide, mixtures of propylene oxide/ethylene oxide, or sulfur dioxide must be an indirect refrigeration system that does not use vapor compression.

53. Sections 154.1721 through 154.1724 are added to read as follows:

**§ 154.1721 Piping systems for toxic products.**

The cargo piping, vent piping, and refrigeration equipment of a cargo tank carrying isopropylamine or monoethylamine must be completely

separate from all other piping systems on the vessel.

**§ 154.1722 Flame screens on vent outlets.**

When table 4 of this part refers to this section, the vent outlets need not comply with § 154.805(c) but must meet either of the following:

(a) Be provided with a flame screen that—

- (1) Meets § 30.10–25 of this chapter;
- (2) Is readily renewable; and
- (3) Is designed and installed so as to prevent blockage by freezing cargo vapors or by icing in bad weather.

(b) Have a device approved by the Commandant (G–MTH) to prevent the passage of flame.

**§ 154.1723 Maximum allowable quantity of cargo per tank.**

When table 4 of this part refers to this section, no person may operate a tankship that carries a cargo tank containing in excess of 3,000 m<sup>3</sup> (105,923 ft<sup>3</sup>) of the listed cargo.

**§ 154.1724 Vapor return connections.**

When table 4 of this part refers to this section, connections for returning the expelled gases ashore during loading must be provided.

**§ 154.1735 [Amended]**

54. In § 154.1735(b)(2)(ii), remove the word "guage" and add, in its place, the word "gauge".

55. Section 154.1745 is revised to read as follows:

**§ 154.1745 Vinyl chloride: Transfer operations.**

(a) The person in charge of a vinyl chloride transfer operation shall ensure that the following are complied with during that operation:

- (1) Cargo vapors are returned to the cargo tank or shore disposition for reclamation or destruction.
- (2) Continuous monitoring for vinyl chloride vapor leaks is conducted. Fixed or portable instrumentation may be used to ensure that personnel are not exposed to vinyl chloride vapor concentrations in excess of 1 ppm averaged over any eight hour period or 5 ppm averaged over any period not exceeding 15 minutes. The method of monitoring and measurement must have an accuracy (with a confidence level of 95%) of not less than plus or minus 50% from 0.25 ppm through 0.5 ppm, plus or minus 35% from over 0.5 ppm through 1.0 ppm, and plus or minus 25% over 1.0 ppm.

(3) The cargo transfer operation is discontinued or corrective action is initiated by the person in charge to minimize personnel exposure whenever a vinyl chloride vapor concentration in

excess of 1 ppm is detected. If the vinyl chloride concentration exceeds 5 ppm for over 15 minutes, action to reduce the leak may be continued only if each person in the area of the leak uses a respirator which meets the following:

(i) The respirator must be approved by the Mine Safety and Health Administration (MSHA) under 30 CFR part 11. When filter elements are used, they must include approval for vinyl chloride.

(ii) An electrically powered respirator also must meet the electrical engineering requirements in subchapter J of this chapter for the electrical hazard class and group listed in table 4 of this part.

(4) Those portions of the cargo line that would be open to the atmosphere after piping is disconnected are free of vinyl chloride liquid and that the vinyl chloride vapor concentration in the area of the vinyl chloride piping disconnect points is not greater than 5 ppm.

(5) Any restricted gauge fitted on a tank containing vinyl chloride is locked or sealed so that the gauge cannot be used.

(6) A restricted gauge is not used as a means of verifying the reading obtained by the closed gauge or as a means of sampling.

(b) The words "Cancer Suspect Agent" must be added to the warning sign, as required by § 154.1830(f).

(c) Signs bearing the legend "CANCER SUSPECT AGENT IN THIS AREA—PROTECTIVE EQUIPMENT REQUIRED—AUTHORIZED PERSONNEL ONLY" must be posted whenever hazardous operations, such as tank cleaning, are in progress.

(d) When vinyl chloride transfer operations are conducted, the vessel must be designated as a regulated area and access must be limited to authorized persons. A daily roster of persons authorized to enter the regulated area must be maintained on the vessel.

(e) Personnel engaged in hazardous operations, such as tank cleaning, must be provided with, and required to wear and use, respirators under paragraph (a)(3) of this section. Also, protective garments capable of preventing skin contact with liquid vinyl chloride must be provided. The garments must be clean and dry for each use.

56. In § 154.1760, designate the text as paragraph (a) and add a new paragraph (b) to read as follows:

**§ 154.1760 Liquid ammonia.**

\* \* \* \* \*

(b) For pressure vessels and pipelines made of carbon-manganese steel, the oxygen content of the vapor space must

be reduced to the minimum level practicable before the introduction of liquid ammonia at temperatures of greater than  $-20^{\circ}\text{C}$  ( $-4^{\circ}\text{F}$ ).

57. Sections 154.1765, 154.1770, and 154.1775 are added to read as follows:

**§ 154.1765 Diethyl ether, vinyl ethyl ether.**

(a) Diethyl ether and vinyl ethyl ether cargoes must be discharged by deepwell pumps or by hydraulically operated submerged pumps.

(b) When a diethyl ether or vinyl ethyl ether cargo is carried in independent tanks type C, inert gas displacement may be used to discharge the cargo if the cargo system is designed for the expected pressure.

**§ 154.1770 Propylene oxide and mixtures of propylene oxide and ethylene oxide containing not more than 30% ethylene oxide by weight: Requirements for carriage.**

(a) Vessels carrying propylene oxide or a mixture of propylene oxide and ethylene oxide containing not more than 30% ethylene oxide by weight must meet the following:

(1) Acetylene must not be present in the propylene oxide or the mixture of propylene oxide and ethylene oxide.

(2) Cargo piping, vent piping, refrigeration equipment, and inert gas supply lines must be completely separate from piping systems for all other tanks, including empty tanks and cargo compressors. If the piping systems are not separate, they may be made separate by removing spool pieces, valves, and other pipe sections and installing blank flanges.

(3) Valves, flanges, fittings, and accessory equipment must be made of steel, stainless steel, or other material specially approved by the Commandant (G-MTH).

(4) Valve disk faces, seats, and other wearing parts of valves must be made of stainless steel containing not less than 11% chromium.

(5) Gaskets must be constructed of spirally wound stainless steel with teflon or other material specially approved by the Commandant (G-MTH). Gaskets made of neoprene or natural rubber, asbestos or asbestos mixed with other materials, or materials containing oxides of magnesium must not be used in propylene oxide containment systems.

(6) Cargo piping must not have threaded joints.

(7) The vessel must have an exterior water spray system under § 154.1105 that protects the above deck cargo piping.

(8) The vessel must have a nitrogen inerting system or on board nitrogen gas storage system capable of maintaining,

for a period of thirty days at an oxygen level of 2% or less, an inert atmosphere in the vapor space of a tank carrying these cargoes.

(b) Cargo tanks carrying propylene oxide which have a design vapor pressure of less than 0.6 Bar gauge (8.5 psig) and cargo tanks carrying mixtures of propylene oxide and ethylene oxide containing not more than 30% ethylene oxide by weight which have a design vapor pressure of less than 1.2 Bar gauge (17.1 psig) must have a refrigeration system that maintains the product at a temperature below the reference temperature under § 154.1844(b).

(c) Cargo tanks in which the product is to be carried must meet the following:

(1) Be constructed of steel or stainless steel.

(2) For independent tanks of type C, have pressure relief valves settings that are—

(i) Not less than 0.2 Bar gauge (2.8 psig);

(ii) For propylene oxide, not more than 7.0 Bar gauge (99.6 psig); and

(iii) For propylene oxide and ethylene oxide mixtures, not more than 5.3 Bar gauge (75.4 psig).

(3) Have an automatic nitrogen make-up system that provides a padding of nitrogen and that does not allow the tank pressure to fall below 0.07 Bar gauge (1.0 psig) in the event of a decrease in cargo temperature. Sufficient nitrogen of commercially pure quality must be available to satisfy this requirement. This requirement for automatic pressure control may be satisfied by a battery of nitrogen bottles connected to the cargo tank by a pressure reduction valve.

(4) Be thoroughly cleaned, including washing or purging of associated piping, before other cargoes may be carried.

**§ 154.1775 Propylene oxide and mixtures of propylene oxide and ethylene oxide containing not more than 30% ethylene oxide by weight: Transfer operations.**

(a) Propylene oxide and mixtures of propylene oxide and ethylene oxide containing not more than 30% ethylene oxide by weight may be transported only in accordance with cargo handling plans which have been approved by the Commanding Officer, U.S. Coast Guard Marine Safety Center (G-MS-C). A separate cargo handling plan for each loading arrangement must be prepared which shows the entire piping system and the location of all blank flanges installed under § 154.1770(a)(2). A copy of each approved cargo handling plan must be kept on board the vessel. The IMO Certificate must be endorsed to include reference to the approved cargo handling plans.

(b) Before loading the product, a person acceptable to the Captain of the Port must perform the following:

(1) Certify in writing that the piping separation under § 154.1770(a)(2) has been achieved. This certification must be kept on board the vessel.

(2) Fit a wire and seal to each connection between a blank flange and a pipeline flange to ensure that the blank flange is not inadvertently removed.

(c) A list of the maximum allowable tank filling limits for each cargo tank, at each of the planned loading temperatures and at the maximum reference temperature, must be prepared and submitted to the Commanding Officer, U.S. Coast Guard Marine Safety Center (G-MS-C) for approval. A copy of the approved list must be kept on board the vessel.

(d) The master shall ensure that, before the product is loaded into a cargo tank—

(1) The tank is thoroughly clean, dry, and free from rust;

(2) The hold spaces are inerted with an inert gas that meets § 154.1710(b)(1); and

(3) The cargo tank vapor space is tested to ensure that the oxygen concentration is 2% (by volume) or less.

(e) Cargo hoses used for the transfer of these products must be marked "FOR ALKYLENE OXIDE TRANSFER ONLY".

(f) Filling and discharge piping must extend to within 100mm (4 in) of the bottom of the tank or any sump pit.

(g) Venting of the cargo tanks to the atmosphere must not occur during loading or discharge. A vapor return to shore may be used during loading provided that the vapor return system connected to a containment system for the product is separate from all other containment systems.

(h) The pressure in the cargo tank must be maintained above 0.07 Bar gauge (1.0 psig) during discharge operations.

(i) The cargo must be discharged by deepwell pumps, hydraulically operated submerged pumps, or inert gas displacement.

(j) Cargo pumps must be arranged to ensure that, if the discharge from the pump is turned off or otherwise blocked, there will not be a significant increase in the temperature of the cargo.

(k) Before disconnecting the lines connecting to the shore facility, the pressure in liquid and vapor lines must be relieved through valves installed at the loading header. Liquid and vapor from the lines must not be discharged to the atmosphere.

58. Section 154.1800 is revised to read as follows:

**§ 154.1800 Operating requirements under part 35 of this chapter.**

Each vessel must operate in accordance with part 35 of this chapter, except for § 35.30-20 of this chapter.

59. In § 154.1803, paragraph (b) is revised to read as follows:

**§ 154.1803 Expiration of Certificates of Compliance.**

(b) If a vessel's IMO Certificate expires or otherwise becomes invalid, the vessel's Certificate of Compliance becomes invalid for the carriage of cargoes listed in table 4 of this part or authorized by special approval under § 154.30. To maintain the validity of the Certificate of Compliance, the vessel's owner must submit a copy of the revised or reissued IMO Certificate to the Commanding Officer, U.S. Coast Guard Marine Safety Center (G-MSA).

60. Section 154.1818, paragraph (a) is revised to read as follows:

**§ 154.1818 Certification of inhibition.**

(a) Except as provided in § 154.1740(b), no person may operate a vessel carrying butadiene, isoprene, vinyl chloride, vinyl ethyl ether, or vinylidene chloride without carrying in the wheelhouse written certification from the shipper that the product is inhibited.

**§ 154.1820 [Amended]**

61. In § 154.1820 introductory text, remove the word "wheelhouse" and add, in its place, the word "wheelhouse".

62. Section 154.1831 is revised to read as follows:

**§ 154.1831 Person in charge of cargo transfer operations.**

(a) The master of a U.S. flag vessel shall ensure that cargo transfer operations are supervised by a person designated as a person in charge of cargo transfer operations under 33 CFR 155.710(a)(1).

(b) The master of a foreign flag vessel shall ensure that the cargo transfer operations are supervised by a person who—

(1) Holds a valid document issued by the flag nation which authorizes that person to serve as a person in charge of cargo transfer operations on board the vessel that is transferring cargo;

(2) Is designated as a person in charge of cargo transfer operations by the master;

(3) Is readily able to communicate in English, either directly or through an interpreter, with the person in charge of cargo transfer at the transfer facility; and

(4) Has studied and understands the responsibilities described in this subchapter.

63. Section 154.1832 is added to read as follows:

**§ 154.1832 Incompatible cargo.**

(a) The person in charge of cargo transfer operations under § 154.1831 may not authorize the loading of incompatible cargoes under part 150 of this chapter, unless the cargo containment systems meet the following:

(1) Are separated by—

(i) Cofferdams, other than spaces between primary and secondary barriers;

(ii) Empty tanks;

(iii) Tanks containing mutually compatible cargoes;

(iv) Pipe tunnels; or

(v) Void spaces.

(2) Have separate cargo piping and venting systems.

(b) The person in charge of cargo transfer operations may not authorize the loading into a tank of a cargo that is incompatible under part 150 of this chapter with residue left in the tank from a previous cargo.

64. Section 154.1834 is revised to read as follows:

**§ 154.1834 Cargo transfer piping.**

The person in charge of cargo transfer operations under § 154.1831 shall ensure that—

(a) Cargo is transferred to or from a cargo tank only through the vessel's cargo piping system; and

(b) All cargo vapor or cargo tank inert gas displaced by the cargo loading operation is—

(1) Managed on board the vessel to eliminate atmospheric venting; or

(2) Returned to shore through the vapor return connections under § 154.1724, if the transfer terminal has vapor return equipment capable of handling the vapor from the cargo tank.

65. In § 154.1850, paragraph (d) is added to read as follows:

**§ 154.1850 Entering cargo handling spaces.**

(d) Before permitting hot work near internal insulation tanks, the gas absorbing and desorbing characteristics of the tank insulation material must be taken into consideration.

66. In § 154.1870(d), revise the list of chemicals to read as follows:

**§ 154.1870 Bow and stern loading.**

(d) \* \* \*

- (1) Acetaldehyde.
- (2) Ammonia, anhydrous.
- (3) Diethyl ether.
- (4) Dimethylamine.
- (5) Ethyl chloride.
- (6) Isopropylamine.
- (7) Methyl chloride.
- (8) Monethylamine.
- (9) Propylene oxide.
- (10) Vinyl chloride.
- (11) Vinyl ethyl ether.
- (12) Vinylidene chloride.

67. Following § 154.1872, revise table 4 and its footnotes to read as follows:

**§ 154.1872 Cargo emergency jettisoning.**

TABLE 4.—SUMMARY OF MINIMUM REQUIREMENTS

Cargo name <sup>1,2</sup>	Ship type	Independent tank type C required	Control of cargo tank vapor space	Vapor detection <sup>3</sup>	Gauging <sup>4</sup>	Electrical hazard class and group <sup>5</sup>	Special requirements in part 154
Acetaldehyde	IIG/IIPG	.....	Inert	I & T	C	1-C	1401, 1402, 1410, 1710, 1720, 1870.
Ammonia, anhydrous	IIG/IIPG	.....	.....	T	C	1-D	1402, 1405, 1410, 1702 (b), (c) & (e), 1760, 1870.
Butadiene	IIG/IIPG	.....	Inert	I	R	1-B	1401, 1702 (b), (d) & (f), 1710, 1750, 1818.
Butane	IIG/IIPG	.....	.....	I	R	1-D	1401.
Butylene	IIG/IIPG	.....	.....	I	R	1-D	1401.
Diethyl ether <sup>6</sup>	IIG/IIPG	.....	Inert	I & T	C	1-C	1401, 1405, 1410, 1702(b), 1705(a), 1710, 1722-1724, 1765, 1870(d).

TABLE 4.—SUMMARY OF MINIMUM REQUIREMENTS—Continued

Cargo name <sup>1,2</sup>	Ship type	Independent tank type C required	Control of cargo tank vapor space	Vapor detection <sup>3</sup>	Gauging <sup>4</sup>	Electrical hazard class and group <sup>5</sup>	Special requirements in part 154
Dimethylamine	IIG/IIPG			I	C	1-C	1401, 1402, 1405, 1410, 1702 (b), (c) & (e), 1870.
Ethane	IIG			I	R	1-D	1401.
Ethyl chloride	IIG/IIPG			I & T	R	1-D	1401, 1402, 1870.
Ethylene	IIG			I	R	1-C	1401.
Ethylene oxide	IG	Yes	Inert	I & T	C	1-B	660(b)(3), 1401, 1402, 1405, 1410, 1702 (b), (d) & (f), 1705(b), 1710, 1720, 1725, 1730, 1870 (a) & (b).
Isoprene <sup>6</sup>	IIG/IIPG			I	R	1-D	1401, 1410, 1718, 1722, 1724, 1728, 1818.
Isopropylamine <sup>6</sup>	IIG/IIPG			I & T	C	1-D	1401, 1405, 1702 (b) & (c), 1718, 1721, 1722, 1723, 1724, 1870(d).
Methane (LNG)	IIG			I	C	1-D	703-709, 1401, 1854.
Methyl acetylene-propadiene mixture.	IIG/IIPG			I	R	1-C	1401, 1735.
Methyl bromide	IG	Yes		T	C	1-D	660(b)(3), 1345 (c) & (d), 1402, 1405, 1410, 1702 (a) & (d), 1705(b), 1720, 1870 (a) & (b).
Methyl chloride	IIG/IIPG			I & T	C	1-D	1401, 1402, 1702(a), 1870.
Monoethylamine <sup>6</sup>	IIG/IIPG			I & T	C	1-D	1401, 1402, 1405, 1702 (b) & (c), 1718, 1721, 1722, 1723, 1724, 1870(d).
Nitrogen	IIIG			O	C		1755.
Propane	IIG/IIPG			I	R	1-D	1401.
Propylene	IIG/IIPG			I	R	1-D	1401.
Propylene oxide <sup>6</sup>	IIG/IIPG		Inert	I & T	C	1-B	1401, 1402, 1410, 1705(a), 1710, 1720, 1722, 1723, 1724, 1770, 1775, 1870(d).
Propylene oxide and ethylene oxide mixture (30% w/w ethylene oxide) <sup>6</sup> .	IIG/IIPG		Inert	I & T	C	1-B	1401, 1402, 1410, 1705(a), 1710, 1720, 1722, 1723, 1724, 1770, 1775, 1870(d).
Refrigerant gases	IIIG				R		None.
Sulfur dioxide	IG	Yes	Dry	T	C		660(b)(3), 1345 (c) & (d), 1401, 1402, 1405, 1410, 1705(b), 1715, 1720, 1870 (a) & (b).
Vinyl chloride	IIG/IIPG			I & T	C	1-D	1401, 1405, 1410, 1702 (a), (b), (d) & (f), 1710, 1740, 1745, 1750, 1818, 1830(f), 1870.
Vinyl ethyl ether <sup>6</sup>	IIG/IIPG		Inert	I & T	C		1401, 1402, 1405, 1410, 1705(a), 1710, 1722, 1723, 1724, 1765, 1818, 1870(d).
Vinylidene chloride <sup>6</sup>	IIG/IIPG		Inert	I & T	R	1-D	1401, 1402, 1405, 1410, 1710, 1722, 1723, 1724, 1818, 1870(d).

<sup>1</sup> Refrigerant gases include non-toxic, non-flammable gases, such as dichlorodifluoromethane, dichloromonofluoromethane, dichlorotetrafluoroethane, monochlorodifluoromethane, monochlorotetrafluoroethane, and monochlorotrifluoromethane.

<sup>2</sup> Unless otherwise specified, a cargo may be shipped under these requirements when it contains up to 5% total acetylene.

<sup>3</sup> As used in this column, "I" stands for flammable vapor detection, "T" stands for toxic vapor detection, and "O" stands for oxygen detection. See §§ 154.1345 through 154.1360.

<sup>4</sup> As used in this column, "C" stands for closed gauging and "R" stands for restricted gauging. See § 154.1300.

<sup>5</sup> The designations used in this column are from the National Electrical Code.

<sup>6</sup> This cargo is covered also by part 153 of this chapter.

Dated: April 18, 1994.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94-13537 Filed 6-3-94; 8:45 am]

BILLING CODE 4910-14-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

[MM Docket No. 93-285, RM-8376]

### Radio Broadcasting Services; Alamo, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of.

**SUMMARY:** The Commission dismisses the petition filed by Keith E. Lamonica requesting the allotment of Channel 228A to Alamo, Nevada, as the community's first local aural transmission service. See 58 FR 62319, November 26, 1993. Neither the petitioner nor any other party filed

comments reiterating an intention to apply for the channel, if allotted.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 93-285, adopted May 23, 1994, and released June 1, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Federal Communications Commission.

**John A. Karousos,**

*Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 94-13631 Filed 6-3-94; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 93-281, RM-8370]

#### Radio Broadcasting Services; Austin, NV

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; dismissal of.

**SUMMARY:** The Commission dismisses the petition filed by Keith E. Lamonica requesting the allotment of Channel

259A to Austin, Nevada, as the community's first local aural transmission service. See 58 FR 62319, November 26, 1993. Neither the petitioner nor any other party filed comments reiterating an intention to apply for the channel, if allotted.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 93-281, adopted May 23, 1994, and released June 1, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Federal Communications Commission.

**John A. Karousos;**

*Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 94-13632 Filed 6-3-94; 8:45 am]

BILLING CODE 6712-01-M

#### 47 CFR Part 73

[MM Docket No. 93-280, RM-8369]

#### Radio Broadcasting Services; Lund, NV

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; dismissal of.

**SUMMARY:** The Commission dismisses the petition filed by Keith E. Lamonica requesting the allotment of Channel 264A to Lund, Nevada, as the community's first local and aural transmission service. See 58 FR 62320, November 26, 1993. Neither the petitioner nor any other party filed comments reiterating an intention to apply for the channel, if allotted.

**FOR FURTHER INFORMATION CONTACT:**

Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 93-280, adopted May 23, 1994, and released June 1, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Federal Communications Commission.

**John A. Karousos,**

*Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 94-13633 Filed 6-3-94; 8:45 am]

BILLING CODE 6712-01-M

# Notices

Federal Register

Vol. 59, No. 107

Monday, June 6, 1994

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

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

[Docket No. 94-055-1]

#### Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice.

**SUMMARY:** We are advising the public that two applications for permits to release genetically engineered organisms into the environment are

being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

**ADDRESSES:** Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are requested to call ahead on (202) 690-2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, BBEP, APHIS, USDA, room 850, Federal Building,

6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

**SUPPLEMENTARY INFORMATION:** The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
94-126-01	DNA Plant Technology Corporation ....	05-06-94	Pepper plants genetically engineered to express reduced levels of the enzyme B-1,4 endoglucanase.	California.
94-129-01	Rutgers University .....	05-09-94	Eggplant plants genetically engineered to express a gene from <i>Bacillus thuringiensis</i> (Bt) for resistance to coleopteran insects.	New Jersey.

Done in Washington, DC, this 31st day of May 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-13653 Filed 6-3-94; 8:45 am]

BILLING CODE 3410-34-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### National Weather Service, Modernization Transition Committee

**TIME AND DATE:** June 22, 1994 from 8 a.m.-12 noon and 1-4 p.m.; and June 23, 1994 from 9 a.m.-12 noon and 1-2:30 p.m. The Committee will tour the Forecast Systems Laboratory on June 23.

**PLACE:** The meeting on June 22, 1994 will be held at the Holiday Inn, Boulder, Colorado, Breckenridge Room, 800 28th Street, Boulder, Colorado 80303.

**STATUS:** The meeting will be open to the public. Approximately 30 seats will be available on a first-come first-served basis for the public on June 22.

On June 22, 1994 the last hour will be set aside for oral comments from the public. Persons wishing to speak during the public comment period must register on a sign-up sheet as they enter the meeting.

**MATTERS TO BE CONSIDERED:** This meeting will include: (1) A report by Norman Hoffman, Meteorologist-In-Charge of WSFO San Francisco, in response to recommendations on the proposed relocation certification made by the Committee at the March meeting; (2) review of public comments received

as a result of publication of the proposed relocation certification in the Federal Register and NWS responses to the public comments; (3) completion of consultation with the Committee on the final relocation certification; (4) a progress report by the NWS on issues identified by the Committee during consultation on the FY95 National Implementation Plan; and (5) an informational briefing by the FAA on the ASOS program and automation certification.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Senator Raygor, National Weather Service, Wx211, 1325 East-West Highway, SSMC2, Silver Spring, MD 20910, telephone: (301) 713-0391.

Dated: May 31, 1994.

Elbert W. Friday, Jr.,

Assistant Administrator for Weather Service.

[FR Doc. 94-3602 Filed 6-3-94; 8:45 am]

BILLING CODE 3510-12-M

#### Patent and Trademark Office

##### Meeting of the Public Advisory Committee for Trademark Affairs

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

**SUMMARY:** In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the open meeting of the Public Advisory Committee for Trademark Affairs.

**DATES:** The Public Advisory Committee for Trademark Affairs will meet from 10 a.m. until 4 p.m. on June 14, 1994.

**PLACE:** U.S. Patent and Trademark Office, 2121 Crystal Drive, Crystal Park 2, room 912, Arlington, Virginia.

**STATUS:** The meeting will be open to public observation; seating will be available for the public on a first-come-first-served basis. Members of the public will be permitted to make oral comments of three (3) minutes each. Written comments and suggestions will be accepted before or after the meeting on any of the matters discussed. Copies of the minutes will be available upon request.

**MATTERS TO BE CONSIDERED:** The agenda for the meeting is as follows:

- (1) Finance
- (2) Automation
- (3) Strategic Planning
- (4) Current Trademark Office Practice Issues
- (5) International Trademark Law

**CONTACT PERSON FOR MORE INFORMATION:**

For further information, contact Lynne Beresford, Office of the Assistant Commissioner for Trademarks, Building CPK2, room 910, Patent and Trademark Office, Washington, DC 20231.

Telephone: (703) 305-9464.

Dated: May 26, 1994.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 94-13655 Filed 6-3-94; 8:45 am]

BILLING CODE 3510-16-M

#### Change of Address for Trademark Applications and Trademark Related Papers

AGENCY: Patent and Trademark Office, Commerce.

#### ACTION: Notice.

**SUMMARY:** Commencing July 5, 1994, trademark applications and other trademark-related mail, except for trademark-related documents sent to the Assignment Branch for recordation and requests for certified copies of trademark documents, should be addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

**DATES:** This new address will be effective July 5, 1994.

**FOR FURTHER INFORMATION CONTACT:**

Lynne G. Beresford at (703) 305-9464 or by mail marked to her attention and addressed to: Assistant Commissioner for Trademarks, Washington, DC 20231. After July 5, 1994, mail should be addressed to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

**SUPPLEMENTAL INFORMATION:** As part of its emphasis on better service for trademark applicants and registrants, the responsibility for receiving, opening and routing of trademark mail is being transferred to the Assistant Commissioner for Trademarks. In order to more efficiently process the mail, the Assistant Commissioner has determined that trademark-related mail, except for trademark-related documents sent to the Assignment Branch for recordation and requests for certified copies of trademark application and registration documents, should be sent directly to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, which is the location of the Trademark Operation. Having mail sent directly to that address should speed up processing and reduce the amount of lost or misrouted mail. The mail room at the South Tower Building will begin to receive and process mail on July 5, 1994. For a period after July 5, 1994, the Patent and Trademark Office (Office) will receive trademark-related mail at both the old address, Commissioner of Patents and Trademarks, Washington, DC 20231, and at the new address, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia, 22205-3513. The Office is currently preparing a notice of proposed rule-making to formally change the address for trademark-related papers. The Office will continue to maintain the following special boxes, Box Trademark Application, Box ITU, Box AAU, and Box 5, for expedited processing and distribution of specific types of documents. The Office encourages the continued use of these boxes with the new address.

People may continue to file both patent and trademark-related papers directly at the Attorneys' Window located in room 1B03 of Crystal Plaza Building 2, Arlington, Virginia.

Sections 1.8 and 1.10 of title 2 of section 37 of the Code of Federal Regulations are waived, to the extent that, on or after July 5, 1994, a certificate of mailing under §§ 1.8 or 1.10, for trademark applications and other trademark-related mail, except for trademark-related documents sent to the Assignment Branch for recordation and requests for certified copies of trademark application and registration documents, may be addressed either to the Commissioner of Patents and Trademarks, Washington, DC 20231, or to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia, 22202-3513. Patent-related mail should continue to be sent to: Commissioner of Patents and Trademarks, Washington, DC 20231.

Authority: 35 U.S.C. 6, 15 U.S.C. 1123.

Dated: May 26, 1994.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 94-13654 Filed 6-3-94; 8:45 am]

BILLING CODE 3510-16-M

#### DEPARTMENT OF DEFENSE

##### Office of the Secretary

AGENCY: Department of Defense, Advisory Board on the Investigative Capability of the Department of Defense.

ACTION: Notice of open meeting.

**SUMMARY:** Pursuant to Public Law 92-463, notice is hereby given of a forthcoming meeting of the Advisory Board on the Investigative Capability of the Department of Defense. The purpose of the meeting is to discuss the progress of the study and further courses of action. This meeting is open to the public.

**DATE AND TIME:** June 9, 1994, from 8:30 a.m.-5 p.m.

**ADDRESSES:** 1700 N. Moore Street, suite 1425, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:**

E. Vaughn Dunnigan, Deputy Staff Director, Advisory Board on the Investigative Capability of the Department of Defense, 1700 N. Moore Street, suite 1420, Arlington, VA 22209; telephone (703) 696-6055.

May 31, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison  
Officer, Department of Defense.

[FR Doc. 94-13598 Filed 6-3-94; 8:45 am]

BILLING CODE 5000-04-M

## DEPARTMENT OF ENERGY

### Justification for Acceptance of an Unsolicited Application

AGENCY: Department of Energy (DOE).

ACTION: Notice.

**SUMMARY:** DOE announces that pursuant to 10 CFR 600.14, it intends to award on a noncompetitive basis a Cooperative Agreement to the African Electrification Foundation. The purpose of this program is to develop a partnership with Historically Black Colleges and Universities (HBCU's) to collaborate in strengthening the electric power system infrastructure in Africa. This cooperative agreement will help ensure that minority businesses and educational institutions are afforded an opportunity to expand their participation in the commercial application of energy-related technologies and enhance their competitiveness. Eligibility for this award is restricted to the African Electrification Foundation.

**FOR FURTHER INFORMATION CONTACT:** Rufus H. Smith, M-5, U S Department of Energy, Oak Ridge, Tennessee 37830, (615) 576-4988.

Issued in Oak Ridge, Tennessee, on May 24, 1994.

Peter D. Dayton,

Director, Procurement & Contracts Division,  
Oak Ridge Operations Office.

[FR Doc. 94-13686 Filed 6-3-94; 8:45 am]

BILLING CODE 6450-01-M

### Noncompetitive Award of Financial Assistance Pacific Northwest and Alaska Bioenergy Program—State Grants

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

**SUMMARY:** The Department of Energy (DOE), Golden Field Office, through the Seattle Support Office, announces that pursuant to DOE Financial Assistance Rules 10 CFR 600.7(b)(2), it intends to award grants to: Alaska Department of Community and Regional Affairs, Energy Division; Idaho Department of Water Resources, Energy Division; Montana Department of Natural Resources and Conservation, Energy

Division; Oregon Department of Energy; and Washington State Energy Office.

The awards represent a continuation of DOE funded research, development, and demonstration of bioenergy-related technologies. Public Law 97-88 provides the statutory authority for the proposed award.

**SUPPLEMENTARY INFORMATION:** Through the agencies identified above, the states of Alaska, Idaho, Montana, Oregon and Washington have been engaged in encouraging the development of bioenergy technologies for at least the last eleven years and have made successful advances to:

- (1) Produce cost-shared projects,
- (2) establish regional bioenergy committees,
- (3) Interact with trade and professional associations,
- (4) Provide technical assistance to developers and utilities,
- (5) Produce targeted information, and
- (6) Implement regulatory incentives or reduce regulatory and environmental barriers which promote the development of bioenergy technologies. Research, development, and demonstration activities occurring under these grant agreement will provide needed data and information to DOE and the bioenergy industry. This helps remove barriers to the utilization of bioenergy technologies.

Therefore, these financial assistance applications are being accepted because the work to be funded is necessary to continue activities presently being supported by DOE and the work will enhance the public benefit. DOE knows of no other entities within respective state boundaries which are conducting these activities in the near or distant future. The project period for the grant agreements is expected to begin in July 1994 for a five year period. DOE plans to provide funding in the amount of \$475,000 for each state for this project period (State in-kind match equals \$125,000 and U.S. DOE funds equal \$350,000).

#### FOR FURTHER INFORMATION CONTACT:

Jeffrey James, U.S. Department of Energy, Seattle Support Office, 800 Fifth Avenue, Suite 3950, Seattle, WA 98104, (206) 553-2079.

Department of Energy, Golden Field Office, Noncompetitive Award of Financial Assistance, Pacific Northwest and Alaska Bioenergy Program—State Grants.

Issued in Golden, Colorado on May 24, 1994.

Dated: May 24, 1994.

John W. Meeker,

Chief, Procurement Team, GO.

[FR Doc. 94-13687 Filed 6-3-94; 8:45 am]

BILLING CODE 6450-01-M

## Energy Information Administration

### Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

**SUMMARY:** The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information:

- (1) The sponsor of the collection (a DOE component, which term includes the Federal Energy Regulatory Commission (FERC));
- (2) Collection number(s);
- (3) Current OMB docket number (if applicable);
- (4) Collection title;
- (5) Type of request, e.g., new, revision, extension, or reinstatement;
- (6) Frequency of collection;
- (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit;
- (8) Affected public;
- (9) An estimate of the number of respondents per report period;
- (10) An estimate of the number of responses per respondent annually;
- (11) An estimate of the average hours per response;
- (12) The estimated total annual respondent burden; and
- (13) A brief abstract describing the proposed collection and the respondents.

**DATES:** Comments must be filed on or before July 6, 1994. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed

below of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the EIA contact listed below.)

**ADDRESSES:** Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

**FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT:** Norma White, Office of Statistical Standards, (EI-73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Ms. White may be telephoned at (202) 254-5327.

**SUPPLEMENTARY INFORMATION:** The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC-580
3. 1902-0137
4. Interrogatory on Fuel and Energy Purchase Practices
5. Revision
6. Biennially
7. Mandatory
8. Businesses or other for-profit
9. 67 respondents
10. 1 response
11. 90 hours per response
12. 6030 hours
13. The information is needed to comply with the requirements of Section 205(f)(2) of the Federal Power Act for a review "not less frequently than every two years" of practices \* \* \* to insure efficient use of resources.

**Statutory Authority:** Sec. 5(a), 5(b), 13(b), and 52, Pub. L. No. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, May 27, 1994.

**Yvonne M. Bishop,**

*Director, Statistical Standards, Energy Information Administration.*

[FR Doc. 94-13688 Filed 6-3-94; 8:45 am]

BILLING CODE 6450-01-P

### Clearance of Form-EIA-858, "Uranium Industry Annual Survey"

**AGENCY:** Energy Information Administration, DOE.

**ACTION:** Notice of proposed changes to form.

**SUMMARY:** Under its continuing effort to reduce paperwork and reporting burden for respondents (as required by the

Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. 3501 et seq.), the Energy Information Administration (EIA) conducts a consultation program to provide the general public and other Federal agencies an opportunity to comment on its continuing and newly proposed survey forms. This program helps to assure that: (a) Data can be reported by respondents in the requested format; (b) burden of reporting is minimized; (c) survey forms are clearly understood; and (d) the impact of collection requirements on respondents can be accurately assessed. Currently, EIA is soliciting comments concerning proposed changes to Form EIA-858, "Uranium Industry Annual Survey," for the collection of 1994 data.

**DATES:** Written comments must be submitted July 6, 1994. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should, as soon as possible, advise the EIA contact listed below of your intention to provide comments.

**FOR FURTHER INFORMATION CONTACT:** Luther Smith, Energy Information Administration, EI-522; U.S. Department of Energy; Washington, DC 20585; Phone (202) 254-5565. Requests for additional information or copies of the form and instructions should be directed to Luther Smith.

#### SUPPLEMENTARY INFORMATION:

- I. Background
- II. Current Actions
- III. Request for Comments

#### I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. 93-275) and the Department of Energy (DOE) Organization Act (Public Law 95-91), the Energy Information Administration is conducting a comprehensive energy data and information program to collect, evaluate, assemble, and analyze periodic data and information on the domestic uranium industry and economic and statistical information related to the adequacy of domestic uranium resources and production capability to meet the Nation's near- and longer-term future needs. The information collected is used by the Energy Information Administration to fulfill its monitoring and data dissemination functions as mandated by the Congress.

Data collected on these forms provide a comprehensive statistical characterization of the domestic uranium industry in these areas: (a) Uranium exploration, mining, reserves,

uranium concentrate production, and employment related to those activities, and (b) uranium marketing activities, inventory status, imports and exports, enrichment feed deliveries, purchases of enrichment services, and use of unirradiated uranium in new fuel assemblies. Published data from these surveys are used by the Congress, Federal and State agencies, the uranium and electric-utility industries, and the general public. National and State level data are published in the EIA reports "World Nuclear Capacity and Fuel Cycle Requirements," "Uranium Purchases Report," "Uranium Industry Annual," and the "Annual Energy Review."

#### II. Current Actions

##### Summary of Changes

In the December 7, 1993, Federal Register notice (58 FR 64399), the EIA proposed that 1994 data on uranium contracts (Item 1, Schedule B, annual Form EIA-858) would be collected on a new quarterly survey form, Schedule M. Under this proposal also, the collection of 1994 data under Schedule A and under Items 2-7 of Schedule B, Form EIA-858, would have been done annually.

After review of comments received in response to the Federal Register notice, the EIA has decided not to implement the proposed new Schedule M for 1994. Instead, the technical suggestions for improving the Form EIA-858 survey provided in the comments will be used, where applicable, to revise the annual Schedule B as described below.

For the EIA-858 survey for 1994, the EIA also has dropped the proposed new criteria that would have expanded the number of data elements that would be releasable. The "Provisions for Confidentiality" declaration on the 1994 Form EIA-858 will remain the same as it was on the 1993 Form EIA-858.

In the December 7, 1993, Federal Register notice, the EIA also proposed to use a one-page survey, Form EIA-851, to collect quarterly data on uranium concentrate production for 1994. The EIA has decided not to pursue at this time implementation of a formal survey form for the EIA-851 collection. Instead, the current mode of monthly reporting of uranium concentrate production data through collection of internal company production reports and phone surveys will be continued. The production data collected under the EIA-851 survey will continue to be treated as confidential.

Detailed Description of Changes

Form EIA-858: On the 1994 Form EIA-858, Schedule B data items have been reordered (compared with the 1993 Form EIA-858) as described in the following table:

NUMBERING OF SCHEDULE B DATA ITEMS, FORM EIA-858

1993 (Current)		1994 (Change)	
Item No.	Item title	Item No.	Item title
1	Contract .....	1	Contract.
2	Inventories ....	2	Inventories.
3	Inventory policy .....	3	Inventory policy.
4	Actual enrichment feed deliveries ...	4	Unirradiated new assemblies loaded.
5	Projected feed deliveries ...	5	Actual enrichment feed deliveries.
6	Unirradiated new assemblies loaded	6	Projected feed deliveries.
7	Enrichment services purchased by utilities ..	7	Now Item 1.J, under "Contract".

On the 1993 Form EIA-858 (left-hand column above), Items 1 and 6 (now Item 4) will be modified as described below. Items 2, 3, 4 (now Item 5), and Item 5 (now Item 6) of Schedule B will continue to be collected without modifications. Item 7, "Enrichment Services Purchased by Utilities," on the 1993 Schedule B will be incorporated under Item 1.J, "Utility Purchases of Enrichment Services," on the 1994 Schedule B.

For Item 1 (Contract)

Item 1 will be modified as explained under "a" through "h" below:

a. A check off box will be added to Item 1.B to identify contracts that have been renegotiated based on price-related issues.

b. Item 1.C will be a new item to collect information on the term-of-delivery arrangement specified in a contract: i.e., Whether the respondent classifies the reported contract as having a "spot," short-term," "medium-term," or a "long-term" delivery period.

c. Item 1.D, "Transaction Type," will provide separate check off boxes to indicate whether uranium materials were sent or received under an Exchange transaction.

d. Item 1.E will display a listing of applicable country identification codes from which respondents can choose to report the country or countries of origin and/or destination for deliveries of natural uranium and the country of enrichment services for enriched uranium. An "Other" space will be provided for respondents to write in a country name and its identification code not listed under item 1.E.

e. Item 1.F will be designed to collect data on individual quantities of delivered uranium and the type of material delivered, its price, delivery date (DD/MM), whether the material was imported or exported, and country of origin. For deliveries of enriched uranium product (EUP), the quantity will be reported as kilograms of uranium (KgU). The transaction tails assay, the product assay, and the feed assay also will be reported to allow the EIA to calculate the natural uranium feed component quantity as equivalent U<sub>3</sub>O<sub>8</sub> for each delivered quantity. For EUP, the country of enrichment will be reported instead of the country of uranium origin. For deliveries of both natural uranium and EUP, forecast for firm and optional deliveries will be requested for a five-year forward period.

f. Reporting the contract pricing mechanism under Item 1.H will be simplified to: (a) Request respondents to report whether a pricing arrangement under a market-price related contract specifies a "floor price" or a "no floor price"; (b) add a check off box to capture "spot-market price" pricing arrangements; and (c) allow pricing arrangements other than for "market-price related" and "contract price" to be reported as "Other" and briefly described in the space provided.

g. Under Item 1.I, respondents will be requested to briefly describe the options that are allowed under the contract for the seller and/or the buyer (purchaser).

h. Utility purchases of enrichment services (formerly Item 7 of Schedule B) will be reported under Item 1.J in order to collect the reporting of all utility contracting activities under Item 1. This new format will permit the respondent to report individual quantities of separative work units (SWU) purchased by a utility by the date of delivery, seller's name, and the country of enrichment origin.

For Item 6 (Unirradiated New Fuel Assemblies Loaded into the Reactor)

The data element title will be changed to make clear the data being requested, which is the quantity of uranium used in unirradiated, new fuel assemblies loaded into a reactor(s) during the survey year.

III. Request for Comments

Prospective respondents and other interested parties should comment on these proposed changes. The following general guidelines are provided to assist in the preparation of responses.

As a potential respondent:  
A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions provided in the instructions?

C. Can data be submitted in accordance with the response period specified in the instructions?

D. Will the estimated burden of reporting for the Form EIA-858 survey, currently 25 hours per response, be reduced or increased due to the proposed form changes.

E. Will the estimated cost of completing the form, including the direct and indirect costs associated with the data collection, be reduced or increased as a result of these changes? Direct costs should include all costs, such as administrative costs, directly attributable to providing the requested information.

F. How can the revised Form EIA-858, Schedules A and B, be improved?

G. Do you know of another Federal, State, or local agency that collects similar data? If so, specify the agency, the data element(s), and the means of collection.

H. What definitions does your company use for: spot, short-term, medium-term, and/or long-term contracts?

As a potential data user:

A. Will these changes improve the usefulness of the data?

B. Can you use data at the levels of detail indicated on the Form EIA-858?

C. For what purposes do you use the data? Please be specific.

D. How could the form be improved to better meet your specific needs?

E. Are there alternate sources of data and do you use them? What are their deficiencies and/or strengths

F. What data should be published that are not now being published? Please specifically address any data publication issues as they might relate to changes in the survey form and/or the data collected.

The EIA also is interested in receiving comments from persons regarding their views on the need for the information contained in the survey Form EIA-858.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of these forms changes. The comments also will become a matter of public record.

**Statutory Authority**

Sections 5(a), 5(b), 13(b), and 52 of Public Law 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), 790a, and section 205, Public Law 95-91, Department of Energy Organization Act, 42 U.S.C. 7135.

Issued in Washington, DC, May 25, 1994.

John Gross,

Acting Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 94-13689 Filed 6-3-94; 8:45 am]

BILLING CODE 6450-01-P

**Federal Energy Regulatory Commission**

[Docket No. ER94-289-000, et al.]

**Midwest Power Systems Inc., et al.; Electric Rate and Corporate Regulation Filings**

May 27, 1994.

Take notice that the following filings have been made with the Commission:

**1. Midwest Power Systems, Inc.**

[Docket No. ER94-289-000]

Take notice that on May 23, 1994, Midwest Power Systems Inc. (MPSI) tendered for filing Amendment No. 3 to the filing of a Peaking Capacity Sales Agreement (Agreement) dated June 6, 1991, between Corn Belt Power Cooperative (Corn Belt) and Iowa Public Service Company, n/k/a MPSI. This Agreement's principle purpose is to establish terms for MPSI to purchase capacity and energy from Corn Belt from June 1, 1994, through September 30, 2000. Paragraph 12 of the Agreement allows for MPSI to set capacity and energy to Corn Belt, at Corn Belt's sole option, in the months of October and November to each respective year.

Amendment No. 3 contains additional support data and information.

MPSI requests a waiver of § 35.3 of the commission's regulations so that the Peaking Capacity Sales Agreement be approved effective June 1, 1994. Midwest Power respectfully requests an abbreviated notice of filing of approximately ten days.

MPSI states that copies of this filing were served on Corn Belt and the Iowa Utilities Board.

*Comment date:* June 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

**2. Consolidated Edison Company of New York, Inc.**

[Docket Nos. ER94-1213-000, ER94-1214-000, ER94-1215-000, ER94-1216-000, ER94-1217-000, ER94-1218-000, ER94-1219-000, and ER94-1220-000]

Take notice that on May 23, 1994, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a letter requesting a waiver of the 60-day prior notice requirement for the above-listed dockets and an amendment to four of the above-listed dockets (ER94-1213-000, ER94-1214-000, ER94-1217-000, and ER94-1220-000). The initial filings provided for an increase in the monthly charge for the transmission of power and energy pursuant to the following Rate Schedules:

Docket No.	Rate schedule	Person receiving service
ER94-1213-000	60	Power Authority of the State of New York ("Power Authority")(Brookhaven).
ER94-1214-000	78	Power Authority (LI MDAs).
ER94-1215-000	102	Power Authority (EDP).
ER94-1216-000	117	Long Island Lighting Company (LILCO) (Y-50).
ER94-1217-000	81	Power Authority (LI Municipals).
ER94-1218-000	105	Orange & Rockland Utilities, Inc. ("O&R").
ER94-1219-000	94	LILCO (Gilboa).
ER94-1220-000	66	Power Authority (Grumman).

Con Edison states that a copy of this filing has been served by mail upon the Authority, LILCO, O&R, and the Villages of Freeport, Greenport, and Rockville Centre.

*Comment date:* June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

**3. New England Power Company**

[Docket No. ER94-1275-000]

Take notice that on May 19, 1994, New England Power Company (NEP), tendered for filing a revised service agreement under NEP's FERC Electric Tariff Original Volume No. 4. The revision would permit the addition of a delivery point for service to the West Boylston (Mass.) Municipal Lighting Plant.

*Comment date:* June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

**4. The Montana Power Company**

[Docket No. ER94-1285-000]

Take notice that on May 20, 1994, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 a supplement to Rate Schedule FERC No. 188 (a Transmission Agreement between The Montana Power Company and Puget Sound Power & Light Company, dated July 30, 1971). Montana requests that the Commission grant a waiver of the 60-day prior notice requirement pursuant to 18 CFR 35.11.

*Comment date:* June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

**5. Western Resources, Inc.**

[Docket No. ER94-1286-000]

Take notice that on May 20, 1994, Western Resources, Inc. (Western Resources) tendered for filing Transmission Service Agreements (Agreements) between Western Resources and each of the following

Kansas cities: Fredonia, Mulvane, Neodesha, and Winfield. Under the Agreements, Western Resources will make transmission service available for the delivery of power and energy to each of the cities. This service will be subject to the terms and conditions in Service Schedule FT (Firm Wholesale Transmission Service) in Western Resources' FERC Electric Tariff, Volume No. 1, filed March 31, 1994. This filing is proposed to become effective June 1, 1994.

Copies of this filing were served upon Fredonia, Mulvane, Neodesha, Winfield and the Kansas Corporation Commission.

*Comment date:* June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

**6. Western Regional Transmission Association**

[Docket No. ER94-1288-000]

Take notice that on May 20, 1994, PacifiCorp, the California Municipal Utilities Association and the

Independent Energy Producers tendered for filing in accordance with 18 CFR 35.13 of the Commission's Rules and Regulations, a Governing Agreement on behalf of the Western Regional Transmission Association.

*Comment date:* June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

#### 7. Rayburn Country Electric Cooperative, Inc.

[Docket No. ER94-1290-000]

Take notice that on May 20, 1994, Rayburn Country Electric Cooperative, Inc. (Rayburn Electric), tendered for filing proposed changes to its FERC Electric Service Tariff, Rate Schedule WP-S. Rayburn Electric proposes to replace its current Rate Schedule WP-S with a new Rate Schedule WP-2 for the purpose of implementing a uniform, system-wide rate for sales to its members, both under the jurisdiction of the FERC and the Public Utility Commission of Texas (PUCT).<sup>1</sup> The proposed rate changes are projected to increase revenues from jurisdictional sales and service by \$413,672 (or 3.18 percent) from the existing FERC rate and decrease revenues by \$7,223 (or 0.01 percent) from the existing PUCT rate based upon the 12 month period ending December 31, 1994.

The purpose of the proposed rate change is to permit Rayburn Electric to charge a common, blended rate for service to all of its distribution members, thereby avoiding a disparity of rates and spreading savings resulting from a transaction with the Southwestern Electric Power Company among all of its members.

Copies of the filing were served upon Rayburn Electric's customers and the PUCT.

*Comment date:* June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

#### 8. Long Island Lighting Company

[Docket No. ER94-1291-000]

Take notice that on May 23, 1994, Long Island Lighting Company (LILCO), tendered for filing a 1994 Summer Banking Agreement between LILCO and New York Power Authority (NYPA) and a Summer 1994 Operating Agreement between LILCO and the Village of Rockville Centre (Rockville Centre).

The two agreements facilitate the delivery of up to 26 megawatts of NYPA power to Rockville Centre during the 1994 Summer period (May 1, 1994 to October 31, 1994). LILCO has requested

an effective date of May 1, 1994, or, alternatively, an effective date as of one day after the date of its filing of the two agreements with the Commission. LILCO also requests that the agreements be permitted to terminate as of October 31, 1994.

Copies of this filing have been served by LILCO on NYPA, Rockville Centre, and the New York State Public Service Commission.

*Comment date:* June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

#### 9. Orange and Rockland Utilities, Inc.

[Docket No. ER94-1292-000]

Take notice that on May 23, 1994, Orange and Rockland Utilities, Inc., (Orange and Rockland) tendered for filing pursuant to the Federal Energy Regulatory Commission's order issued January 15, 1988, in Docket No. ER88-112-000, an executed Service Agreement between Orange and Rockland and Guild Molders, Inc.

*Comment date:* June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

#### 10. Orange and Rockland Utilities, Inc.

[Docket No. ER94-1293-000]

Take notice that on May 23, 1994, Orange and Rockland Utilities, Inc. (Orange and Rockland), tendered for filing pursuant to the Federal Energy Regulatory Commission's order issued January 15, 1988, in Docket No. ER88-112-000, an executed Service Agreement between Orange and Rockland and Becton Dickinson.

*Comment date:* June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

#### 11. Public Service Electric and Gas Company

[Docket No. ER94-1294-000]

Take notice that on May 23, 1994, Public Service Electric and Gas Company (PSE&G), tendered for filing an initial Rate Schedule to provide fully interruptible transmission service to for deliveries of non-firm wholesale electrical power and associated energy output utilizing the PSE&G bulk power transmission system.

*Comment date:* June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

#### 12. Portland General Electric Company

[Docket No. ER94-1295-000]

Take notice that on May 24, 1994, Portland General Electric Company (PGE), tendered for filing service agreements under FERC Electric Tariff, Original Volume No. 1 (PGE-1) with

Enron Power Marketing, Inc. and Electric Clearinghouse, Inc. Copies of the filing have been served on the parties included in the distribution list defined in the filing letter.

*Comment date:* June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

#### 13. The Montana Power Company

[Docket No. ER94-1296-000]

Take notice that on May 24, 1994, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13, a Form of Service Agreement with Rainbow Energy Marketing Corporation (Rainbow) under FERC Electric Tariff, Second Revised Volume No. 1 (M-1 Tariff), as well as a revised Index of Purchasers under said Tariff and a Certificate of Concurrence from Rainbow.

A copy of the filing was served upon Rainbow.

*Comment date:* June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

#### 14. Black Creek Hydro, Inc.

[Docket No. ER94-1297-000]

Take notice that on May 24, 1994, Black Creek Hydro, Inc. (Black Creek), tendered for filing its proposed initial Rate Schedule FERC No. 1.

The proposed initial Rate Schedule No. 1 would allow Black Creek to charge non-cost-based negotiated rates for sales of power from its Black Creek hydroelectric facility located in King County, Washington.

*Comment date:* June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

#### 15. Florida Power & Light Company

[Docket No. ER94-1298-000]

Take notice that on May 24, 1994, Florida Power & Light Company (FPL) filed with the Commission the Specified Transmission Facilities Modification Agreement between Florida Power & Light Company and Seminole Electric Cooperative, Inc. (SEC) (the Agreement). FPL states that the Agreement provides the terms and conditions applicable to the modification of certain FPL transmission facilities necessary for SEC to assume a direct service obligation at those delivery points. In addition, FPL seeks to modify one attachment and terminate three exhibits applicable to those delivery points which are attached to and part of the Aggregate Billing Partial Requirements Service Agreement between Florida Power & Light Company and Seminole Electric

<sup>1</sup> Rayburn Electric filed the same Rate Schedule WP-2 with the Public Utility Commission of Texas on May 16, 1994.

Cooperative, Inc. FPL requests that the Agreement and the terminations become effective on May 25, 1994.

*Comment date:* June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

#### 16. Central Hudson Gas & Electric Corporation

[Docket No. ER94-1299-000]

Take notice that on May 20, 1994, Central Hudson Gas and Electric Corporation (Central Hudson), tendered for filing its development of actual costs for 1992 and 1993 related to substation service provided to Consolidated Edison Company of New York, Inc. (Con Edison) in accordance with the provisions of its Rate Schedule FERC No. 43.

Central Hudson indicates that the actual cost amounted to \$247,568 for 1992 and \$239,490 for 1993; 1993's actual cost will be the basis on which estimated charges for 1994 will be billed.

Central Hudson requests waiver on the notice requirements set forth in 18 CFR 35.11 of the Regulations to permit charges to become effective January 1, 1994, as agreed by the parties.

Central Hudson states that a copy of its filing was served on Con Edison and the State of New York Public Service Commission.

*Comment date:* June 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

#### 17. Northwestern Public Service Company

[Docket No. ES94-28-000]

Take notice that on May 20, 1994, Northwestern Public Service Company filed an application under section 204 of the Federal Power Act seeking authorization to issue not more than \$25 million of short-term debt securities from time to time over a two-year period immediately following the date of the Commission's approval of the application.

*Comment date:* June 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

#### 18. Temple-Inland Forest Products Corporation

[Docket No. QF84-389-001]

On May 20, 1994, Temple-Inland Forest Products Corporation tendered for filing a supplement to its filing in this docket.

The supplement pertains to the ownership structure and technical aspects of the facility. No determination has been made that the submittal constitutes a complete filing.

The prior notice of application for recertification of a qualifying facility published in 59 *Federal Register* 14,157 (1994) on March 25, 1994, was erroneously issued under Docket No. QF94-76-000. The correct designation should have been Docket No. QF84-389-001.

*Comment date:* June 13, 1994, in accordance with Standard Paragraph E at the end of this notice.

#### Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-13619 Filed 6-3-94; 8:45 am]

BILLING CODE 6717-01-P

#### [Project No. 349-029]

#### Alabama Power Co.; Availability of Environmental Assessment

May 31, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 FR 47897), the Office of Hydropower Licensing has revised the application for Martin Dam Project, located on the Tallapoosa River, in Elmore, Coosa, and Tallapoosa Counties, Alabama, and has prepared an Environmental Assessment (EA) of the proposed revised recreation plan. The Commission staff concluded that approval of the application for the revised recreation plan, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Please submit any comments within 30 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 349-029 to all comments. For further information, please contact Dan Hayes at (202)-219-2660.

Lois D. Cashell,

Secretary.

[FR Doc. 94-13613 Filed 6-3-94; 8:45 am]

BILLING CODE 6717-01-M

#### [Project No. 11264]

#### Turbine Industries, Inc.; Availability of Final Environmental Assessment

May 31, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Cooleme Hydroelectric Project located on the South Yadkin River in the Town of Cooleme, Davie County, North Carolina, and has prepared a Final Environmental Assessment (FEA) for the proposed project. In the FEA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the FEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94-13612 Filed 6-3-94; 8:45 am]

BILLING CODE 6717-01-M

#### [Docket No. CP94-570-000]

#### Equitrans, Inc.; Request Under Blanket Authorization

May 31, 1994.

Take notice that on May 26, 1994, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275,

filed in Docket No. CP94-570-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install a delivery tap under Equitrans' blanket certificate issued in Docket No. CP83-508-000 and transferred to Equitrans in Docket No. CP86-676-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Equitrans proposes to install one delivery tap in the City of Coal Center, Pennsylvania to provide gas transportation service to Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable). Equitrans projects the quantity of gas to be delivered through the delivery tap will be approximately 1 Mcf on a peak day. Equitrans states it will charge Equitable the applicable transportation rate contained in Equitrans' tariff on file with and approved by the Commission.

Equitrans further states that the 1 Mcf per day of peak service will not impact Equitrans' peak day and annual deliveries. Equitrans also states that it has sufficient capacity to accomplish the deliveries without detriment to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,  
Secretary.

[FR Doc. 94-13614 Filed 6-3-94; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. GT94-38-000]

#### Transcontinental Gas Pipe Line Corp.; Report of Refunds

Take notice that on May 2, 1994, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Federal Energy

Regulatory Commission (Commission) its Report of Refunds in accordance with section 4 of Transco's Rate Schedule LSS showing refunds made to its LSS customers resulting from the Commission's order issued December 30, 1993, in National Fuel's Docket Nos. RP92-73-000 and RS92-21-000, *et al.*

Transco states that on April 25, 1994, it refunded \$19,027.64, including interest, to its LSS customers for the referenced National Fuel refund for the period August 1, 1993 through November 30, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before June 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 94-13616 Filed 6-3-94; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. GT94-39-000]

#### Transcontinental Gas Pipe Line Corp.; Report of Refunds

May 31, 1994.

Take notice that on May 2, 1994, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Report of Refunds in accordance with section 4 of Transco's Rate Schedule SS-2 showing refunds made to its SS-2 customers resulting from the Commission's order issued December 30, 1993, in National Fuel's Docket Nos. RP92-73-000 and RS92-21-000, *et al.*

Transco states that on April 25, 1994, it refunded \$32,843.71, including interest, to its SS-2 customers for the referenced National Fuel refund for the period August 1, 1993 through November 30, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington,

DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before June 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 94-13615 Filed 6-3-94; 8:45 am]  
BILLING CODE 6717-01-M

[Docket No. GT94-37-000]

#### Transcontinental Gas Pipe Line Corporation; Report of Refunds

May 31, 1994.

Take notice that on May 2, 1994, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing with the Federal Energy Regulatory Commission (Commission) its Report of Refunds in accordance with § 8.01 (i) of Transco's NIPPs-SE Rate Schedule x-314, x-315, x-316, x-317, x-318, and x-324 showing refunds made to its NPSE customers resulting from the Commission's order issued December 30, 1993, in National Fuel's Docket Nos. RP92-73-000 and RS92-21-000, *et al.*

Transco states that on April 26, 1994, it refunded \$124,565.68, including interest, to its NPSE customers for the referenced National Fuel refund for the period August 1, 1993 through November 30, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on

file with the Commission and are available for public inspection.

Lois D. Cashell,  
Secretary.

[FR Doc. 94-13617 Filed 6-3-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-181-000]

**Williams Natural Gas Company;  
Further Conference**

May 31, 1994.

By this notice, the technical conference previously scheduled for Monday, June 20, 1994, (59 FR 27273, May 26, 1994), in the above-docket, has been rescheduled for Tuesday, June 28, 1994.

Lois D. Cashell,  
Secretary.

[FR Doc. 94-13618 Filed 6-3-94; 8:45 am]

BILLING CODE 6717-01-M

**Office of Fossil Energy**

[FE Docket No. 94-35-NG]

**Alberta Resources Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas From and to Canada**

AGENCY: Office of Fossil Energy, DOE.  
ACTION: Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Alberta Resources Inc. blanket authorization to import and export up to a combined total of 50 billion cubic feet (Bcf) of natural gas from and to Canada over a two-year term beginning on the date of first import or export.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 13, 1994.

Clifford P. Tomaszewski,  
Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94-13659 Filed 6-3-94; 8:45 am]

BILLING CODE 6450-01-P

[FE Docket No. 94-20-NG]

**CU Energy Marketing, Inc.; Blanket Authorization To Import Natural Gas From Canada**

AGENCY: Office of Fossil Energy, DOE

ACTION: Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting CU Energy Marketing, Inc. authorization to import up to 200 Bcf of natural gas from Canada over a two-year term beginning on the date of the first delivery after June 16, 1994.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on May 17, 1994.

Clifford P. Tomaszewski,  
Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94-13660 Filed 6-3-94; 8:45 am]

BILLING CODE 6450-01-P

[FE Docket No. 94-14-NG]

**Distrigas of Massachusetts Corp.; Blanket Authorization To Export Natural Gas, Including Liquefied Natural Gas, to Canada**

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Distrigas of Massachusetts Corporation authorization to export to Canada up to 20 Bcf of natural gas, including liquefied natural gas (LNG). The term of the authorization is for a period of two years beginning on the date of the first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on May 17, 1994.

Clifford P. Tomaszewski,  
Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94-13661 Filed 6-3-94; 8:45 am]

BILLING CODE 6450-01-P

[FE Docket No. 94-39-NG]

**Meridian Oil Transportation Inc.; Order Granting Blanket Authorization To Export Natural Gas, Including Liquefied Natural Gas, to Mexico**

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Order.

**SUMMARY:** The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Meridian Oil Transportation Inc. blanket authorization to export up to 54 Bcf of natural gas, including liquefied natural gas, to Mexico over a period of two years beginning on the date of first delivery after May 31, 1994.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, May 17, 1994.

Clifford P. Tomaszewski,  
Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

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BILLING CODE 6450-01-P

**Office of Hearings and Appeals**

**Implementation of Special Refund Procedures**

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of implementation of special refund procedures.

**SUMMARY:** The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of \$144,864.85, plus accrued interest, in refined petroleum overcharges obtained by the DOE under the terms of a Remedial Order issued to N. C. Ginther Company, Case No. LEF-0060. The OHA has determined that the funds will be distributed in accordance with the provisions of 10 CFR. Part 205, Subpart V and 15 U.S.C. 4501, the Petroleum Overcharge Distribution and Restitution Act (PODRA).

**FOR FURTHER INFORMATION CONTACT:** Richard T. Tedrow, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW. Washington, DC 20585 (202) 586-6602.

**DATES AND ADDRESSES:** Applications for Refund must be filed in duplicate, addressed to N. C. Ginther Company Special Refund Proceeding and sent to:

Office of Hearings and Appeals,  
Department of Energy, 1000  
Independence Avenue, SW.  
Washington, DC 20585. Applications  
should display a prominent reference to  
the Case Number LEF-0060 and be  
postmarked on or before November 30,  
1994.

**SUPPLEMENTARY INFORMATION:** In  
accordance with 10 CFR 205.282(b),  
notice is hereby given of the issuance of  
the Decision and Order set out below.  
The Decision and Order sets forth the  
procedures that the DOE has formulated  
to distribute to eligible claimants  
\$144,864.85, plus accrued interest,  
obtained by the DOE under the terms of  
a Consent Order that the DOE issued to  
N. C. Ginther Company on March 25,  
1983. The Consent Order resolved all  
civil and administrative claims and  
disputes between N. C. Ginther  
Company and the DOE.

The OHA has determined to distribute  
the Consent Order fund in a two stage  
refund proceeding. Purchasers of  
propane, butane, and natural gasoline  
from N. C. Ginther Company will have  
an opportunity to submit refund  
applications in the first stage. The  
specific requirements which an  
applicant must meet in order to receive  
a refund are set out in Section III of the  
Decision. Claimants who meet these  
specific requirements will be eligible to  
receive refunds based on the number of  
gallons of propane, butane, and natural  
gasoline which they purchased from N.  
C. Ginther Company.

In the event that money remains after  
all first stage claims have been disposed  
of, the remaining funds will be  
disbursed in accordance with the  
provisions of 15 U.S.C. 4501, the  
Petroleum Overcharge Distribution and  
Restitution Act of 1986 (PODRA).

Applications for Refund must be  
postmarked on or before November 30,  
1994. Instructions for the completion of  
refund applications are set forth in  
Section IV of the Decision that  
immediately follows this notice.  
Applications should be sent to the  
address listed at the beginning of this  
notice.

Unless labelled as "confidential," all  
submissions must be made available for  
public inspection between the hours of  
1 p.m. and 5 p.m., Monday through  
Friday, except federal holidays, in the  
Public Reference Room of the Office of  
Hearings and Appeals, located in room  
1E-234, 1000 Independence Avenue,  
SW., Washington DC 20585.

Dated: May 31, 1994.

**George B. Breznay,**  
*Director, Office of Hearings and Appeals.*

### **Decision and Order of The Department of Energy**

#### *Implementation of Special Refund Procedures*

Name of Petitioner: N. C. Ginther  
Company

Date of Filing: July 20, 1993

Case Number: LEF-0060

Under the procedural regulations of  
the Department of Energy (DOE), the  
Economic Regulatory Administration  
(ERA) may request that the Office of  
Hearings and Appeals (OHA) formulate  
and implement special refund  
procedures. 10 CFR 205.281. These  
procedures are used to refund monies to  
those injured by actual or alleged  
violations of the DOE price regulations.

In this Decision and Order, we  
consider a Petition for Implementation  
of Special Refund Procedures filed by  
the ERA on July 20, 1993, for funds  
obtained due to alleged pricing  
violations in the sale of propane,  
butane, and natural gasoline (natural gas  
liquids products). The funds at issue in  
that Petition were obtained through  
settlement of DOE enforcement  
proceedings involving N. C. Ginther  
Company (Ginther), pursuant to 10 CFR  
part 205, subpart V. The present  
Decision will set forth final procedures  
for the distribution of these funds to  
qualified purchasers of Ginther's natural  
gas liquids (NGL) products.

#### **I. Background**

During the period covered by the  
Consent Order (September 1, 1973,  
through March 31, 1977), Ginther was a  
"gas plant operator" (as defined in 10  
CFR 212.162) and its sales were subject  
to DOE price regulations. Accordingly,  
Ginther was subject to the DOE  
Mandatory Petroleum Price Regulations.  
An ERA audit of Ginther's records  
revealed possible violations of the  
Mandatory Petroleum Price Regulations,  
10 CFR part 212 subparts E and K, in  
specified transactions during the period  
September 1, 1973, through March 31,  
1977 (the consent order period).<sup>1</sup>  
Consequently, the ERA issued a Notice  
of Probable Violation (NOPV) to Ginther

<sup>1</sup> Ginther owned all or a portion of four gas  
processing plants for various lengths of time during  
the audit period. In addition, Ginther owned and  
operated Ginther Energy Marketing Company and A  
& V Gas Service, Inc. In accordance with the  
definition of a firm in 10 CFR 212.31, the four gas  
processing plants, Ginther Energy Marketing  
Company, and A & V Gas Service, Inc., constitute  
one firm and were regarded as such by ERA in the  
audit. Notice of Probable Violation issued to N. C.  
Ginther dated December 31, 1980.

on December 31, 1980, alleging pricing  
violations in the sale of propane,  
butane, and natural gasoline during the  
audit period. On March 25, 1983,  
Ginther and the DOE entered into a  
Consent Order. The Consent Order  
refers to the ERA's allegations of  
regulatory violations. It also includes  
Ginther's denials that any such  
violations occurred.

As a result of the Consent Order, there  
is a total of \$144,864.85, plus accrued  
interest, available for restitution. This  
Decision concerns the distribution of all  
funds in the Ginther escrow account.

#### **II. The Proposed Decision and Order**

On April 14, 1994, the OHA issued a  
Proposed Decision and Order (PDO)  
establishing tentative procedures to  
distribute the alleged violation amount  
obtained from Ginther. 59 FR 19005  
(April 21, 1994). The OHA tentatively  
outlined procedures under which  
purchasers of Ginther's NGL products  
could apply for refunds. In order to  
permit applicants to make refund claims  
without incurring disproportionate costs  
as well as to allow the OHA to equitably  
and efficiently consider those claims,  
we set forth a number of presumptions  
pertaining to refund procedures.

First, we presumed that the alleged  
refined product overcharges were  
spread evenly over all of Ginther's sales  
of NGL products during the Consent  
Order period. We therefore proposed  
that an applicant's potential refund  
generally should be computed by  
multiplying the per-gallon refund  
amount by the number of gallons of  
Ginther's NGL products that the  
claimant purchased during the Consent  
Order period. The resulting figure is  
referred to as the claimant's "volumetric  
share" of the Ginther Consent Order  
funds. Because an applicant may have  
been overcharged by more than the  
volumetric amount, we proposed that an  
applicant could rebut the volumetric  
refund presumption by showing that it  
sustained a greater amount of the  
overcharge.

Because it is potentially difficult,  
time-consuming, and expensive to  
demonstrate that one was forced to  
absorb any overcharges from Ginther,  
we proposed to adopt a number of  
presumptions concerning injury. We  
proposed that resellers and retailers  
claiming refunds of \$5,000 or less, end-  
users, agricultural cooperatives, and  
certain types of regulated firms would  
be presumed injured by Ginther's  
alleged overcharges. We proposed that  
refiners, resellers, and retailers seeking  
refunds greater than \$5,000 could  
receive a maximum of \$20,000 based  
upon 40 percent of their volumetric

share without having to prove injury. We also proposed to presume that claimants who made only spot purchases from Ginther were not injured and must rebut that presumption to receive a refund. We stated that applicants not covered by one of the injury presumptions would be required to demonstrate that they were forced to absorb any overcharge by Ginther in order to receive their full volumetric shares of the Ginther Consent Order funds.

Finally, we proposed that any money remaining after all Ginther refund claims are analyzed should be disbursed as indirect restitution in accordance with the provisions of the Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. §§ 4501-4507 (1988).

The PDO provided a period of 30 days from the date of publication in the *Federal Register* in which comments could be filed regarding the tentative refund process. More than 30 days have elapsed and the OHA has received no comments concerning the proposed procedures for the distribution of the Ginther settlement funds. Consequently, the procedures will be adopted as proposed.

### III. Refund Procedures

#### A. Eligibility for Refund

As indicated above, the Consent Order resolved all civil and administrative claims between DOE and Ginther. Accordingly, to the extent that is possible, the Ginther Consent Order amount of \$144,864.85, plus accrued interest, will be distributed to purchasers of covered Ginther NGL products who can show that they were injured by Ginther's pricing practices during the period September 1, 1973, through March 31, 1977.

#### B. Calculation of Refund Amount

We are adopting a volumetric method to apportion the Ginther escrow account. Under this volumetric refund approach, a claimant's allocable share of the refined products pool is equal to the number of gallons of covered products purchased during the Consent Order period times a per gallon refund amount. We will derive the volumetric figure (per gallon refund amount) by dividing the \$144,864.85 received from Ginther by the total volume of NGL products sold by the firm during the regulatory period, 25,312,920 gallons. This yields a volumetric refund amount of \$.0057 per gallon, exclusive of interest. This method is based upon the presumption that the alleged overcharges were spread equally over all

gallons of NGL products sold by Ginther during the regulatory period. *E.g.*, *American Pac. Int'l, Inc.*, 14 DOE ¶ 85,158, at 88,293 (1986).<sup>2</sup>

Under the volumetric approach, an eligible claimant will receive a refund equal to the number of gallons of covered products that it purchased from Ginther during the period September 1, 1973, through March 31, 1977, multiplied by the per gallon volumetric amount for this proceeding. Accordingly, each claimant will be required to establish, by documentation or reasonable estimation, the volume of products that it purchased during this period. In addition, each successful claimant will receive a pro rata portion of the interest that has accrued on the Ginther funds since the date of remittance. As in previous cases, we will establish a minimum amount of \$15 for refund claims. *E.g.*, *Uban Oil Co.*, 9 DOE ¶ 82,541, at 85,225 (1982). Accordingly, an applicant must have purchased at least 2,544 gallons of NGL products from Ginther in order for its claim to be considered.

#### C. Showing of Injury

Each claimant will be required to document its purchases of covered products from Ginther during the Consent Order period. In addition, in order to receive a refund, an applicant generally must demonstrate through the submission of detailed evidence that it did not pass on the alleged overcharges to its customers. See, *e.g.*, *Office of Enforcement*, 8 DOE ¶ 82,597, at 85,396-97 (1981) (*Vickers*).

However, as we have done in many prior refund cases, we will adopt a number of presumptions regarding injury for claimants in each category listed below. These presumptions are

<sup>2</sup> Nevertheless, we realize that the impact on an individual claimant may have been greater than the volumetric amount. Therefore, the volumetric presumption will be rebuttable, and we will allow a claimant to submit evidence detailing the specific overcharges that it incurred in order to be eligible for a larger refund. *E.g.*, *Standard Oil Co./Army and Air Force Exchange Serv.*, 12 DOE ¶ 85,015 (1984). Such an application will be granted only if an applicant makes a persuasive showing that: (1) it was "overcharged" by a specific amount, (2) it sustained a disproportionate share of Ginther's alleged overcharges, and (3) it was injured by those overcharges. See *MCO Holdings, Inc./MGPC, Inc./Little America Refining Co.*, 19 DOE ¶ 85,560 (1989); *Marathon Petroleum Co./Red Diamond Oil Co.*, 19 DOE ¶ 85,543 (1989); *Getty Oil Co./Atchison, Topeka & Santa Fe Railroad Co.*, 18 DOE ¶ 85,107 (1988). To the extent that a claimant makes this showing, it will receive a refund above the volumetric refund level. In computing the appropriate refunds of this type, we will prorate the refund amount by the ratio of the Ginther Consent order amount as compared to the aggregate overcharge amount alleged by the ERA. *Amtel, Inc./Whitco, Inc.*, 19 DOE ¶ 85,319 (1989) (*Amtel/Whitco*).

intended to ease what would be a time-consuming and potentially expensive process if an applicant were forced to demonstrate that they absorbed the alleged overcharges.

#### 1. End-Users

In accordance with prior Subpart V proceedings, we are adopting the presumption that an end-user or ultimate consumer of Ginther NGL products whose business is unrelated to the petroleum industry was injured by the alleged overcharges settled by the consent order. See, *e.g.*, *Texas Oil and Gas Corp.*, 12 DOE ¶ 85,069, at 88,209 (1984) (*TOGCO*). Unlike regulated firms in the petroleum industry, members of this group generally were not subject to price controls during the consent order period and were not required to keep records which justified selling price increases by reference to cost increases. Consequently, analysis of the impact of the alleged overcharges on the final prices of goods and services produced by members of this group would be beyond the scope of the refund proceeding. Id. Therefore, end-users of Ginther NGL products need only document their purchase volumes from Ginther during the consent order period to make a sufficient showing that they were injured by the alleged overcharges.

#### 2. Regulated Firms and Cooperatives

In order to receive a full volumetric refund, a claimant whose prices for goods and services are regulated by a governmental agency, *i.e.*, a public utility, or an agricultural cooperative which is required by its charter to pass through cost savings to its member purchasers, need only submit documentation of purchases used by itself or, in the case of a cooperative, sold to its members. However, a regulated firm or a cooperative will also be required to certify that it will pass any refund received through to its customers or member-customers, provide us with a full explanation of how it plans to accomplish the restitution, and certify that it will notify the appropriate regulatory body or membership group of the receipt of the refund. See *Marathon*, 14 DOE at 88,514-15. This requirement is based upon the presumption that, with respect to a regulated firm, any overcharge would have been routinely passed through to its customers. Similarly, any refunds received should be passed through to its customers. With respect to a cooperative, in general, the cooperative agreement which controls its business operations would ensure that the alleged overcharges, and similarly refunds, would be passed

through to its member-customers. Accordingly, these firms will not be required to make a detailed demonstration of injury.<sup>3</sup>

### 3. Refiners, Resellers, and Retailers

a. *Small claims presumption.* We will adopt a "small claims" presumption that resellers requesting relatively small refunds were injured by the alleged overcharges. Under the small claims presumption, a refiner, reseller, or retailer seeking a refund of \$5,000 or less, exclusive of interest, will not be required to submit evidence of injury beyond documentation of the volume of Ginther products it purchased during the consent order period. See *TOGCO*, 12 DOE at 88,210. This presumption is based on the fact that there may be considerable expense involved in gathering the types of data necessary to support a detailed claim of injury; for small claims the expense might even exceed the potential refund. Consequently, failure to allow simplified refund procedures for small claims could deprive injured parties of their opportunity to obtain a refund. Furthermore, use of the small claims presumption is desirable because it allows the OHA to process the large number of routine refund claims in an efficient manner.<sup>4</sup>

b. *Mid-Level Claim Presumption.* In addition, a refiner, reseller, or retailer claimant whose allocable share of the refund pool exceeds \$5,000, excluding interest, may elect to receive as its refund either \$5,000 or 40 percent of its allocable share, up to \$20,000,<sup>5</sup> whichever is larger.<sup>6</sup> The use of this presumption reflects our conviction that these larger, mid-level claimants were likely to have experienced some injury as a result of the alleged overcharges. See *Marathon*, 14 DOE at 88,515. We are adopting a 40 percent presumptive level of injury for all mid-level claimants in

<sup>3</sup> A cooperative's purchases of Ginther products which were resold to non-members will be treated in a manner consistent with purchases made by other resellers. See *Total Petroleum, Inc./Farmers Petroleum Cooperative, Inc.*, 19 DOE ¶ 85,215 (1989).

<sup>4</sup> In order to qualify for a refund under the small claims presumption, a refiner, reseller, or retailer must have purchased less than 877,280 gallons of Ginther products during the consent order period. However, an applicant, who has purchased more than 877,280 gallons of Ginther products during the consent order period, may elect to limit its refund to the small claims presumption.

<sup>5</sup> In most prior proceedings, we have used a \$50,000 mid-level claim presumption. However, due to the small size of the Ginther consent order fund and the rather small volumetric figure, this amount would be impractical.

<sup>6</sup> That is, claimants who purchased more than 877,281 gallons of Ginther products during the consent order period (mid-level claimants) may elect to utilize this presumption.

this proceeding. Consequently, an applicant in this group will only be required to provide documentation of its purchase volumes of Ginther NGL products during the consent order period in order to be eligible to receive a refund of 40 percent of its total allocable share, up to \$20,000, or \$5,000, whichever is greater.<sup>7</sup>

c. *Spot purchasers.* We are adopting a rebuttable presumption that a reseller that made only spot purchases from Ginther did not suffer injury as a result of those purchases. As we have previously stated, spot purchasers generally had considerable discretion as to the timing and market in which they made their purchases and therefore would not have made spot market purchases from a firm at increased prices unless they were able to pass through the full amount of the firm's selling price to their own customers. See, e.g., *Vickers*, 8 DOE at 85,396-97. Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from Ginther.<sup>8</sup>

### D. Allocation Claims

We may also receive claims based upon Ginther's alleged failure to furnish products that it was obliged to supply under the DOE allocation regulations that became effective in January 1974. See 10 CFR part 211. Any such applications will be evaluated with reference to the standards set forth in subpart V implementation cases such as *Office of Special Counsel*, 10 DOE ¶ 85,048, at 88,220 (1982), and refund application cases such as *Mobil Oil Corp./Reynolds Indus., Inc.*, 17 DOE ¶ 85,608 (1988); *Marathon Petroleum Co./Research Fuels, Inc.*, 19 DOE ¶ 85,575 (1989) (*Marathon/RFI*), *aff'd sub nom. Research Fuels, Inc. v. DOE*, No. CA3-89-2983G (N.D. Tex. 1990), *aff'd*, 977 F.2d 601 (Temp. Emer. Ct.

<sup>7</sup> A claimant who attempts to make a detailed showing of injury in order to obtain 100 percent of its allocable share but, instead, provides evidence that leads us to conclude that it passed through all of the alleged overcharges, or that it is eligible for a refund of less than the applicable presumption-level refund, may not then be eligible for a presumption-based refund. Instead, such a claimant may receive a refund which reflects the level of injury established in its application. No refund will be approved if its submission indicates that it was not injured as a result of its purchases from Ginther. See *Exxon*, 17 DOE at 89,150 n.10.

<sup>8</sup> In prior proceedings, we have stated that refunds will be approved for spot purchasers who demonstrate that: (1) They made the spot purchases for the purpose of ensuring a supply for their base period customers rather than in anticipation of financial advantage as a result of those purchases and (2) they were forced by market conditions to resell the product at a loss.

App. 1992). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the consent order firm and the likelihood that the consent order firm failed to furnish NGL products that it was obliged to supply to the claimant under 10 CFR part 211. In addition, the claimant should provide evidence that it had contemporaneously notified the DOE or otherwise sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

In our evaluation of whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible about the agency's treatment of complaints made to it by the claimant. We will also look at any affirmative defenses that Ginther may have had to the alleged allocation violation. See *Marathon/RFI*, 19 DOE ¶ 85,575. In assessing an allocation claimant's injury, we will evaluate the effect of the alleged allocation violation on its entire business operations with particular reference to the amount of product that it received from suppliers other than Ginther. In determining the amount of an allocation refund, we will utilize any information that may be available regarding the portion of the Ginther consent order amount that the agency attributed to allocation violations in general and to the specific allocation violation alleged by the claimants. Finally, since the Ginther consent order fund is less than Ginther's potential liability in the proceedings, we will pro rate those allocation refunds that would otherwise be disproportionately large in relation to the consent order fund. Cf. *Amtel/Whitco*, 19 DOE ¶ 85,319.

### E. Distribution of Funds Remaining After First Stage

In the event that money remains after all refund claims from the Ginther funds have been analyzed, the remaining funds in that account will be disbursed as indirect restitution in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. 4501-07. PODRA requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in subpart V proceedings and make those funds available to state governments for use in energy conservation programs. The Secretary has delegated these responsibilities to the OHA, and any funds in the Ginther consent order escrow account that the

OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

#### IV. General Refund Application Requirements

Pursuant to 10 CFR 205.283, we will now accept Applications for Refund from individuals and firms that purchased NGL products sold by Ginther during the period September 1, 1973, through March 31, 1977. There is no specific application form that must be used. However, the following information should be included in all Applications for Refund:

(1) Identifying information including the claimant's name, current business address, business address during the refund period, taxpayer identification number, a statement indicating whether the claimant is a corporation, partnership, sole proprietorship, or other business entity, the name, title, and telephone number of a person to contact for any additional information, and the name and address of the person who should receive any refund check.<sup>9</sup> If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify these names.

(2) If the applicant's firm is owned by another company, or owns other companies, a list of those companies' names, addresses, and descriptions of their relationship to the applicant's firm.

(3) A brief description of the claimant's business and the manner in which it used the petroleum products listed on its application.

(4) A monthly schedule of the applicant's purchases of NGL products that it purchased from Ginther during the Consent Order period. The applicant must indicate the name of its supplier and the delivery location. The applicant should indicate the source of its volume information. Monthly schedules should

<sup>9</sup> Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant that does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications, and is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 C.F.R. part 205, subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the OHA.

be based upon actual, contemporaneous business records. If such records are not available, the applicant may submit estimates provided that those estimates are reasonable and the estimation methodology is explained in detail.

(5) If the applicant was an indirect purchaser, it should submit the name, address, and telephone number of its immediate supplier and indicate why it believes that the NGL products was originally sold by Ginther.

(6) A statement whether the applicant or a related firm has filed, or authorized any individual to file on its behalf, any other Application for Refund in the Ginther proceeding, and if so, the circumstances surrounding that filing or authorization.

(7) A statement whether the applicant was in any way affiliated with Ginther. If so, the applicant should explain the nature of the affiliation.

(8) If the applicant is a reseller, retailer, or refiner whose volumetric share exceeds \$5,000, it must indicate whether it elects to receive its maximum refund under the presumptions of injury. If it does not elect a presumption of injury, it must submit a detailed showing that it was injured by Ginther's pricing practices.

(9) If the applicant is a regulated utility or a cooperative, certifications that it will pass on the entirety of any refund received to its customers, will notify its state utility commission, other regulatory agency, or membership body of the receipt of any refund, and a brief description as to how the refund will be passed along.

(10) A statement whether there has been any change in the ownership of the entity that purchased the covered Ginther products at any time during or after the refund period. If so, the name and address of the current (or former) owner should be provided.

(11) The statement listed below signed by the individual applicant or a responsible official of the company filing the refund application:

I swear (or affirm) that this is the only refund Application filed on behalf of this applicant in the N.C. Ginther Company special refund proceeding and that the information contained in this Application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. 1001. I understand that the information contained in this Application is subject to public disclosure. I have enclosed a duplicate of this entire Application which will be placed in the OHA Public Reference Room.

We also invite each applicant to submit copies of no more than five

contemporaneous invoices or other proofs of purchase showing that it purchased NGL products from Ginther. While this information is not required of refund applicants, it may well expedite the processing of the refund application.

All applications should be either typed or printed and clearly labeled "N.C. Ginther Company Application for Refund." Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish for this information to be publicly disclosed, it must submit an original application, clearly designated "confidential," containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be sent to: N.C. Ginther Company Refund Proceeding, Case No. LEF-0060, Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

The filing deadline is November 30, 1994.

It Is Therefore Ordered That:

(1) Applications for Refund from the funds remitted to the Department of Energy by N.C. Ginther Company pursuant to the Consent Order finalized on March 25, 1983, may now be filed.

(2) All Applications submitted pursuant to Paragraph (1) above must be filed in duplicate and postmarked no later than November 30, 1994.

Dated: May 31, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 94-13692 Filed 6-3-94; 8:45 am]

BILLING CODE 6450-01-P

#### Office of Hearings and Appeals

##### Proposed Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals, Department of Energy.

**ACTION:** Notice of proposed implementation of special refund procedures.

**SUMMARY:** The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the proposed procedures for disbursement of \$870,000, plus accrued interest, in alleged crude oil overcharges obtained by the DOE under the terms of a Consent Order entered into with Dane Energy Company, Case No. LEF-0122. The OHA has tentatively determined that the funds obtained through this Consent Order, plus accrued interest, will be distributed in accordance with

the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges.

**DATES AND ADDRESSES:** Comments must be filed in duplicate on or before July 6, 1994, and should be addressed to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. All comments should display a reference to case number LEF-0122.

**FOR FURTHER INFORMATION CONTACT:** Richard T. Tedrow, Deputy Director, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8018.

**SUPPLEMENTARY INFORMATION:** In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute to eligible claimants \$870,000, plus accrued interest, obtained by the DOE under the terms of a Consent Order entered into with Dane Energy Company on December 16, 1993. The funds were paid towards the settlement of alleged violations of the DOE price and allocation regulations involving the sale of crude oil during the period December 1978 through December 1980.

The OHA has proposed to distribute the Consent Order funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986) (the MSRP). Under the MSRP, crude oil overcharge monies are divided between the federal government, the states, and injured purchasers of refined petroleum products. Refunds to the states would be distributed in proportion to each state's consumption of petroleum products during the price control period. Refunds to eligible purchasers would be based on the number of gallons of petroleum products which they purchased and the degree to which they can demonstrate injury.

Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to provide two copies of their submissions. Comments must be submitted within 30 days of publication of this notice in the Federal Register and should be sent to the address set forth at the beginning of this notice. All comments received in this proceeding will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the

Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: May 31, 1994.

George B. Breznay,  
Director, Office of Hearings and Appeals.

### Proposed Decision and Order of the Department of Energy

#### Implementation of Special Refund Procedures

Name of Firm: Dane Energy Company  
Date of Filing: April 8, 1994  
Case Number: LEF-0122

Under the procedural regulations of the Department of Energy (DOE), the Economic Regulatory Administration (ERA) may request that the Office of Hearings and Appeals (OHA) formulate and implement special refund procedures. 10 CFR 205.281. These procedures are used to refund monies to those injured by actual or alleged violations of the DOE price regulations.

In this Decision and Order, we consider a Petition for Implementation of Special Refund Procedures filed by the ERA on April 8, 1994, for crude oil overcharge funds. The funds at issue in this petition were obtained from Dane Energy Company (Dane). This Office issued a Remedial Order to Dane finding violations of the crude oil pricing regulations during the period December 1978 through December 1980. *Dane Energy Co.*, 22 DOE ¶ 83,007 (1992). That Order required Dane to remit \$8,361,227.88 to the DOE. Believing that it serves the public interest for DOE to compromise its claims against Dane on an ability-to-pay basis where, as here, the financial status of the covered party can be satisfactorily determined, DOE agreed to enter into a Consent Order, whereby Dane agreed to remit \$870,000. The DOE received \$870,000 on April 8, 1993. This Decision and Order establishes the OHA's procedures to distribute those funds.

The general guidelines which the OHA may use to formulate and implement a plan to distribute refunds are set forth in 10 CFR part 205, subpart V. The Subpart V process may be used in situations where the DOE cannot readily identify the persons who may have been injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 62,508 (1981), and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981). We have

considered the ERA's request to implement subpart V procedures with respect to the monies received from Dane and have determined that such procedures are appropriate.

#### I. Background

On July 28, 1986, the DOE issued a Statement of Modified Restitutionary Policy in Crude Oil Cases, 51 FR 27899 (August 4, 1986) (the SMRP). The SMRP, issued as a result of a court-approved Settlement Agreement *In re: The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan. 1986), reprinted in 6 Fed. Energy Guidelines ¶ 90,501 (the Stripper Well Agreement), provides that crude oil overcharge funds will be divided among the states, the federal government, and injured purchasers of refined petroleum products. Eighty percent of the funds, and any monies remaining after all valid claims are paid, are to be disbursed equally to the states and federal government for indirect restitution.

Shortly after the issuance of the SMRP, the OHA issued an Order that announced its intention to apply the Modified Policy in all subpart V proceedings involving alleged crude oil violations. Order Implementing the Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 29689 (August 20, 1986). In that Order, the OHA solicited comments concerning the appropriate procedures to follow in processing refund applications in crude oil refund proceedings. The OHA then issued a Notice analyzing the numerous comments and setting forth generalized procedures to assist claimants that file refund applications for crude oil monies under the subpart V regulations. 52 FR 11737 (April 10, 1987) (the April 10 Notice).

The OHA has applied these procedures in numerous cases since the April 10 Notice, e.g., *New York Petroleum, Inc.*, 18 DOE ¶ 85,435 (1988) (*New York Petroleum*); *Shell Oil Co.*, 17 DOE ¶ 85,204 (1988); *Ernest A. Allerkamp*, 17 DOE ¶ 85,079 (1988) (*Allerkamp*), and the procedures have been approved by the United States District Court for the District of Kansas as well as the Temporary Emergency Court of Appeals. Various States filed a Motion with the Kansas District Court, claiming that the OHA violated the Stripper Well Agreement by employing presumptions of injury for end-users and by improperly calculating the refund amount to be used in those proceedings. *In re: The Department of Energy Stripper Well Exemption Litigation*, 671 F. Supp. 1318 (D. Kan.

1987), *aff'd*, 857 F. 2d 1481 (Temp. Emer. Ct. App. 1988). On August 17, 1987, Judge Theis issued an Opinion and Order denying the States' Motion in its entirety. The court concluded that the Stripper Well Agreement "does not bar [the] OHA from permitting claimants to employ reasonable presumptions in affirmatively demonstrating injury entitling them to a refund." *Id.* at 1323. The court also ruled that, as specified in the April 10 Notice, the OHA could calculate refunds based on a portion of the M.D.L. 378 overcharges. *Id.* at 1323-24.

## II. The Proposed Refund Procedures

### A. Refund Claims

We now propose to apply the procedures discussed in the April 10 Notice to the crude oil subpart V proceeding that is the subject of the present determination. As noted above, \$870,000 of an alleged crude oil violation is covered by this proposed Decision. We have decided to reserve the full twenty percent of the alleged crude oil violation amount, or \$174,000, for direct refunds to claimants, in order to ensure that sufficient funds will be available for refunds to injured parties.

The process which the OHA will use to evaluate claims based on alleged crude oil violations will be modeled after the process the OHA has used in Subpart V proceedings to evaluate claims based upon alleged overcharges involving refined products. *E.g.*, *Mountain Fuel Supply Co.*, 14 DOE ¶ 85,475 (1986) (*Mountain Fuel*). As in non-crude oil cases, applicants will be required to document their purchase volumes of covered products and prove that they were injured as a result of the alleged violations. Generally, a covered product is any product that was either covered by the Emergency Petroleum Allocation Act of 1973, 15 U.S.C. §§ 751-760, or if the product was purchased from a crude oil refinery or originated in a crude oil refinery. See *Great Salt Lake Minerals & Chem. Corp.*, 23 DOE ¶ 88,118, at 88,305 (1993). Applicants who were end-users or ultimate consumers of petroleum products, whose businesses are unrelated to the petroleum industry, and who were not subject to the DOE price regulations are presumed to have been injured by any alleged crude oil overcharges. In order to receive a refund, end-users need not submit any further evidence of injury beyond the volume of petroleum products purchased during the period of price controls. *E.g.*, *A. Tarricone, Inc.*, 15 DOE ¶ 85,495, at 88,893-96 (1987). However, the end-user presumption of injury can

be rebutted by evidence which establishes that the specific end-user in question was not injured by the crude oil overcharges. *E.g.*, *Berry Holding Co.*, 16 DOE ¶ 85,405, at 88,797 (1987). If an interested party submits evidence that is sufficient to cast serious doubt on the end-user presumption, the applicant will be required to produce further evidence of injury. *E.g.*, *New York Petroleum*, 18 DOE at 88,701-03.

Reseller and retailer claimants must submit detailed evidence of injury and may not rely on the presumptions of injury utilized in refund cases involving refined petroleum products. They can, however, use econometric evidence of the type employed in the *Report by the Office of Hearings and Appeals to the United States District Court for the District of Kansas, In Re: The Department of Energy Stripper Well Exemption Litigation*, reprinted in 6 Fed. Energy Guidelines ¶ 90,507 (1986). Applicants who executed and submitted a valid waiver pursuant to one of the escrows established in the Stripper Well Agreement have waived their rights to apply for crude oil refunds under subpart V. *Mid-America Dairyman, Inc. v. Herrington*, 878 F. 2d 1448 (Temp. Emer. Ct. App. 1989); accord *Boise Cascade Corp.*, 18 DOE ¶ 85,970 (1989).

Refunds to eligible claimants who purchased refined products will be calculated on the basis of a volumetric refund amount derived by dividing the alleged crude oil violation amounts involved in this determination (\$870,000) by the total consumption of petroleum products in the United States during the period of price controls (2,020,997,335,000 gallons). *Mountain Fuel*, 14 DOE at 88,868 n.4.

As we stated in previous Decisions, a crude oil refund applicant will be required to submit only one application for crude oil overcharge funds. *E.g.*, *Allerkamp*, 17 DOE at 88,176. Any party that has previously submitted a refund application in the crude oil refund proceedings need not file another application. That previously filed application will be deemed to be filed in all crude oil proceedings as the procedures are finalized. The DOE has established June 30, 1994, as the final deadline for filing an Application for Refund from the crude oil funds. See 58 F.R. 26,318 (May 3, 1993). It is the policy of the DOE to pay all crude oil refund claims filed within this deadline at the rate of \$0.0008 per gallon. However, while we anticipate that applicants that filed their claims within the original June 30, 1988 deadline will receive a supplemental refund payment, we will decide in the future whether claimants that filed later Applications

should receive additional refunds. *E.g.*, *Seneca Oil Co.*, 21 DOE ¶ 85,327 (1991). Notice of any additional amounts available in the future will be published in the Federal Register.

### B. Payments to the States and Federal Government

Under the terms of the SMRP, we propose that the remaining eighty percent of the alleged crude oil violation amounts subject to this Decision, or \$696,000, should be disbursed in equal shares to the states and federal government for indirect restitution. The share or ratio of the funds which each state will receive is contained in Exhibit H of the Stripper Well Agreement. When disbursed, these funds will be subject to the same limitations and reporting requirements as all other crude oil monies received by the states under the Stripper Well Agreement.

*It Is Therefore Ordered That:* The refund amount remitted to the Department of Energy by Dane Energy Company pursuant to the Consent Order executed on April 8, 1993 will be distributed in accordance with the foregoing Decision.

[FR Doc. 94-13693 Filed 6-3-94; 8:45 am]  
BILLING CODE 6450-01-P

## Proposed Implementation of Special Refund Procedures

**AGENCY:** Office of Hearings and Appeals, DOE.

**ACTION:** Notice of proposed implementation of special refund procedures.

**SUMMARY:** The Office of Hearings and Appeals (OHA) of the Department of Energy announces proposed procedures for the disbursement of \$56,149.35 (plus accrued interest) that Telum, Inc. remitted to the DOE pursuant to a Consent Order entered into by the DOE and Telum. The OHA has tentatively determined that the funds will be distributed in accordance with the DOE's special refund procedures, 10 CFR part 205, subpart V.

**DATES AND ADDRESSES:** Comments must be filed in duplicate on or before July 6, 1994 and should be addressed to: Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585. All comments should conspicuously display a reference to Case Number LEF-0114.

**FOR FURTHER INFORMATION CONTACT:** Richard W. Dugan, Associate Director, Andrew W. Beckwith, Staff Analyst, Office of Hearings and Appeals, 1000 Independence Avenue, SW.,

Washington, DC 20585, (202) 586-2860 (Dugan), (202) 586-4921 (Beckwith).

**SUPPLEMENTARY INFORMATION:** In accordance with § 205.282(b) of the procedural regulations of the Department of Energy (DOE), 10 CFR 205.282(b), notice is hereby given of the issuance of the Proposed Decision and Order set out below. The Proposed Decision and Order sets forth the procedures that the DOE has tentatively formulated to distribute monies that have been remitted by Telum, Inc. to the DOE to settle possible pricing violations with respect to its sale of middle distillates. The DOE is currently holding \$56,149.35 in an interest-bearing escrow account pending distribution.

Applications for Refund should not be filed at this time. Appropriate public notice will be given when the submission of claims is authorized. Any member of the public may submit written comments regarding the proposed refund procedures. Commenting parties are requested to submit two copies of their comments. Comments should be submitted within 30 days of the publication of this notice in the Federal Register, and should be sent to the address set forth at the beginning of this notice. All comments received will be available for public inspection between the hours of 1 p.m. and 5 p.m., Monday through Friday, except federal holidays, in the Public Reference Room of the Office of Hearings and Appeals, located in room 1E-234, 1000 Independence Avenue SW., Washington, DC 20585.

Dated: May 31, 1994.

George B. Breznay,  
Director, Office of Hearings and Appeals.

#### Proposed Decision and Order of the Department of Energy, Implementation of Special Refund Procedures

Name of Firm: Telum, Inc.  
Date of Filing: October 7, 1993.  
Case Number: LEF-0114.

May 31, 1994.

In accordance with the procedural regulations of the Department of Energy (DOE), 10 CFR part 205, subpart V, the Economic Regulatory Administration (ERA) of the DOE filed a Petition for the Implementation of Special Refund Procedures with the Office of Hearings and Appeals (OHA) on October 7, 1993. The petition requests that OHA formulate and implement procedures for the distribution of funds received pursuant to a consent order entered into by the DOE and Telum, Inc. (Telum).

#### I. Background

Telum was a "reseller-retailer" of "covered products" as those terms were

defined in 6 CFR 150.352 and 10 CFR 212.31. Therefore, Telum was required to price middle distillate fuel in accordance with the price rule of the Mandatory Petroleum Price Regulations set forth at 10 CFR part 212, subpart F, and antecedent regulations at 6 CFR part 150, subpart L. As a result of an audit, the ERA alleged that Telum and entities under Telum's direction violated the price regulations in sales of middle distillate fuel to Salt River Project (Salt River) during a five month period from December 1, 1973, through April 30, 1974 (the audit period).<sup>1</sup> The auditors determined that during this period Telum made sales of middle distillates to Salt River at prices in excess of the maximum lawful selling price (MLSP) permitted by the regulations. Consequently, the ERA issued a Proposed Remedial Order (PRO) to Telum on May 28, 1980, alleging pricing violations in the sale of middle distillate fuel to Salt River. After revising its selection of the "nearest comparable outlet" with regard to the "new market" determination under 10 CFR 212.111(b), the ERA issued an Amended PRO on September 15, 1986, alleging that Telum had overcharged Salt River in its sales of middle distillate fuel in the amount of \$357,587. On April 7, 1988, that Amended PRO was remanded by OHA to the ERA, for a new determination regarding Telum's nearest comparable outlet and a recalculation of MLSPs and any overcharges in sales to Salt River. Telum, Inc., 17 DOE ¶ 83,010 (1988).

The ERA did not issue a second Amended PRO. Instead, on May 30, 1990, the DOE entered into a consent order (No. 820H00020Z) with Telum to resolve all administrative and civil claims related to Telum's compliance with the Federal petroleum price and allocation regulations in its resale transactions of petroleum products during the period December 1, 1973 through April 30, 1974. Specifically, Telum agreed to remit \$60,000, plus interest, to the DOE for deposit in an interest-bearing escrow account. Telum has remitted \$56,149.35 to the DOE, consisting of \$51,626.18 toward payment of the \$60,000 principal amount due and \$4,523.17 toward payment of interest due on principal. The DOE has authorized a write-off of the remainder of the amount due for

<sup>1</sup> Telum was incorporated as Bonus Oil Company on August 13, 1968. Bonus Oil Company's name was changed to Telum, Inc. effective December 3, 1974. For the purposes of this Decision, we will refer to the firm only as Telum.

The other entities under Telum's direction, as listed in the consent order, are: Industrial Fuels, Inc., an Arizona Corporation, and Giraud Corporation, a Utah corporation.

reasons of uncollectability. Telum is no longer in business, and Earl K. Cook, the former president of Telum, has indicated that he is unable to pay the remainder of the amount due. As of March 31, 1994, \$9,028.85 in interest had accrued in the DOE escrow account on the amount paid by Telum.

#### II. Jurisdiction

The procedural regulations of the DOE set forth general guidelines by which the Office of Hearings and Appeals may formulate and implement a plan of distribution for funds received as a result of an enforcement proceeding. 10 CFR part 205, subpart V. It is the DOE policy to use the subpart V process to distribute such funds. For a more detailed discussion of subpart V and the authority of the Office of Hearings and Appeals to fashion procedures to distribute refunds obtained as part of consent orders, see Office of Enforcement, 9 DOE ¶ 82,553 (1982); Office of Enforcement, 9 DOE ¶ 82,508 (1981); Office of Enforcement, 8 DOE ¶ 82,597 (1981). After reviewing the record in the present case, we have concluded that a subpart V proceeding is an appropriate mechanism for distributing the Telum consent order fund. We therefore propose to grant the ERA's petition and assume jurisdiction over distribution of the fund.

#### III. Proposed Refund Procedures

##### A. Refund Claimant

Insofar as possible, the consent order fund should be distributed to customers of Telum who were injured by the alleged overcharges. Salt River, the only Telum customer who made purchases during the consent order period that were covered by the PRO and Amended PRO, is the only Telum customer we have identified as likely to have been injured by the alleged overcharges. Although we recognize that the Telum consent order covers all sales of "covered products" by Telum for the period December 1, 1973 through April 30, 1974, the ERA audit files, the PRO, and the Amended PRO are all based only on sales by Telum to Salt River. The consent order, while lacking in specificity, was clearly arrived at in order to settle this one outstanding enforcement issue. We are thus able to use the information contained in the audit files for guidance as to the identity of Telum's injured customer and the extent of the alleged overcharges, as we have done in some prior refund proceedings. See, e.g., Howard Oil Co., 15 DOE ¶ 85,072 (1986). Consequently, we propose to establish a claims procedure in which Salt River may

apply for a refund of the entire consent order fund. Limiting the universe of applicants to Salt River allows us to fashion a refund plan that will correspond most closely to the alleged overcharges settled by the consent order. See Consumers Oil Co., 13 DOE ¶ 85,226 (1985); Marion Corp., 12 DOE ¶ 85,014 (1984).

In prior refund proceedings, in order to receive a full refund, claimants whose prices for goods and services are regulated by a governmental body, e.g., a public utility, have not been required to provide a detailed showing of injury. See, e.g., Dorchester Gas Corp., 14 DOE ¶ 85,240 at 88,451 (1986). Instead, regulated firms have been required to (i) certify that they will pass any refund received through to their customers, (ii) provide us with a full explanation of how they plan to accomplish the restitution, and (iii) certify that they will notify the appropriate regulatory body of the receipt of the refund. Id. This requirement is based on the presumption that, with respect to a regulated firm, any overcharges would have been routinely passed through to its customers. Similarly, any refunds received should be passed through to its customers.

We have been informed by Salt River that the nature of its business is that of a municipal public power utility whose rates for electricity are set by a publicly-elected Board of Directors (i.e., a governmental body). See Memorandum of April 29, 1994 Telephone Conversation between John Egan, Spokesperson for Salt River, and Andrew Beckwith, OHA Staff Analyst. We have determined, therefore, that Salt River is a regulated firm as that category is defined above. See City of Lubbock, 18 DOE ¶ 85,116 (1988). Accordingly, we propose that Salt River, as a regulated firm, need not make a showing that it was injured by the alleged overcharges. However, Salt River will be required to comply with the stipulations outlined above that are incumbent upon regulated firms when submitting an Application for Refund.

#### B. Calculation of Refund Amount

As stated above, the ERA audit files identify Salt River as the Telum customer injured by the alleged overcharges that were the subject of the consent order. We propose to pay the entire amount of the consent order fund to Salt River as a refund for the alleged overcharges. In addition, Salt River will receive all of the interest that has accrued on the consent order fund.

#### IV. Conclusion

Salt River should not file a refund application in this proceeding until the issuance of a final Decision and Order. Detailed procedures for filing an application will be provided in the final Decision and Order. Before disposing of any of the funds received as a result of the Telum consent order, we intend to publicize the distribution process and to provide an opportunity for any affected party to submit comments. All comments must be filed within 30 days of the publication of this Proposed Decision in the *Federal Register*. In addition to publishing copies of the proposed and final Decisions in the *Federal Register*, copies of both will be provided to Salt River.

It is therefore ordered that:  
The refund amount remitted to the Department of Energy by Telum, Inc. pursuant to Consent Order No. 820H00020Z, finalized on May 30, 1990, will be distributed in accordance with the foregoing Decision.

[FR Doc. 94-13690 Filed 6-3-94; 8:45 am]  
BILLING CODE 6450-01-P

#### ENVIRONMENTAL PROTECTION AGENCY

##### Gulf of Mexico Program Management Committee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting of the Management Committee of the Gulf of Mexico Program.

SUMMARY: The Gulf of Mexico Program's Management Committee will hold a meeting at the Omni Royal Orleans Hotel, 621 St. Louis Street, New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas Lipka, Acting Director, Gulf of Mexico Program Office, Building 1103, room 202, John C. Stennis Space Center, Stennis Space Center, MS 39529-6000, at (601) 688-3726.

SUPPLEMENTARY INFORMATION: A meeting of the Management Committee of the Gulf of Mexico Program will be held on June 29, 1994, at the Omni Royal Orleans Hotel, 621 St. Louis Street, New Orleans, LA. The committee will meet from 8:30 a.m. to 4:30 p.m. on June 29. Agenda items will include: Report on Mega-Meeting; Process of Selection and Funding of FY95 Action Item Projects; Committee Action on Business/Industry Presentation on Interaction with GMP; Issue Committee Co-Chair Representation; and Status Reports on Federal Interagency Summit Meeting,

Strategic Planning Initiative, and GMP Symposium.

The meeting is open to the public.

Douglas A. Lipka,

Acting Director, Gulf of Mexico Program.

[FR Doc. 94-13669 Filed 6-3-94; 8:45 am]

BILLING CODE 6560-50-M

[PF-599; FRL-4870-3]

##### Miles, Inc., Agricultural Division; Amended Pesticide Petition for Tebuconazole

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received from Miles, Inc., the filing of an amendment to pesticide petition (PP) 9F3724 proposing to establish tolerances for residues of the fungicide tebuconazole (*alpha*-[2-(4-chlorophenyl)-ethyl]-*alpha*-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol) in or on the raw agricultural commodities peanuts at 0.1 part per million (ppm) and peanut hulls at 4.0 ppm.

ADDRESSES: By mail, submit written comments, identified by the document control number [PF-599], to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth on 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Steve Robbins, Acting Product Manager (PM 21), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis

Hwy., Arlington, VA 22202, (703)-305-6900.

**SUPPLEMENTARY INFORMATION:** EPA has received from Miles, Inc., Agricultural Division (formerly Mobay Corp., Agricultural Chemicals Division), P.O. Box 4913, Kansas City, MO 64120-0013, an amendment to the notice of filing under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for pesticide petition (PP) 9F3724, which appeared in the *Federal Register* of March 23, 1989 (54 FR 12009). The original petition proposed to amend 40 CFR part 180 by establishing tolerances for the fungicide (*alpha*-[2-(4-chlorophenyl)-ethyl]-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol) in or on the commodities barley grain at 2.0 ppm, barley grain forage at 5.0 ppm, barley straw at 5.0 ppm, grapes at 2.0 ppm, grass, seed cleanings (including hulls) at 25.0 ppm, grass, seed straw (including chaff) at 30.0 ppm, peanuts at 0.05 ppm, peanut hulls at 3.5 ppm, peanut hay at 50.0 ppm, raisins at 3.0 ppm, wheat grain at 0.40 ppm, wheat grain forage at 4.5 ppm, and wheat straw at 19.0 ppm.

Miles, Inc., has amended the petition to propose amending 40 CFR part 180 by establishing a regulation to permit the residues of the fungicide (*alpha*-[2-(4-chlorophenyl)-ethyl]-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol) in or on peanuts at 0.1 ppm and peanut hulls at 4.0 ppm. The proposed analytical method for determining residues is high-performance liquid chromatography.

In previous amendments to the cited pesticide petition, requested by Miles, Inc., all commodities other than peanuts and peanut hulls (peanut hay, barley grain, barley grain forage, barley straw, grapes, grass seed cleanings including hulls, grass seed straw including chaff, raisins, wheat grain, wheat grain forage, and wheat straw) were withdrawn.

**Authority:** 7 U.S.C. 346a and 371.

Dated: May 26, 1994.

**Stephanie R. Irene,**

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

[FR Doc. 94-13673 Filed 6-3-94; 8:45 am]

BILLING CODE 6550-50-F

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collection Requirements Submitted To Office of Management And Budget For Review

May 31, 1994.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632-0276. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, room 3221 NEOB, Washington, DC 20503, (202) 395-3561.

**OMB Number:** 3060-0059

**Title:** Statement Regarding the Importation of Radio Frequency Devices Capable of Causing Harmful Interference

**Form Number:** FCC Form 740

**Action:** Extension of currently approved collection

**Respondents:** Individuals or households, state or local governments, non-profit institutions, and businesses or other for-profit (including small businesses)

**Frequency of Response:** On occasion reporting requirement

**Estimated Annual Burden:** 496,500 responses; .037 hours average burden per response; 18,371 hours total annual burden

**Needs and Uses:** FCC Form 740 declaration is submitted to the Commission and U.S. Customs Service upon importation of radio frequency (RF) devices.

The information collection describes devices being imported that may be harmful to authorized radio frequencies so that the FCC, with the assistance of Customs, can carry out this responsibility. Examples of RF devices include: Microwave ovens, virtually any product containing a computer microprocessor, computers and computer peripherals, telephones with memory or other advanced features, video cameras and recorders, transmitters and transceivers, most receivers including television receivers, electronic musical instruments, video games, and radio remote control toys. Rule changes in 1990 reduced the

number and types of devices for which the import declaration is required. Those rule changes also has led to the use of electronic submission of the required information. Because of the effect of the change to electronic filing, the number of paper forms submitted annually has dropped by an estimated sixty percent. The information continues to be used by FCC to ensure that radio frequency devices imported into the United States and its customs territory comply with applicable FCC Rules and Regulations. Information is necessary to FCC/FOB Enforcement Division, FCC Laboratory and U.S. Customs. Purpose is to keep non-compliant devices from being distributed to the general public thereby reducing the potential for harmful interference being caused to authorized communications. When a violation is discovered, the FCC can issue a fine or request Customs to issue redelivery notice to the importer. If the importer does not redeliver the RF device to Customs, the importer is subject to fines imposed by the U.S. Customs Service.

**OMB Number:** 3060-0073

**Title:** Application for and Certification of Overtime Service Involving Inspection of Ship Radio Equipment

**Form Number:** FCC Form 808

**Respondents:** Businesses or other for-profit (including small businesses)

**Frequency of Response:** On occasion reporting requirement

**Estimated Annual Burden:** 200 responses; .084 hours average burden per response; 17 hours total annual burden

**Needs and Uses:** FCC Form 808 is used to request an overtime inspection of compulsory shipboard radio equipment, pursuant to section 4(f)(3) of the Communications Act of 1934, as amended, and FCC Rules and Regulations, 47 CFR 80.59(e). The information requested certifies that the overtime service was requested and performed. If this form were not completed, the U.S. Government would not be reimbursed for the overtime money paid to the employee.

Federal Communications Commission

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 94-13634 Filed 6-3-94; 8:45 am]

BILLING CODE 6712-01-M

### Public Information Collection Requirement Submitted to Office of Management and Budget For Review

June 3, 1994.

The Federal Communications Commission has submitted the

following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commissions' copy contractor International Transcription Service, Inc. 2100 M. Street, NW., suite 140, Washington, DC 20037, (202) 857-3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632-0276. Persons wishing to comment on this information collection should contact Tim Fain, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-7231.

*Please note:* The Commission has requested emergency review of this item by June 3, 1994, under the provisions of 5 CFR 1320.18.

*OMB Number:* None.

*Title:* FCC Rate Regulation Impact Survey.

*Action:* New collection.

*Respondents:* Business or other for-profit.

*Frequency of Response:* Other: One-time survey.

*Estimated Annual Burden:* 100 respondents, 25 responses each, 2500 total responses; 1 hour average burden per response; 2500 hours total annual burden.

*Needs and Uses:* Section 623 of the Communications Act of 1934, as amended by the Cable Television Consumer Protection and Competition Act of 1992 ("Cable-Act") required the Commission to establish rules to govern rate regulation of cable services offered by cable systems that are not subject to effective competition. On 2/22/94, the Commission adopted revised cable rate regulations in a Second Order on reconsideration, Fourth Report and Order and Fifth Notice of Proposed Rulemaking MM Docket No. 92-266, Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992, Rate Regulation, wherein we revised rules to implement section 623, subscriber rate regulation. The new rules became effective on May 15, 1994, and, pursuant to §§ 76.932 and 76.964 of the rules, cable systems must give subscribers 30 days notice of any proposed rate change or restructuring made by the cable system. In connection with these orders, the Commission will conduct a survey on the impact of these new rate regulations. The purpose of this survey is to determine the effect of our regulations on the rates for regulated cable services since the 5/15/94 effective date. This survey will be addressed to the largest 100 multiple system operators. Surveying the largest

multiple system operators will permit a review of rate practices under our revised regulations of cable operators providing a majority of cable service in the United States. The consequences of not conducting this survey will impair our ability to assess whether our rate regulations have been effective. Respondents will be requested to submit copies of documentation which verifies subscriber notification, via facsimile, and respond to both written and telephone inquiries by FCC staff. Any responses may be made by telephone or in written format via facsimile, upon request by Bureau staff.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

[FR Doc. 94-13795 Filed 6-3-94; 8:45 am]

BILLING CODE 6712-01-M

## FEDERAL MARITIME COMMISSION

### Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

*Agreement No.:* 202-002744-077.

*Title:* West Coast of South America Agreement.

*Parties:*

A.P. Moller-Maersk Line,  
Compania Chilena de Navigacion  
Interoceania, S.A.,  
Compania Sud Americana de  
Vapores, S.A.,  
Crowley American Transport, Inc.,  
Flota Merchante Gran Colombiana,  
S.A.,  
Lykes Bros. Steamship Co., Inc.,  
Nedlloyd Linjen, B.V.,  
Sea-Land Service, Inc.,  
South Pacific Shipping Company Ltd.

*Synopsis:* The proposed amendment would revise the Agreement's voting provisions and would establish a new rule regarding distribution of, and

liability for, liquidated damages under service contracts. It would also permit Principals of the Conference to agree on exceptions to certain basic Agreement provisions regarding service contracts. The parties have requested a shortened review period.

*Agreement No.:* 203-011453.

*Title:* Southern Africa/Oceania Agreement.

*Parties:*

Safbank Line, Ltd.  
Mediterranean Shipping Co., S.A.

*Synopsis:* The proposed Agreement would authorize the parties to establish a slot charter, sailing, revenue sharing and cooperative working arrangement in the trades between the United States and Australia, New Zealand, including other islands of Oceania, and South Africa.

*Agreement No.:* 202-011454.

*Title:* U.S.A./Oceania Agreement.

*Parties:*

Safbank Line, Ltd.  
Mediterranean Shipping Co., S.A.

*Synopsis:* The proposed Agreement would authorize the parties to establish a ratemaking arrangement in the trades between the United States and Australia, New Zealand and other islands of Oceania.

By Order of the Federal Maritime Commission.

Dated: May 31, 1994.

**Joseph C. Polking,**  
*Secretary.*

[FR Doc. 94-13611 Filed 6-3-94; 8:45 am]

BILLING CODE 6730-01-M

## FEDERAL RESERVE SYSTEM

### Agency Forms Under Review; Correction

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice; Correction.

**SUMMARY:** This notice corrects a notice published in the **Federal Register** on May 19, 1994, on page 26228 (FR Doc. 94-12192). In the dates caption, "May 20, 1994" is corrected to read "June 17, 1994."

Board of Governors of the Federal Reserve System, May 31, 1994.

**William W. Wiles,**  
*Secretary of the Board.*

[FR Doc. 94-13641 Filed 6-3-94; 8:45 am]

BILLING CODE 6210-01-F

### Citicorp, New York, New York; Request for an Exemption from Tying Provisions

Citicorp, New York, New York (Citicorp), has requested, pursuant to section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. § 1971 *et seq.*) (Section 106(b)), that the Board grant an exemption to permit any subsidiary of Citicorp to vary the consideration charged for mortgage loans based upon the condition or requirement that the customer obtain a loan, discount, deposit, or trust service from an affiliate.

Section 106(b) permits a bank to fix or vary the consideration for extending credit or furnishing services on condition or requirement that a customer also obtain a traditional banking product (loan, discount, deposit or trust service) from that bank. However, Section 106(b) prohibits a bank from engaging in these same activities on condition that the customer obtain any additional credit or services from any affiliate. The Board may, by regulation or order, grant exceptions that are not contrary to the purposes of the section.

Citicorp contends that its request is consistent with the purposes of Section 106(b) because it is not anticompetitive. Citicorp argues that the market for mortgage loans is national in scope and highly competitive. In this regard, Citicorp asserts that it does not have sufficient market power in any relevant market to restrain competition and that the highly competitive mortgage lending market prevents any mortgage lender from having sufficient market power to restrain competition in the market or force a consumer to purchase a product on uncompetitive terms.

Further, Citicorp argues that its proposal is not anticompetitive because customers would not be required either directly or indirectly to accept one product in order to obtain another product. In this regard, Citicorp states that all products would be available separately at separate prices and the prices of products would be kept competitive through normal market forces. Citicorp also claims that customers would be free to choose to purchase combined or separate services from Citicorp affiliates or from competitors. Finally, Citicorp contends that the proposal would promote competition and provide public benefits in the form of reduced costs and better service.

Notice of Citicorp's request is published solely in order to seek the views of interested persons on the issues presented by the request and does

not represent a determination by the Board that the request meets or is likely to meet the standards of Section 106(b). The request may be inspected at the offices of the Board of Governors.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary of the Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 5, 1994.

Board of Governors of the Federal Reserve System, May 31, 1994.

Jennifer J. Johnson

Associate Secretary of the Board

[FR Doc. 94-13642 Filed 6-3-94; 8:45 am]

BILLING CODE 6210-01-F

### Elton B. Stephens Charitable Lead Annuity Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice, or to the offices of the Board of Governors. Comments must be received not later than June 27, 1994.

**A. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Elton B. Stephens Charitable Lead Annuity Trust*, James T. Stephens, Elton B. Stephens, Jr., Jane S. Comer, and Dell S. Brooke, as Trustees, to retain 36.6 percent of the voting shares of Alabama Bancorp, Birmingham, Alabama, and thereby indirectly acquire Highland Bank, Birmingham, Alabama.

**B. Federal Reserve Bank of Kansas City** (Stephen E. McBride, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Ellen L. Munter*, Coleridge, Nebraska; to acquire an additional 17.04 percent of the voting shares of Gray Bancorp, Coleridge, Nebraska, for a total of 67.90 percent, and thereby indirectly acquire Coleridge National Bank, Coleridge, Nebraska.

**C. Federal Reserve Bank of Dallas** (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Howard Earl Rachofsky*, Dallas, Texas; to acquire an additional 0.44 percent of the voting shares of ROSB Bancorp, Inc., Red Oak, Texas, for a total of 25.15 percent, and thereby indirectly acquire The Red Oak State Bank, Red Oak, Texas.

Board of Governors of the Federal Reserve System, May 31, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-13643 Filed 6-3-94; 8:45 am]

BILLING CODE 6210-01-F

### First Commonwealth Financial Corporation; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the

reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 30, 1994.

**A. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Commonwealth Financial Corporation*, Indiana, Pennsylvania; to merge with United National Bancorporation, Chambersburg, Pennsylvania, and thereby indirectly acquire Unitas National Bank, Chambersburg, Pennsylvania.

In connection with this application, Applicant also proposes to acquire Unitas Mortgage Corporation, Carlisle, Pennsylvania, and thereby engage in mortgage banking activities, including the making or acquiring, for its own account or for the account of others, loans and other extensions of credit secured by real estate pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 31, 1994.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 94-13644 Filed 6-3-94; 8:45 am]

BILLING CODE 6210-01-F

#### **J.P. Morgan & Co. Incorporated, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities**

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the

question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than June 20, 1994.

**A. Federal Reserve Bank of New York** (William L. Rutledge, Senior Vice President) 33 Liberty Street, New York, New York 10045:

1. *J.P. Morgan & Co. Incorporated*, New York, New York; to make a \$100,000 investment in the non-voting preferred stocks of Big City Forest, Inc., Bronx, New York, and to facilitate bridge financing for Big City Forest, Inc., a corporation designed primarily to promote community welfare, such as the economic rehabilitation and development of low income areas pursuant to § 225.25(b)(6) of the Board's Regulation Y.

**B. Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota; to acquire First Insurance Agency of Detroit Lakes, Inc., Detroit Lakes, Minnesota, and thereby engage in general insurance agency activities pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y. These activities will be conducted in Detroit Lakes, Minnesota.

Board of Governors of the Federal Reserve System, May 31, 1994.

**Jennifer J. Johnson,**

*Associate Secretary of the Board.*

[FR Doc. 94-13645 Filed 6-3-94; 8:45 am]

BILLING CODE 6210-01-F

#### **Mellon Bank Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval

under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 30, 1994.

**A. Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mellon Bank Corporation*, Pittsburgh, Pennsylvania; to acquire 100 percent of the voting shares of Glendale Bancorporation, Voorhees Township, New Jersey, and thereby indirectly acquire Glendale Bank of Pennsylvania, and Glendale National Bank of New Jersey, Voorhees Township, New Jersey.

**B. Federal Reserve Bank of Atlanta** (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Allied Bankshares, Inc.*, Thomson, Georgia; to acquire 100 percent of the voting shares of Citizens Bank & Trust, Evans, Georgia.

2. *Allied Bankshares, Inc.*, Thomson, Georgia; to merge with Jefferson Bancshares, Inc., Louisville, Georgia, and thereby indirectly acquire Bank of Jefferson County, Louisville, Georgia.

3. *Synovus Financial Corp.*, Columbus, Georgia; Synovus Financial Corp. of Alabama, Jasper, Alabama; and TB&C Bancshares, Inc., Columbus, Georgia; to merge with State Bancshares, Inc., Enterprise, Alabama, and thereby indirectly acquire Coffee County Bank, Enterprise, Alabama.

Board of Governors of the Federal Reserve System, May 31, 1994.

Jennifer J. Johnson,  
Associate Secretary of the Board.

[FR Doc. 94-13646 Filed 6-3-94; 8:45 am]

BILLING CODE 6210-01-F

**Shawmut National Corporation, et al.;  
Notice of Applications to Engage de  
novo in Permissible Nonbanking  
Activities**

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 27, 1994.

**A. Federal Reserve Bank of Boston**  
(Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Shawmut National Corporation*, Hartford, Connecticut; to engage *de novo* through its subsidiary, Shawmut

Investment Advisers, Inc., Boston, Massachusetts, in providing portfolio investment advice and management for institutional and employee benefit account customers; providing investment advisory services to, and management of accounts supervised by SNC's subsidiary banks; serving as investment advisor to an investment company or companies that may be organized by Applicant, or any of SNC's subsidiaries; providing portfolio investment advice or management to a limited number of personal trust or investment management agency customers; and furnishing general economic information and advice, general economic statistical forecasting services and industry and company studies to the foregoing parties pursuant to § 225.25(b)(4)(ii), (iii), (iv) and (v) of the Board's Regulation Y. These activities will be conducted in the Western Hemisphere.

**B. Federal Reserve Bank of Cleveland**  
(John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Banc One Corporation*, Columbus, Ohio; to engage *de novo* through its subsidiary, Croghan & Associates, Inc., Boulder, Colorado, d.b.a. System One, in collection agency activities pursuant to § 225.25(b)(23) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 31, 1994.

Jennifer J. Johnson,  
Associate Secretary of the Board.

[FR Doc. 94-13647 Filed 6-3-94; 8:45 am]

BILLING CODE 6210-01-F

**Trans Financial Bancorp, Inc.;  
Acquisition of Company Engaged in  
Nonbanking Activities**

The organization listed in this notice has applied under § 225.23(a) or (f) of the Board's Regulation Y (12 CFR 225.23(a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the

proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 27, 1994.

**A. Federal Reserve Bank of St. Louis**  
(Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Trans Financial Bancorp, Inc.*, Bowling Green, Kentucky; to engage *de novo* through a nonbanking subsidiary, Trans Financial Investment Services, Inc., Nashville, Tennessee, in securities brokerage services pursuant to §§ 225.25(b)(15) and (b)(4) of the Board's Regulation Y, and in buying and selling securities on the order of investors as "riskless principal." *Cardinal Bancshares, Inc.*, 80 Federal Reserve Bulletin 447 (1994).

Board of Governors of the Federal Reserve System, May 31, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-13648 Filed 6-3-94; 8:45 am]

BILLING CODE 6210-01-F

**DEPARTMENT OF HEALTH AND  
HUMAN SERVICES**

**Centers for Disease Control and  
Prevention**

[Program Announcement No. 478]

**National Institute for Occupational  
Safety and Health; Implementing Lead-  
Based Paint Abatement Training for  
Workers and Supervisors**

**Introduction**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for a grant program to provide training for workers and supervisors engaged or expected to be engaged in lead-based paint abatement work.

The Public Health Service (PHS) is committed to achieving the health

promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Occupational Safety and Health. (For ordering a copy of Healthy People 2000, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION**).

**Authority:** This program is authorized under section 22(g) of the Occupational Safety and Health Act (29 U.S.C. 671(g)), as amended by section 1033 of Pub. L. 102-550, the Housing and Community Development Act of 1992.

### Smoke-Free Workplace

The PHS strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

### Eligible Applicants

Only non-profit organizations (including colleges and universities, joint labor-management trust funds, States, and non-profit government employee organizations) who have experience in the implementation and operation of health and safety training for lead-based paint abatement workers and supervisors will be considered for funding.

For the purposes of this notice, the term "lead-based paint abatement activity" means activities engaged in by workers that include the removal, disposal, handling, and transportation of lead-based paint and materials containing lead-based paint from public and private dwellings, public and commercial buildings, bridges and other structures or superstructures where lead-based paint presents or may present an unreasonable risk to health and safety of the environment.

Grants made under this program shall be awarded only to those organizations that fund at least 30% of their lead-based paint training programs from non-Federal sources excluding in-kind contributions.

In-kind contributions are defined as the value of a non-cash contribution to meet a recipient's cost-sharing requirement. An in-kind contribution may consist of charges for real property and equipment, or the value of goods and services, directly benefiting the NIOSH-funded project.

The above stipulations are mandated by section 22(g) of the Occupational Safety and Health Act (29 U.S.C. 671(g)), as amended.

### Availability of Funds

Approximately \$500,000 is available in FY 1994 to fund approximately four awards. It is expected that the average award will be \$125,000, ranging from \$100,000 to \$150,000. The awards will begin on or about September 30, 1994, for a 12-month budget period within a project period of up to four years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

### Purpose

The purpose of these awards is to ensure that lead-based paint abatement workers and supervisors receive adequate training and education concerning the health and safety issues of working with and abating lead-based paint.

### Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting activities as follows:

1. Develop and conduct a four-year training program for workers and supervisors involved or expected to be involved in lead-based paint abatement activity.
2. Identify and select regions and populations for training, based on a list of criteria determined by the applicant.
3. Designate specific levels of training, amount of training, and number of trainees to be trained each year. Course materials utilized will be those which meet the most up-to-date Federal (EPA/HUD) requirements.
4. Evaluate the effectiveness of such training.

### Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Program Experience (35%)
  - a. Experience in the development and delivery of adult-education courses with emphasis on training individuals with limited educational experience.
  - b. Experience in the delivery of health and safety course material to individuals with limited English language skills.
  - c. Demonstrated ability to target the worker population.
  - d. Demonstrated experience with hands-on training systems.

### 2. Lead-Based Paint Abatement Worker Course Experience (35%)

- a. Experience in the delivery of courses to lead-based paint abatement workers.
- b. Demonstrated experience in the implementation and operation of health and safety training for lead-based paint abatement workers.
- c. Qualifications of key personnel.

### 3. Project Management, Planning, and Evaluation (30%)

- a. Ability of the applicant to provide appropriate program staff and a management plan for the project, including designation of a qualified program administrator.
- b. Ability to provide space, equipment, staff time, and other resources required to perform the applicant's responsibilities in the project.
- c. The number of courses to be offered, the number of training sites to be used, and the number of workers expected to be trained during the project period.
- d. The methods to be used in evaluating the effectiveness of the training.

### 4. Budget (Not Scored)

The budget will be evaluated to the extent it is reasonable, clearly justified, and consistent with the intended use of funds.

### Executive Order 12372 Review

Applications are not subject to review by Executive Order 12372, Intergovernmental Review of Federal Programs.

### Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

### Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number for this program is 93.197.

### Application Submission and Deadline

The original and two copies of the application PHS Form 5161-1 must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Mailstop E-13, Atlanta, GA 30305, on or before August 1, 1994.

1. Deadline: Applications will be considered to have met the deadline if they are either:

a. Received on or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the objective review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.a. or 1.b. above are considered late applications and will be returned to the applicant.

#### Where To Obtain Additional Information

To receive additional written information call (404) 332-4561. You will be asked to leave your name, address, and telephone number and will need to refer to Announcement Number 478. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Oppie M. Byrd, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention

(CDC), 255 East Paces Ferry Road NE., room 300; Mailstop E-13, Atlanta, GA 30305, telephone (404) 842-6630.

Programmatic technical assistance is available from Price Connor, Ph.D., Grants Program Officer, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Building 1, room 3053, Mailstop D-30, Atlanta, GA 30333, telephone (404) 639-3343.

Please refer to Announcement Number 478 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017-001-00474-0) or Healthy People 2000 (Summary Report, Stock No. 017-001-00473-1) referenced in the "Introduction" through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 783-3238.

Dated: May 27, 1994.

Richard A. Lemen, Ph.D.,

Acting Director, National Institute for Occupational Safety and Health Centers for Disease Control and Prevention (CDC).

[FR Doc. 94-13624 Filed 6-3-94; 8:45 am]

BILLING CODE 4163-19-P

#### Food and Drug Administration

[Docket No. 94N-0195]

#### Adria Laboratories, et al.; Withdrawal of Approval of 15 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is withdrawing approval of 15 abbreviated new drug applications (ANDA's). The holders of the ANDA's notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

**EFFECTIVE DATE:** July 6, 1994.

**FOR FURTHER INFORMATION CONTACT:** Lola E. Batson, Center for Drug Evaluation and Research (HFD-360), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-1038.

**SUPPLEMENTARY INFORMATION:** The holders of the ANDA's listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

ANDA no.	Drug	Applicant
17-959	Fluorouracil Injection, U.S.P., 50 milligrams (mg)/milliliter (mL)	Adria Laboratories, P.O. Box 16529, Columbus, OH 43216-6529.
18-419	Furosemide Tablets, U.S.P., 20 mg, 40 mg, and 80 mg	Warner Chilcott Laboratories, 201 Tabor Rd., Morris Plain, NJ 07950.
18-420	Furosemide Injection, U.S.P., 10 mg/mL	Do.
18-670	Furosemide Injection, U.S.P., 10 mg/mL	Wyeth-Ayerst Laboratories, P.O. Box 8299, Philadelphia, PA 19101-1245.
18-690	Indomethacin Capsules, U.S.P., 25 mg and 50 mg	Chelsea Laboratories, Inc., 896 Orlando Ave., West Hempstead, NY 11552.
19-106	Hydrocortisone Butyrate Ointment 0.1%	Galderma Laboratories, Inc., 3000 Alta Mesa Blvd., suite 300, P.O. Box 331329, Fort Worth, TX 76163.
72-398	Sulfamethoxazole and Trimethoprim Oral Suspension, U.S.P., 200 mg/40 mg per 5 mL	Barre-National, Inc., 333 Cassell Dr., suite 3500, Baltimore, MD 21224.
85-191	Hydrocortisone Cream, U.S.P., 1%	Lemmon Co., 650 Cathill Rd., Sellersville, PA 18960.
85-214	Sterile Hydrocortisone, Acetate Suspension, U.S.P., 50 mg/mL	Steris Laboratories, Inc., 620 North 51st Ave., Phoenix, AZ 85043-4705.
86-001	Theophylline Syrup, 80-2 mg/15 mL	Barre-National, Inc.
87-161	Dipyridamole Tablets, U.S.P., 75 mg	Chelsea Laboratories, Inc.
88-449	Fluocinolone Acetonide, Topical Solution, U.S.P., 0.01%	Pharmafair, Inc., 110 Kennedy Dr., Hauppauge, NY 11788.
88-475	Glycopyrrolate Injection, U.S.P., 0.2 mg/mL	Fujisawa USA, Inc., Parkway North Center, Three Parkway North, Deerfield, IL 60015-2548.
88-606	Acetic Acid 2% and Aluminum Acetate Otic Solution	Pharmafair, Inc.
89-223	Theophylline Elixir, 80 mg/15 mL	Barre-National, Inc.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the ANDA's listed

above, and all amendments and supplements thereto, is hereby withdrawn, effective July 6, 1994.

Dated: May 24, 1994.

Murray M. Lumpkin,

Acting Director, Center for Drug Evaluation and Research.

[FR Doc. 94-13711 Filed 6-3-94; 8:45 am]

BILLING CODE 4160-01-F

**National Institutes of Health****National Center for Research Resources; Meeting of the Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities**

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities, National Center for Research Resources (NCRR), National Institutes of Health (NIH).

This meeting will be open to the public, as indicated below, during which time there will be discussions on administrative matters such as the report of the Director, NCRR, and review of budget and legislative updates. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed to the public as listed below for the review, discussion and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

*Date of Meeting:* June 15-17, 1994.

*Place of Meeting:* The Bethesda Ramada Hotel and Conference Center, 8400 Wisconsin Avenue, Bethesda, Maryland 20892.

*Open:* June 15, 7:30 p.m. until recess.

*Closed:* June 16, 8:30 a.m. until adjournment.

Ms. Maureen Mylander, Information Officer, NCRR, Westwood Building, room 850, NIH, Bethesda, Maryland 20892, (301) 594-7938, will provide a summary of the meeting and a roster of the Board members upon request. Dr. Mary Ann Sestili, Scientific Administrative Reviewer, Office of Review, Westwood Building, room 10A15, NCRR, NIH, Bethesda, Maryland 20892, (301) 594-7902, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Sestili in advance of the meeting.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of newly appointed members.

(Catalog of Federal Domestic Assistance Program No. 93.214 Extramural Research Facilities Construction Projects)

Dated: May 31, 1994.

**Susan K. Feldman,**

*Committee Management Officer, NIH.*

[FR Doc. 94-13601 Filed 6-3-94; 8:45 am]

BILLING CODE 4140-01-M

**Administration on Aging****White House Conference on Aging; Program Announcement No. WHCoA 94-2; Availability of Funds and Request for Applications for Mini-Conferences**

**AGENCY:** White House Conference on Aging, AoA, HHS.

**ACTION:** Extension of deadline for submission of applications.

**SUMMARY:** Due to extenuating circumstances, the White House Conference on Aging (WHCoA) is extending the deadline date for submission of applications for mini-conferences.

**DATES:** The deadline date for the submission of applications of June 6, 1994 is extended to June 27, 1994.

**ADDRESSES:** Application receipt point: Department of Health and Human Services; Administration on Aging, Office of Administration and Management, 330 Independence Avenue, SW., room 4644, Washington, DC 20201, Attn: WHCoA-94-2.

**FOR FURTHER INFORMATION CONTACT:**

For programmatic information, contact Judy Satine, Department of Health and Human Services, White House Conference on Aging, 501 School Street, SW., 8th Floor, Washington, DC 20024, telephone (202) 245-7826. For grant technical information, contact Margaret Tolson, AoA, see address above, telephone (202) 401-0838.

**Fernando M. Torres-Gil,**

*Assistant Secretary for Aging.*

[FR Doc. 94-13782 Filed 6-3-94; 8:45 am]

BILLING CODE 4130-02-M

**Office of Community Services****Potential Reallotment of Funds for FY 1993 Low Income Home Energy Assistance Program (LIHEAP)**

**AGENCY:** Office of Community Services, Administration for Children and

Families, (ACF), Department of Health and Human Services.

**ACTION:** Preliminary determination concerning funds available for reallotment.

**SUMMARY:** Notice is hereby given that a preliminary determination has been made that FY 1993 Low Income Home Energy Assistance Program (LIHEAP) funds are available for reallotment. Section 2607(b)(1) of the Omnibus Budget Reconciliation Act of 1981 (42 U.S.C. 8621 *et seq.*), as amended, requires that if the Secretary of the Department of Health and Human Services determines that, as of September 1 of any fiscal year, an amount allotted to a grantee for any fiscal year will not be used by that grantee during the fiscal year, the Secretary must notify the grantee and publish a notice in the *Federal Register* that such funds may be reallotted. As the Secretary's designee, I have determined that a total of \$22,591 of FY 1993 funds may be available for reallotment. I have based that determination on reports from the United Tribes of Kansas and Southeast Nebraska, Inc. (Kansas), Seldovia Village Tribe (Alaska) and the Aroostock Band of Micmacs (Maine) which were submitted to the Office of Community Services as required by 45 CFR 96.81.

The statute allows grantees who have funds unobligated at the end of a fiscal year to request that they be allowed to carry over up to 10 percent of their allotments to the next fiscal year. Funds in excess of this amount must be returned to HHS and are subject to reallotment to other grantees under section 2607(b)(1) of the LIHEAP statute. All of the amounts described in this notice were reported as unobligated funds in excess of the amount that the three tribes named above could carry over to FY 1994.

The United Tribes of Kansas and Southeast Nebraska, Inc. were notified by certified mail that \$2,384 of its FY 1993 LIHEAP funds may be reallotted. The Seldovia Village Tribe was notified by certified mail that \$5,117 of their FY 1993 LIHEAP funds may be reallotted. The Aroostock Band of Micmacs was notified by certified mail that \$15,090 of its FY 1993 LIHEAP funds may be reallotted. In accordance with section 2607(b)(3), the Chief Executive Officer of each of these tribes has 30 days from the date of the letters to submit comments to me. That 30 day period will expire June 16, 1994. After considering any comments submitted, I will notify the Chief Executive Officer of my decision and will publish my decision in the *Federal Register*. If

funds are reallocated, they will be allocated in accordance with section 2604 and will be treated as an amount appropriated for FY 1994.

**FOR FURTHER INFORMATION CONTACT:**

Janet M. Fox, Director, Division of Energy Assistance, Office of Community Services, 370 L'Enfant Promenade SW., Washington, DC 20447; telephone (202) 401-9351.

Dated: May 25, 1994.

**Donald Sykes,**

*Director, Office of Community Services.*

[FR Doc. 94-13597 Filed 6-3-94; 8:45 am]

BILLING CODE 4184-01-P

**Public Health Service**

**Notice Regarding Section 602 of the Veterans Health Care Act of 1992 Inclusion of Outpatient Hospital Facilities**

**AGENCY:** Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** Section 602 of Public Law 102-585, the "Veterans Health Care Act of 1992" (the "Act"), enacted section 340B of the Public Health Service Act ("PHS Act"), "Limitation on Prices of Drugs Purchased by Covered Entities." Section 340B provides that a manufacturer who sells covered outpatient drugs to eligible entities must sign a pharmaceutical pricing agreement (the "Agreement") with the Secretary, Department of Health and Human Services, in which the manufacturer agrees to charge a price for covered outpatient drugs that will not exceed the amount determined under a statutory formula.

Section 340B(a)(4) lists the entities eligible to receive discount outpatient drug pricing (i.e., certain disproportionate share hospitals (DSHs) and PHS grantees). The definition of a disproportionate share hospital found in section 340B(a)(4)(L) provides criteria to determine which such hospitals are eligible to participate in the program. However, the definition does not include criteria to determine which outpatient facilities (including off-site or satellite clinics) working in conjunction with the eligible hospital would be considered part of the hospital for purposes of eligibility for section 340B drug discounts. The Office of Drug Pricing, which administers this program with PHS, is proposing certain procedures to determine which outpatient hospital facilities are included as part of an eligible disproportionate share hospital.

**DATES:** The public is invited to submit comments on the proposed procedures

by July 6, 1994. Subject to consideration of the comments submitted, the Department intends to publish a final notice regarding these procedures.

**ADDRESSES:** Submit comments to Ms. Alvarez at the address listed below.

**FOR FURTHER INFORMATION CONTACT:**

Marsha Alvarez, R. Ph., Director, Office of Drug Pricing, Bureau of Primary Health Care, 4350 East West Highway, West Towers, 10th Floor, Bethesda, MD 20814, Tel: (301) 594-4354.

**SUPPLEMENTARY INFORMATION:** Section 340B(a)(4) of the PHS Act lists the various groups of entities eligible to receive the section 340B discount pricing. Section 340B(a)(4)(L)<sup>1</sup> describes a subset of "hospitals" as defined in section 1886(d)(1)(B) of the Social Security Act as eligible to participate in the program. Because section 1886 addresses Medicare payment for hospital inpatient services only, the scope of the term "hospital" has been limited to the hospital inpatient services. However, section 340B deals exclusively with outpatient drugs. Although Congress clearly intended that this narrow definition be used to identify Medicare disproportionate share hospitals which are eligible for section 340B drug discounts, we do not believe it is reasonable to use this same definition to limit where the section 340B outpatient drug can be used. Some disproportionate share hospitals offer outpatient services in off-site or satellite outpatient facilities. Further, the movement of nonprofit hospitals in recent years has been to reorganize and offer a variety of services other than

<sup>1</sup> Section 340B(a)(4)(L) of the PHS Act defines as a covered entity—"A subsection (d) hospital (as defined in section 1886(d)(1)(B) of the Social Security Act) [42 U.S.C. 1396ww(d)(1)(B)] that—(i) is owned or operated by a unit of State or local government, is a public or private non-profit corporation which is formally granted governmental powers by a unit of State or local government, or is a private non-profit hospital which has a contract with a State or local government to provide health care services to low income individuals who are not entitled to benefits under title XVIII of the Social Security Act [42 U.S.C. section 1395 et seq.] or eligible for assistance under the State plan under this title; (ii) for the most recent cost reporting period that ended before the calendar quarter involved, had a disproportionate share adjustment percentage (as determined under section 1886(d)(5)(F) of the Social Security Act) [42 U.S.C.A. 1395ww(d)(5)(F)] greater than 11.75 percent or was described in section 1886(d)(5)(F)(i)(II) of such Act [42 U.S.C.A. 1395ww(d)(5)(F)(i)(II)]; and (iii) does not obtain covered outpatient drugs through a group purchasing organization or other group purchasing arrangement."

The Health Care Financing Administration (HCFA) submitted to the Office of Drug Pricing a list of hospitals that met the first two requirements (i.e., 340B(a)(4)(L)(i) and (ii)). HCFA will update this list periodically.

traditional inpatient hospital services through separate divisions, lines of business, or entities. Therefore, for purposes of section 340B drug discounts, a more inclusive interpretation of "hospital" is needed.

The Office of Drug Pricing Program is proposing to recognize as part of an eligible DSH outpatient facilities (including off-site and satellite clinics) which meet the following standard:

The outpatient facility is considered an integral part of the "hospital" and therefore eligible for section 340B drug discounts if it is a reimbursable facility included on the hospital's Medicare cost report.

For example, if a hospital with one Medicare provider number meets the disproportionate share criteria and this hospital has associated outpatient clinics whose costs are listed on the Medicare cost report, these clinics would also be eligible for section 340B drug discounts. However, free-standing clinics of the hospital that submit their own cost reports using a different Medicare number (not under the single hospital Medicare provider number) would not be eligible for this benefit.

This test, using the single Medicare provider number, is proposed for three reasons. First, Congress referred to section 1886 of the Social Security Act, part of the Medicare statute, for the definition of a DSH in section 340B(a)(4)(L) of the PHS Act. We believe, therefore, that it is reasonable to utilize existing Medicare rules to determine eligibility for the drug discount program. The proposed Medicare cost report test was developed by Medicare officials and is used, in part, to determine whether a facility is part of a hospital. If an outpatient facility does not share in the hospital cost report, it is properly viewed as an independent, free-standing facility.

Second, the relative administrative burden of the proposed test (i.e., obtaining sufficient documentation to verify the inclusion of these off-site facilities) should be minimal. Hospitals seeking Medicare reimbursement are required to submit annual cost reports including all hospital units (e.g., on site and off-site clinics); therefore, the information necessary to determine facility eligibility is available and needs no further analysis by the Office of Drug Pricing.

Third, the test incorporates criteria (i.e., the Medicare cost report) that form an independent and objective basis upon which to determine eligibility. Therefore, this test should provide fair and easy administration.

If DSHs have difficulty accessing PHS pricing for eligible outpatient clinics,

they should contact the Office of Drug Pricing (not HCFA) for assistance. If manufacturers have questions concerning the eligibility of certain DSH outpatient clinics, they should also contact the Office of Drug Pricing for a determination of eligibility.

Dated: May 27, 1994.

Ciro V. Sumaya,

Administrator, Health Resources and Services Administration.

[FR Doc. 94-13712 Filed 6-3-94; 8:45 am]

BILLING CODE 4160-15-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[OR-015-94-4210-05; G4-180]

#### Withdrawal of Public Lands From Sale Offering

**AGENCY:** Bureau of Land Management, Interior, Lakeview District.

**ACTION:** Withdrawal of Sale Parcels OR 36285 and OR 49389 from Public Sale Offering.

Notice is given that sale parcels OR 36285 and OR 49389, previously published for public sale offering in the *Federal Register* April 11, 1986, Vol. 51, No. 70, page 12573 and July 22, 1993, Vol. 58, No. 139, pages 39225 and 39226, respectively, are hereby withdrawn from sale.

The subject parcels were advertised for public sale by notice in the above *Federal Register* volumes pursuant to section 203 of the Federal Land Policy and Management Act of 1976, (90 Stat. 2750, 43 U.S.C. 1713) and have not sold. These parcels will be reconsidered for future public sale offering upon public request only.

Scott R. Florence,

Manager, Lakeview Resource Area.

[FR Doc. 94-13635 Filed 6-3-94; 8:45 am]

BILLING CODE 4310-33-M

## INTERSTATE COMMERCE COMMISSION

[Ex Parte No. MC-206]

#### Revision to Accounting and Reporting Requirements for Motor Carriers of Property

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of reopening and request for comments.

**SUMMARY:** The Commission adopted the Annual Report Form M-2 (Form M-2) for class II motor carriers of property, as

set forth below. The purpose of this notice is to give interested parties an opportunity to comment on the new form.

**DATES:** Comments are due on July 6, 1994. Replies are due August 5, 1994.

**ADDRESSES:** Send an original and 15 copies, if possible, of comments and replies referring to Ex Parte No. MC-206 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Brian A. Holmes or Leonard J. Blistein, (202) 927-5740. (TTD for hearing impaired: (202) 927-5721.)

**SUPPLEMENTARY INFORMATION:** By decision in Ex Parte No. MC-206, Revision to Accounting and Reporting Requirements for Motor Carriers of Property, 9 I.C.C.2d 1268 (1994), and published at 59 FR 5110 (2-3-94) (Final Rule), we adopted a new and separate annual report form for class II motor carriers of property, designated as Annual Report Form M-2.

In our Final Rule, we retained class II annual reporting at a reduced level of detail as compared to the old Annual Report Form M. Before adoption of the Final Rule, no opportunity for public comment on the content of the Form M-2 was provided. For this reason, we are reopening this proceeding on our own motion to provide such an opportunity.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927-7428. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

We conclude that implementation of our action to seek comments will not have a significant impact on a substantial number of small entities. Form M-2 was adopted previously. This notice only affords interested persons an opportunity to offer comments.

The Form M-2 contained in this notice will be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (5 CFR 1320). Interested persons may direct comments concerning the paperwork burden and burden estimates of the Form M-2 to the OMB and ICC by addressing them to: Office of Management & Budget, Office of Information and Regulatory Affairs, Desk Officer for ICC (Forms 3120-), Washington, DC 20503.

Interstate Commerce Commission, ATTN: Information Resource Management Forms, Clearance

Officer, Room 4136, Washington, DC 20423.

We conclude that implementation of our action to seek comments will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

Decided: May 25, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Morgan.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94-13701 Filed 6-3-94; 8:45 am]

BILLING CODE 7035-01-M

#### Form M-2

##### Class II

Motor Carriers of Property and Household Goods

Approved by: OMB

3120-xxxx

Expires 12/31/97

#### Annual Report

Motor Carrier No. \_\_\_\_\_

Name of Company \_\_\_\_\_

Doing Business As \_\_\_\_\_

Present Address \_\_\_\_\_

City \_\_\_\_\_

State Zip Telephone No. \_\_\_\_\_

to the Interstate Commerce Commission for the period ending December \_\_\_\_, 1994

#### Notice

1. Three copies of this Annual Report shall be completed. Two of the copies must be filed with the Office of Economic and Environmental Analysis, Interstate Commerce Commission, Washington, DC 20423, by March 31 of each year, and one copy retained by the carrier.

2. Instructions for completion of each line of the schedules are contained in the schedules.

3. Every inquiry must be definitely answered. Where the word "none" truly and completely states the fact, it should be given as the answer. If any inquiry is inapplicable, the words "not applicable" should be used.

4. Wherever the space provided in the schedules is insufficient to permit a full and complete statement of the requested information, inserts should be prepared and appropriately identified by the number of the schedule.

5. All entries should be made in a permanent black ink or typed. Those of

a contrary character must be indicated in parenthesis. Items of an unusual character must be indicated by appropriate symbols and explained in footnotes.

6. Throughout this report the "year" means the year covered by the report, whether a calendar year or a 13-period accounting year; the "start of the year" means the beginning of the first business day of the year in question; the "close of the year" means the last business day of the year in question. In case the report is made for a shorter period than 1 year, the "start of the year" means the first day of the period; and the "close of the year" means the last day of the period. All items/accounts are to be in conformance with Generally Accepted Accounting Principles (GAAP).

7. Money items, throughout the annual report form should be shown in whole dollars.

8. Place MC Number and year on each page as shown.

Table of Contents  
 General Information & Certification  
 Schedule 100—Balance Sheet  
 Schedule 200—Income Statement  
 Schedule 300—Revenue Equipment Owned and Leased  
 Schedule 400—Type of Carrier

General Information

1. Officer, Owner, or Partner to whom correspondence is to be addressed:

(Name) \_\_\_\_\_

(Title) \_\_\_\_\_

2. Filing status

Corporation \_\_\_\_\_

Corporation Sub-S \_\_\_\_\_

Partnership \_\_\_\_\_

Individual (Sole Proprietorship) \_\_\_\_\_

3. Type of Authority

Certificate \_\_\_\_\_

Permit \_\_\_\_\_

Both \_\_\_\_\_

4. Accounting records are maintained at: \_\_\_\_\_

Address

City State Zip

Certification

I hereby certify that this report was prepared by me or under my supervision, that I have examined it, and that the items herein reported on the basis of my knowledge are correctly shown.

Your Name \_\_\_\_\_

Signature \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

ICC Auth. No. Year 19

SCHEDULE 100—BALANCE SHEET

Line No.	Item	Instructions	Balance close of year	Balance start of year
<b>ASSETS</b>				
1 .....	Current Assets .....	All current assets. (Cash, cash equivalents, accounts and notes receivable, materials and supplies, and any other assets that are not considered long-term.)		
2 .....	Carrier Operating Property.	The undepreciated value of all tangible operating property.		
3 .....	Less Accumulated Depreciation.	The total of accumulated depreciation for the tangible property shown in Line 2.		
4 .....	Net Carrier Operating Property.	Line 2 minus Line 3.		
5 .....	Total Intangible Property.	Intangible assets.		
6 .....	Other Assets .....	All other long-term assets such as non-operating property (net of depreciation), long-term notes and accounts receivable, receivables from affiliates, deferred income tax debits, and other deferred debts.		
7 .....	TOTAL ASSETS .....	Line 1 plus Line 4 plus Line 5 plus Line 6.		
<b>LIABILITIES</b>				
8 .....	Current Liabilities ....	All current liabilities. (Accounts and Notes receivable, the portion of long-term debt due within one year, and any other liabilities payable within one year).		
9 .....	Long-Term Debt .....	All debt due after one year. Includes all types of bonds, mortgages, notes, etc. outstanding, with more than one year of payments remaining.		
10 ....	Other Long-Term Liabilities.	Includes deferred tax credits and any other deferred credits or liabilities of more than one year duration.		
11 ....	TOTAL LIABILITIES	Sum of Lines 8 through 10.		
12 ....	TOTAL EQUITY/ CAPITAL.	Line 7 minus Line 11.		
13 ....	TOTAL LIABILITIES AND EQUITY.	Line 11 plus Line 12.		

ICC Auth. No.

## SCHEDULE 200—INCOME STATEMENT

Line No.	Item	Instructions	Amount for current year
1 .....	Freight Revenue—Intercity Common Carrier.	All general freight revenues derived from common carriage of freight on an intercity basis. Excludes any contract carriage, household goods, or local traffic revenues.	
2 .....	Freight Revenue—Intercity Contract Carrier.	All general freight revenues derived from contract carriage of freight on an intercity basis. Excludes any common carriage, household goods, or local traffic revenues.	
3 .....	Household Goods Carrier Operating Revenue.	All intercity common and contract carriage derived from the movement of household goods.	
4 .....	All Other Operating Revenue.	Includes all local carriage, as well as any other operating revenue not shown in lines 1, 2, and 3.	
5 .....	TOTAL OPERATING REVENUE.	Sum of Lines 1 through Line 4.	
6 .....	Carrier Operating Expenses.	All operating expenses related to operations other than those associated with the movement of household goods.	
7 .....	Household Goods Carrier Operating Expenses.	All operating expenses associated with the movement of household goods.	
8 .....	TOTAL OPERATING EXPENSES.	Line 6 plus Line 7.	
9 .....	NET CARRIER OPERATING INCOME.	Line 5 minus Line 8.	
10 .....	Total Other Income (Expense).	The net of all other revenues and expenses from non-carrier operations. If negative, show in ( ).	
11 .....	Ordinary Income Before Taxes.	Line 9 plus Line 10.	
12 .....	Total Provision for Income Tax.	All paid and deferred income taxes, less any applicable investment tax credits.	
13 .....	Ordinary Income (Loss) After Taxes.	Line 11 minus Line 12.	
14 .....	Extraordinary Income (Loss) (Net of Taxes).	Any after-tax extraordinary income or losses.	
15 .....	NET INCOME (LOSS).	Line 13 plus Line 14.	

ICC Auth. No. Year 19

## SCHEDULE 300—REVENUE EQUIPMENT OWNED AND LEASED

Line No.	Description (a)	Instructions (b)	No. units @ beginning of year (c)	No. units required during year (d)	No. units retired/discharged during year (e)	No. units @ end of year (f)
1 .....	Trucks—Owned .....	Trucks actually owned by carrier				
2 .....	Trucks—Leased .....	Trucks leased, both with and without drivers				
3 .....	Truck Tractors—Owned.	Tractors actually owned by carrier				
4 .....	Truck Tractors—Leased.	Tractors leased, both with and without drivers				
5 .....	Van Trailers & Semis.	Both short and long van trailers and semis, including refers, tankers, etc				
6 .....	Other Revenue Equipment.	All other revenue equipment used in carrier operations				

## Instructions for Columns

Column (c) List the number of each type of unit owned or leased at the beginning of the year.

Column (d) List the number of each type of unit acquired by ownership or lease during the year.

Column (e) List the number of each type of unit retired or disposed of by ownership or lease during the year.

Column (f) List the number of each type of unit owned or leased at the end of the year.

## SCHEDULE 400.—TYPE OF CARRIER

This schedule will be used to classify motor carriers.

Indicate which type of carriage (general freight, household goods, or specific commodities) makes up the majority of your revenues. If you are a specific commodity carrier, indicate which type.

All commodities not classified as household goods or specific commodities should be considered as general freight.

## COMMODITY REVENUE GROUP

General Freight

Household Goods

Specific Commodities (Note)

(Note) OTHER SPECIFIC COMMODITIES (x) Major Commodities that apply

- Heavy Equipment  
 Liquid Petroleum Products  
 Refrigerated Liquid Products  
 Refrigerated Solid Products  
 Dump Trucking  
 Agricultural Commodities  
 Motor Vehicles  
 Armored Truck Service  
 Building Material  
 Film Associated Commodities  
 Forest Products  
 Mine Ore Not Including Coal  
 Retail Store Delivery Service  
 Explosives Or Dangerous Material  
 Other (Specify) \_\_\_\_\_

[FR Doc. 94-13701 Filed 6-3-94; 8:45 am]

BILLING CODE 7035-01-P

## JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

### Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Conference Room A of the Office of Director of Practice, suite 600, 801 Pennsylvania Avenue, NW., Washington, DC, on Monday and Tuesday, June 27 and 28, 1994, from 8:30 a.m. to 5 p.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in title 29 U.S. Code, section 1242(a)(1)(B) and to review the May 1994 Joint Board examinations in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the November 1994 pension actuarial examination and the May 1995 basic actuarial examinations will be discussed. In addition, establishing examination guidelines and credit for unanswered questions on the examinations will be addressed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) that the portions of the meeting dealing with the discussion of questions

which may appear on the Joint Board's examinations and review of the May 1994 Joint Board examinations fall within the exceptions to the open meeting requirement set forth in title 5 U.S. Code, section 552(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1:30 p.m. on June 27 and will continue for as long as necessary to complete the discussion, but not beyond 3 p.m. This portion of the meeting will be open to the public as space is available. Time permitting, after discussion of the program, interested persons may make statements germane to this subject. Persons wishing to make oral statements are requested to notify the Committee Management Officer in writing prior to the meeting in order to aid in scheduling the time available, and should submit the written text, or, at a minimum, an outline of comments they proposed to make orally. Such comments will be limited to ten minutes in length. Any interested person also may file a written statement for consideration by the Joint Board and Committee by sending it to the Committee Management Officer. Notifications and statements should be mailed no later than June 11, 1994, to Mr. Leslie S. Shapiro, Joint Board for the Enrollment of Actuaries, c/o U.S. Department of the Treasury, Washington, DC 20220 or by facsimile transmission to 202-376-1420.

Dated: May 27, 1994.

**Leslie S. Shapiro,**

*Advisory Committee Management Officer  
Joint Board for the Enrollment of Actuaries.*

[FR Doc. 94-13495 Filed 6-3-94; 8:45 am]

BILLING CODE 4810-25-M

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

#### 1. CONSOL of Kentucky, Inc.

[Docket No. M-94-60-C]

CONSOL of Kentucky, Inc., 1800 Washington Road, Pittsburgh, Pennsylvania 15241-1421 has filed a petition to modify the application of 30 CFR 75.1101-8 (water sprinkler system; arrangement of sprinklers) to its Jones-Fork Mine (I.D. No. 15-17496) located in Knott County, Kentucky. The petitioner proposes to use a single overhead pipe system with ½ inch orifice automatic sprinklers located on 10 feet centers to cover 50 feet of fire-resistant belt or 150 feet of non-fire-resistant belt with actuation temperatures between 200 and 230 degrees Fahrenheit with water pressure equal to or greater than 10 psi. The petitioner states that the sprinklers would be located 10 feet apart so that the discharge of water will extend over the belt drive, belt take-up, electrical

control, and gear reducing unit. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

## 2. Cyprus Emerald Resources Corporation

[Docket No. M-94-61-C]

Cyprus Emerald Resources Corporation, 9100 East Mineral Circle, Englewood, Colorado 80112 has filed a petition to modify the application of 30 CFR 75.507 (power connection points) to its Emerald Mine No. 1 (I.D. No. 36-05466) located in Greene County, Pennsylvania. The petitioner proposes to use a non-permissible submersible pump in the longwall bleeder sump near the No. 2 bleeder shaft for dewatering the sump and to provide unrestricted airflow into the return shaft. The petitioner states that task training will be provided for all selected mine electricians who will perform electrical work on these pumps; and that the surface pump control and power circuits will be examined monthly. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

## 3. Air Products and Chemicals, Inc.

[Docket No. M-94-62-C]

Air Products and Chemicals, Inc., 600 Grant Street, Pittsburgh, Pennsylvania 15219 has filed a petition to modify the application of 30 CFR 77.213 (draw-off tunnel escapeways) to its Cambria Cogeneration Facility (I.D. No. 36-08276) located in Cambria County, Pennsylvania. The petitioner proposes to have an escapeway not less than 30 inches in diameter from the tunnel within 24 feet of the tail roller at the closed end of the tunnel; to install a cable type heat detection system set at 140 degrees Fahrenheit in the enclosed portion of the tunnel; to install heat activated sprinklers in the tunnel; to install a CO monitoring sensor in the tunnel near the tail roller to activate a visual alarm in the tail roller area and in the Main and Fuel Handling Control rooms when a level of 30 ppm is reached; and to install a pull cord throughout the tunnel to stop the belt. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

## 4. Misty Mountain Mining, Inc.

[Docket No. M-94-63-C]

Misty Mountain Mining, Inc., P.O. Box 517, Barbourville, Kentucky 40906

has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its Mine No. 2 (I.D. No. 15-17314) located in Knox County, Kentucky. The petitioner proposes to monitor continuously with a hand-held deck-mounted methane and oxygen detector instead of using a methane monitoring system on permissible three-wheel tractors with drag bottom buckets. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

## 5. Bell County Coal Corporation

[Docket No. M-94-64-C]

Bell County Coal Corporation, P.O. Box 758, Middlesboro, Kentucky 40965 has filed a petition to modify the application of 30 CFR 75.360(b)(6) (preshift examination) to its Stone Mine No. 2 (I.D. No. 15-09568) located in Bell County, Kentucky. The petitioner proposes to establish evaluation points to monitor the air in areas that were mined prior to the date new ventilation regulations went into effect. The petitioner asserts that the proposed alternative method would not jeopardize the safety of the miners at Stone Mine.

## 6. Tilden Magnetite Partnership

[Docket No. M-94-29-M]

Tilden Magnetite Partnership, P.O. Box 2000, Ishpeming, Michigan 49849 has filed a petition to modify the application of 30 CFR 56/57.18010 (first aid training) to its Tilden Mine (I.D. No. 20-00422) located in Marquette County, Michigan. The petitioner requests that the standard be modified to include Michigan State Certified Emergency Medical Technicians and First Responders as equivalent to "selected supervisors" for the purpose of determining adequate coverage of trained first aid personnel. The petitioner states that modification of the standard would allow for the inclusion of those employees that have had advanced training and are currently licensed as Emergency Medical Technicians or First Responders to be considered as part of the total number of trained first aid personnel and is not meant to preclude the necessity of training additional members of the work force in standard first aid methods to assure adequate coverage on all shifts. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

## 7. General Chemical Corporation

[Docket No. M-94-30-M]

General Chemical Corporation, Green River Soda Ash Operations, P.O. Box 551, Green River, Wyoming 82935-0551 has filed a petition to modify the application of 30 CFR 57.22305 (approved equipment III Mines) to its General Chemical Mine (I.D. No. 48-00155) located in Sweetwater County, Wyoming. The petitioner proposes to use Motorola Radio's P200, Model #H43RFU7160BN, 2.5-5 watts for communication purposes while riding the #5 shaft emergency escape hoist for inspection purposes or when necessary to utilize this hoist in an emergency. The petitioner states that the use of radios would allow personnel in the five-man bucket type hoist to have direct communication with the hoistman or a shaft hand that will bell signals to the hoistman; and that when using the radios in the shaft, methane would be continuously monitored and when 0.5 percent or more of methane is found, use of the radios would be suspended until the methane level was below 0.5 percent. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

## 8. Mitsubishi Cement Corporation

[Docket No. M-94-31-M]

Mitsubishi Cement Corporation, 5808 State Hwy. 18, Lucerne Valley, California 92356 has filed a petition to modify the application of 30 CFR 57.13020 (use of compressed air) to its Cushenbury Plant (I.D. No. 04-00157) located in San Bernardino County, California. The petitioner proposes to establish blow-off stations at various places in the plant where employees can clean their clothes with compressed air. This compressed air would have an OSHA-approved nozzle with pressure no greater than 2-6 psi at normal average line pressure. The petitioner proposes to install tamper-proof airline regulators at each station to ensure that primary operating air pressure is consistent; and to post rules for employees to follow when using compressed air to clean their clothes. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

## 9. Cominco Alaska Incorporated

[Docket No. M-94-32-M]

Cominco Alaska Incorporated, P.O. Box 1230, Kotzebue, Alaska 99752 has filed a petition to modify the application of 30 CFR 56.6306(b)

(loading and blasting) to its Red Dog Mine (I.D. No. 50-01545) located in Northwest Arctic, Alaska. The petitioner proposes to charge blast holes immediately after the drill has completed drilling a blasthole and has moved to the next hole location. The petitioner asserts that the proposed alternate method would enhance the safety of the miners at Red Dog Mine.

#### Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 6, 1994. Copies of these petitions are available for inspection at that address.

Dated: June 1, 1994.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 94-13685 Filed 6-3-94; 8:45 am]

BILLING CODE 4510-43-P

## NATIONAL INSTITUTE FOR LITERACY

### National Institute for Literacy Advisory Board; Meeting

**AGENCY:** National Institute for Literacy Advisory Board, National Institute for Literacy.

**ACTION:** Notice of meeting.

**SUMMARY:** This Notice sets forth the schedule and proposed agenda of a forthcoming meeting of the National Institute for Literacy Advisory Board (Board). This notice also describes the function of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting. **DATE AND TIME:** June 22, 1994, 10 a.m. to 4 p.m.

**ADDRESSES:** National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Sharyn M. Abbott, Acting Executive Officer, National Institute for Literacy, 800 Connecticut Avenue, NW., suite 200, Washington, DC 20006. Telephone (202) 632-1500.

**SUPPLEMENTARY INFORMATION:** The Board is established under section 384 of the Adult Education Act, as amended by title I of Public Law 102-73, the National Literacy Act of 1991. The

Board consists of ten individuals appointed by the President with the advice and consent of the Senate. The Board is established to advise and make recommendations to the Interagency Group, composed of the Secretaries of Education, Labor, and Health and Human Services, which administers the National Institute for Literacy (Institute). The Interagency Group considers the Board's recommendations in planning the goals of the Institute and in the implementation of any programs to achieve the goals of the Institute. Specifically, the Board performs the following functions: (a) Makes recommendations concerning the appointment of the Director and the staff of the Institute; (b) provides independent advice on operation of the Institute; and (c) receives reports from the Interagency Group and the Director of the Institute. In addition, the Institute consults with the Board on the award of fellowships.

The Board will meet in Washington, DC on June 22, 1994, from 10 a.m. to 4 p.m. The meeting of the Board is open to the public. The agenda includes discussions of planned program activities.

Records are kept of all Board proceedings and are available for public inspection at the National Institute for Literacy, 800 Connecticut Avenue, NW, suite 200, Washington, DC 20006 from 8:30 a.m. to 5 p.m.

Dated: June 1, 1994.

Andrew J. Hartman,

Executive Director, National Institute for Literacy.

[FR Doc. 94-13640 Filed 6-3-94; 8:45 am]

BILLING CODE 6055-01-M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

**Date and time:** June 30 and July 1, 1994, 8:30 am to 5 pm.

**Place:** Room 390, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

**Type of meeting:** Part-Open.

**Contact person:** Dr. Machi F. Dilworth, Program Director, Integrative Plant Biology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306-1422.

**Minutes:** May be obtained from the contact person listed above.

**Purpose of meeting:** To provide advice and recommendations concerning proposals submitted to NSF for financial support.

**Agenda:** To review and evaluate NASA/NSF Joint Program in Plant Biology as part of the selection process for awards. OPEN SESSION: June 30, 1994, noon to 1:00 pm—To discuss research trends and opportunities in NASA/NSF Joint Programs in Plant Biology.

**Reason for closing:** The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-13703 Filed 6-3-94; 8:45 am]

BILLING CODE 7555-01-M

### Special Emphasis Panel in Civil and Mechanical Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

**Name:** Special Emphasis Panel in Civil and Mechanical Systems.

**Date and time:** June 27-28, 1994; 8:30 a.m. to 5 p.m.

**Place:** National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Conference Room 320.

**Contact person:** Dr. Devendra P. Garg, Program Director, Dynamic Systems and Control, Telephone: (703) 306-1361.

**Types of meetings:** Closed.

**Purpose of meeting:** To provide advice and recommendations concerning unsolicited proposals submitted to NSF for financial support.

**Agenda:** To review and evaluate proposals submitted to the Division of Civil and Mechanical Systems as part of the selection process for awards.

**Reason for closing:** The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: June 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-13704 Filed 6-3-94; 8:45 am]

BILLING CODE 7555-01-M

### Special Emphasis Panel in Electrical & Communication Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

*Name:* Special Emphasis Panel in Electrical and Communication Systems.

*Date and time:* June 23-24, 8 am-5 pm.

*Place:* National Science Foundation, 4201 Wilson Blvd., Room 530, Arlington, Virginia 22230.

*Contact person:* Dr. George Lea, Program Director, Computational Engineering, ECS, Room 675, National Science Foundation, 4201 Wilson Blvd.

*Telephone:* 703/306-1339.

*Type of meeting:* Closed.

*Purpose of meeting:* To review concept papers submitted to NSF for possible later proposal submissions (National Challenge Groups—Fiscal Year 1994).

*Agenda:* To review and evaluate concept papers submitted under a IITA-94 National Challenge Group for financial support.

*Reason for closing:* The proposals being reviewed include information of a proprietary confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government Sunshine Act.

Dated: June 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-13705 Filed 6-3-94; 8:45 am]

BILLING CODE 7555-01-M

### Committee on Equal Opportunities in Science and Engineering; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting:

*Name:* Committee on Equal Opportunities in Science and Engineering (CEOSE) (1173).

*Date and time:* June 23, 1994; 8:30 a.m.—5 p.m. (Open); June 24, 1994; 8:30 a.m.—12 Noon (Open).

*Place:* Room 375, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Open.

*Contact person:* Wanda E. Ward, Executive Secretary, CEOSE, National Science Foundation, 4201 Wilson Boulevard, Room 805, Arlington, VA 22230. Telephone: (703) 306-1604.

*Summary minutes:* May be obtained from the Executive Secretary at the above address.

*Purpose of meeting:* To discuss NSF strategic planning activities, the NSF equal opportunity task force report, human resource development national policy issues, and to review issues about and assessments

of participation rates of all segments of society in science and engineering.

*Agenda:* June 23: 8:30 a.m. to 12 Noon—Discussion of NSF strategic planning and human resources development national policy issues; 1:30 p.m. to 5 p.m.—Discussion of issues about the participation rates of all segments of society in science and engineering and the equal opportunity task force report; 5 p.m.—Recess; June 24: 8:30 a.m. to 12 Noon—Review of assessments of participation rates of all segments of society in science and engineering; future directions.

Dated: June 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-13706 Filed 6-3-94; 8:45 am]

BILLING CODE 7555-01-M

### Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

#### Special Emphasis Panel in Geosciences

*Date and Time:* June 27, 1994, 9 a.m. to 5 p.m.

*Place:* UNIDATA Program Office, 3300 Mitchell Lane, Suite 170, Boulder, Colorado 80301.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Cliff Jacobs, UNIDATA Program Director, ATM, Rm. 775, National Science Foundation, 4201 Blvd., Arlington, Virginia 22230. Telephone: (703) 306-1521.

*Purpose of Meeting:* Review of equipment proposals submitted to the National Science Foundation in support of the university-based UNIDATA program.

*Agenda:* Review and evaluate university sponsored UNIDATA proposals.

*Reason for Closing:* The materials being reviewed include information of a proprietary or confidential nature, including technical information; financial data; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government Sunshine Act.

Dated: June 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94-13707 Filed 6-3-94; 8:45 am]

BILLING CODE 7555-01-M

### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34125; File No. SR-Amex-93-41]

#### Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc., Relating to the Limitation of Exchange Liability for Negligent Conduct

May 27, 1994.

On December 23, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to limit the Exchange's liability in connection with its administration of proprietary indexes and products. Notice of the proposed rule change appeared in the *Federal Register* on April 1, 1994.<sup>3</sup> No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

The Exchange currently has listed for trading, or has received approval to trade, options on several broad-based and narrow-based stock indexes.<sup>4</sup> The Exchange represents that there is a great deal of work involved in the daily calculation and dissemination of these index values and while much of this work is automated, a substantial amount of manual input is still required. Human error, such as incorrectly inputting a symbol or index value, overlooking a corporate action, or inaccurately reporting the number of outstanding shares of a component of an index, can occur during the manual input of data which exposes the Exchange to potential liability. As options on more new indexes are introduced, the chances for human error increase, thus exposing the Exchange to an even greater risk of liability.

Currently, Amex Rules 902C and 1003 disclaim Exchange liability regarding the calculation or dissemination of any index value, and in the creation, redemption, and trading of Portfolio Depository Receipts, respectively. These disclaimers cover errors, omissions, and delays resulting from any conduct beyond the reasonable control of the

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1992).

<sup>3</sup> See Securities Exchange Act Release No. 33817 (March 25, 1994), 59 FR 15466 (April 1, 1994).

<sup>4</sup> Examples of the broad-based indexes include the Eurotop 100, Institutional, Major Market, and S&P MidCap 400 Indexes. Example of the narrow-based indexes include the Biotechnology, Broker/Dealer, Natural Gas, and Retail Indexes.

Exchange, and include acts of God, power or systems failure, or any error, omission, or delay in the reported price of an underlying security. The Exchange believes, however, that these disclaimer provisions are arguably ambiguous with respect to whether the Exchange remains potentially liable for damages caused by any human error or omission by an Exchange employee in connection with the performance of the Exchange's index responsibilities.

In view of the increased potential for Exchange liability as a result of the Exchange's expanding role in the administration of new proprietary indexes and products, the Amex wishes to make clear that in addition to the areas specified in Rules 902C and 1003, the Exchange also disclaims liability for negligent conduct. The Exchange represents that the Amex, as well as other self-regulatory organizations, currently disclaim liability for negligent conduct associated with the dissemination of their market data to vendors, as well as generally in connection with the use of their facilities, except as they otherwise provide. The exchange believes that it is inappropriate for exchanges to bear the risks and liabilities associated with the use of such information and facilities. In the area of index administration, the Exchange represents that Standard & Poor's and all the other major index providers likewise routinely disclaim liability for any negligent conduct.<sup>5</sup> Additionally, the New York Stock Exchange ("NYSE") has a rule which is substantively similar to the Exchange's proposed rule change.<sup>6</sup> Finally, the Exchange acknowledges that Rules 902C and 1003 cannot be relied upon by the Exchange to limit its liability to non-members or for any intentional or negligent violation of federal securities laws.<sup>7</sup>

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).<sup>8</sup> Specifically, the Commission finds that the proposed rule change provides the Exchange with virtually the same protection from liability available to the New York Stock Exchange pursuant to

NYSE Rule 702(b). Additionally, because the Amex represents that the proposed rule change cannot be used to limit its liability to non-members arising from negligent conduct or for any intentional or negligent violation of federal securities laws,<sup>9</sup> the Commission believes that the proposal may serve to facilitate transactions in securities, while also protecting investors and the public interest. Specifically, entities such as the Amex may be encouraged to continue to calculate and disseminate index values so that derivative products based on these indexes, which are found to provide hedging or other economic functions, will remain available to investors.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,<sup>10</sup> that the proposed rule change (SR-Amex-93-41), is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-13608 Filed 6-3-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-34133; File No. SR-Amex-94-12]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc.; Relating to Amendments to its Listing Fees

May 31, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 72s(b)(1), notice is hereby given that on May 3, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex is proposing to reduce the maximum fee applicable to original

listings of stock issues. The fee is proposed to be amended as follows:<sup>1</sup>

#### § 140. Original Listing Fees

Stock Issues	
Less than 1 million shares.....	\$5,000
1+ - 2 million shares.....	10,000
2+ - 3 million shares.....	15,000
3+ - 4 million shares.....	17,500
4+ - 5 million shares.....	20,000
5+ - 6 million shares.....	22,500
6+ - 7 million shares.....	25,000
7+ - 8 million shares.....	27,500
8+ - 9 million shares.....	30,000
9+ - 10 million shares.....	32,500
10+ - 15 million shares.....	37,500
15+ million shares.....	45,000
[15+ - 25 million shares.....	47,500
25+ - 50 million shares.....	72,500
50+ - 75 million shares.....	97,500
75+ - 100 million shares.....	122,500
All Shares over 100 million - 1/10 cents per share (no maximum)]	

In addition to the above per-share fee, there is a one-time charge of \$5,000 for companies that do not have a stock or warrant issue listed on the Exchange. (The one-time charge of \$5,000 does not apply to any company which previously paid the one-time charge in connection with the listing of a debt issue.)

[There is no maximum fee applicable to original listings of stock and warrant issues, except] I [i]n the case of non-U.S. companies listed on foreign stock exchanges[.], [For such issues,] the fee, including the one-time charge, will be 50% of the rates set forth above, with a maximum fee of [\$30,000] \$25,000. Where the original listing of more than one class of stock is included in the same application, the fee is based on the aggregate number of shares of all such classes.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the fee increase and discussed any comments it received on the fee increase. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

<sup>1</sup> With respect to the following schedule, italicizing indicates new material and brackets indicate material to be deleted.

<sup>5</sup> See e.g., Chicago Board Options Exchange, Inc. Rule 24.14.

<sup>6</sup> See NYSE Rule 702(b).

<sup>7</sup> See Letter from Bruce Ferguson, Associate General Counsel, Legal & Regulatory Policy, Amex, to Brad Ritter, Attorney, Office of Derivatives and Equity Oversight, Division of Market Regulation, Commission, dated March 21, 1994.

<sup>8</sup> 15 U.S.C. 78f(b)(5) (1988).

<sup>9</sup> See supra note 7.

<sup>10</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>11</sup> 17 CFR 200.30-3(a)(12) (1993).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) Purpose

When an issuer applies for listing on the Exchange, an original listing fee is levied on the company based on the total number of shares to be listed. Currently, the fee ranges from \$5,000 for new listings of less than one million shares to more than \$122,500 for listings of greater than 100 million shares. In addition, each issuer which does not already have securities listed on the Exchange is assessed a one-time charge of \$5,000. Listing fees for non-U.S. issuers listed on foreign stock exchanges are currently 50% of the rates for U.S. companies, including the one-time charge, with maximum of \$30,000.

Based upon discussions with prospect companies, the Exchange believes that each year several large companies elect not to list on the Amex because the expense of the Exchange's listing fee can become significant at the upper end of the scale.

The Exchange is therefore proposing to amend section 140 of its Company Guide to provide that the maximum fee applicable to the original listing of stock issues is \$50,000, inclusive of the one-time charge of \$5,000. To be consistent, the Exchange is proposed to reduce the maximum listing fee for non-U.S. issuers already listed on a foreign exchange from \$30,000 to \$25,000.

The Exchange notes that Nasdaq/NMS original listing fees are roughly comparable to the Exchange's current fees, although their fees are already capped at \$50,000 (also inclusive of a \$5,000 one-time fee for new listings).<sup>2</sup>

(2) Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it is designed to remove impediments to and perfect the mechanism of a free and open market.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule change will remove or lessen an existing burden on competition in that it proposes to reduce an existing difference between the Exchange's original listing fees and those charged by Nasdaq.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the publication of this notice in the *Federal Register* or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed fee increase that are filed with the Commission, and all written communications relating to the proposed fee increase between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-94-12 and should be submitted by June 27, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Margaret H. McFarland,**  
Deputy Secretary.

[FR Doc. 94-13684 Filed 6-3-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-34126; File No. SR-CBOE-93-47]

**Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to a Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Temporary Suspensions of Trading in Options**

May 27, 1994.

On October 20, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to provide limited authority to Post Directors, Order Book Officials ("OBOs"), and under certain circumstances, Designated Primary Market-Makers ("DPMs"), to suspend trading in a class of options for a limited period of time. Notice of the proposal appeared in the *Federal Register* on November 9, 1993.<sup>3</sup> No comment letters were received on the proposed rule change. On April 11, 1994, the CBOE filed Amendment No. 1 to the proposed rule change.<sup>4</sup> This order approves the Exchange's proposal, as amended.

The CBOE proposes to amend Rule 6.3 ("Trading Halts") to authorize, with respect to a particular class of options, the Post Director<sup>5</sup> or OBO to suspend trading in the options class for a period of time not to exceed five minutes whenever trading in the underlying security is halted. This limited authority may be exercised only if the trading halt in the underlying security is evidenced by an "ST" symbol (for an exchange-listed security) or an "H" (for a National Market security traded through the NASDAQ system) appearing on the class display screen that displays current market information for the underlying security, or if such trading halt is otherwise verified by the senior

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1992).

<sup>3</sup> See Securities Exchange Act Release No. 33131 (November 2, 1993), 58 FR 59500 (November 9, 1993).

<sup>4</sup> Amendment No. 1: (1) Clarifies that only one five minute suspension of trading is authorized pursuant to the proposal; (2) defines who is a "Post Director;" and (3) deletes the DPM as one of the persons authorized to impose a temporary suspension of trading. See Letter from Michael L. Meyer, Schiff Hardin & Waite, to Michael Walinskas, Branch Chief, Office of Derivatives and Equity Oversight, Division of Market Regulation, Commission, dated April 8, 1994 ("Amendment No. 1").

<sup>5</sup> A Post Director is an Exchange employee at a trading post whose function is to assist the OBO and the DPM at each station at the post. *Id.*

<sup>2</sup> See NASD Manual, part IV, paragraph 1814(A)(1).

person in charge of the Exchange's Control Room. The proposed rule change applies only in the circumstance where there has been a trading halt in an underlying security, and has no application to "circuit breaker" trading halts under Rule 6.3A.

Concurrently with any suspension of trading pursuant to the proposed rule change, the responsible Post Director or OBO shall turn off the Retail Automatic Execution System applicable to the affected options class or classes. Additionally, the Post Director or OBO shall disseminate the designation 998-999 on the Exchange's quote reporting system, which indicates the option is not trading on the CBOE.

Prior to the expiration of any temporary suspension imposed pursuant to the proposed rule change, the responsible Post Director or OBO is required to notify two Floor Officials in order to obtain a determination by them whether a trading halt in the effected options class should be declared under Rule 6.3(a). If the two Floor Officials determine not to halt trading, immediately following such determination it shall be announced to the crowd and trading (or a rotation in the option) shall in no event resume more than five minutes after the temporary suspension of trading was implemented. The Post Director or OBO may only invoke a single five minute suspension of trading pursuant to the proposed rule change.<sup>6</sup>

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5),<sup>7</sup> in that it is designed to protect the mechanism of a free and open market and to protect investors and the public interest. Specifically, the Commission finds that the proposal will protect investors and the public interest by enabling Post Directors and OBOs to temporarily suspend options trading promptly in response to verified trading halts in underlying securities. Pursuant to the current version of Rule 6.3(a), Floor Officials have the authority to halt trading in any options class for a period not in excess of two consecutive business days if trading in the underlying security has been halted in the primary market. The proposed rule change, therefore, merely bridges the gap that currently exists between the time that trading in an underlying security is halted and the time it takes

for the Floor Officials to impose a trading halt in the related options class pursuant to their authority under Rule 6.3(a). Additionally, a temporary trading suspension pursuant to the proposed rule change can only be invoked once during a single occurrence of a halt in trading in the underlying security. If two Floor Officials determine not to institute a trading halt pursuant to Rule 6.3(a), or if a decision is not made by two Floor Officials within the five minute period, trading in the options class will immediately resume and will continue unless two Floor Officials subsequently independently decide to invoke a trading halt pursuant to Rule 6.3(a). Accordingly, the Commission finds that the proposed rule change protects investors and the public interest by providing a means for an immediate trading halt in those circumstances where Floor Officials would be likely to impose a trading halt pursuant to Rule 6.3(a). Moreover, because the conditions under which the five minute halt can be invoked are specific and objective, the Commission does not expect that the rule change will increase the likelihood of abuse in the implementation of trading halts.

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the *Federal Register*. Specifically, Amendment No. 1 removes the DPM as one of the persons authorized to impose a temporary suspension of trading. Because the DPM performs market making functions, in addition to having the responsibilities of an OBO, the Commission believes it would be inappropriate for a DPM to be able to suspend trading in a class of options for any period of time. Amendment No. 1 also makes certain clarifications to the proposed rule language. The Commission believes that these clarifications will minimize any potential for confusion as to the application of the rule. As a result, the Commission believes that good cause exists for approving Amendment No. 1 on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the

proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File Number SR-CBOE-93-47 and should be submitted by June 27, 1994.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,<sup>8</sup> that the proposed rule change (File No. SR-CBOE-93-47) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Margaret H. McFarland,  
Deputy Secretary.

[FR Doc. 94-13606 Filed 6-3-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-34124; File No. SR-CBOE-93-36]

**Self-Regulatory Organizations; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to a Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing of Regular and Long-Term Index Options on the S&P/Barra Growth Index and the S&P/Barra Value Index**

May 27, 1994.

**I. Introduction**

On September 9, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to provide for the listing and trading of regular and long-term index options on the S&P/Barra Growth Index ("Growth Index") and the S&P/Barra Value Index ("Value Index") (each individually an "Index," and collectively the "Indexes"). The proposed rule change was published for comment in the *Federal Register* on

<sup>8</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>9</sup> 17 CFR 200.30-3(a)(12) (1993).

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1993).

<sup>6</sup> *Id.*

<sup>7</sup> 15 U.S.C. 78f(b)(5) (1988).

November 19, 1993.<sup>3</sup> No comment letters were received on the proposed rule change. On May 25, 1994, the CBOE filed Amendment No. 1 to the proposed rule change.<sup>4</sup> This order approves the Exchange's proposal, as amended.

## II. Description of Proposal

### A. General

The CBOE proposes to trade options on the Growth and Value Indexes, stock indexes calculated by Standard & Poor's ("S&P") (or its designee) and maintained by Barra, Inc. ("Barra") pursuant to a license agreement between Barra and S&P. The CBOE also proposes to list long-term options ("Index LEAPS") on either the full-value of each Index or reduced-value Growth and Value Indexes that will be computed at one-tenth of the value of the respective Indexes. Index LEAPS on the Growth and Value Indexes will trade independent of and in addition to regular options on the Indexes traded on the Exchange, however, as discussed below, position and exercise limits of Index LEAPS and regular options on the Indexes will be aggregated.

### B. Composition and Maintenance of the Index

The Indexes are constructed by sorting the stocks in the S&P 500 Index on the basis of their book-to-price ratios as determined by Barra twice per year, based on end-of-day information on November 30 and May 31. Starting with the company with the highest book-to-price ratio, companies are added to the Value Index until that Index contains 50% of the market capitalization of the

S&P 500 Index. The Growth Index is composed of the remaining companies in the S&P 500 Index. The partition of the S&P 500 Index using November 30 information becomes effective as of January 1 of the following year; the partition of the S&P 500 Index using May 31 information becomes effective July 1 of the same year.

Based on the last partition of the S&P 500 Index, effective January 1, 1994, the Value Index is currently composed of 310 securities. As of the close of trading on May 3, 1994, the Value Index was valued at 71.65. The market capitalizations of the individual stocks in the Value Index ranged from a high of \$76.05 billion to a low of \$97.23 million, with the mean and median being \$5.27 billion and \$2.96 billion, respectively. The market capitalization of all the stocks in the Value Index was \$1.63 trillion. The total number of shares outstanding for the stocks in the Value Index ranged from a high of 1.24 billion shares to a low of 8.94 million shares. The price per share of the stocks in the Value Index on that date ranged from a high of \$146.13 to a low of \$4.00. Lastly, no one stock comprised more than 4.65% of the Value Index's total value and the percentage weighting of the five largest issues in the Value Index accounted for 15.19% of the Index's value. The percentage weighting of the lowest weighted stock was 0.01% of the Index and the percentage weighting of the five smallest issues in the Index accounted for 0.05% of the Value Index's value.

Based on the last partition of the S&P 500 Index, effective January 1, 1994, the Growth Index is currently composed of

the 190 S&P 500 Index securities not included in the Value Index. As of the close of trading on May 3, 1994, the Growth Index was valued at 60.47. The market capitalizations of the individual stocks in the Growth Index ranged from a high of \$82.09 billion to a low of \$506.63 million, with the mean and median being \$8.43 billion and \$4.28 billion, respectively. The market capitalization of all the stocks in the Growth Index was \$1.60 trillion. The total number of shares outstanding for the stocks in the Growth Index ranged from a high of 2.30 billion shares to a low of 14.46 million shares. The price per share of the stocks in the Growth Index on that date ranged from a high of \$736.00 to a low of \$4.50. Lastly, no one stock comprised more than 5.12% of the Growth Index's total value and the percentage weighting of the five largest issues in the Growth Index accounted for 19.47% of the Index's value. The percentage weighting of the lowest weighted stock was 0.03% of the Growth Index and the percentage weighting of the five smallest issues in the Index accounted for 0.19% of the Index's value.

### C. Calculation of the Index

Like the S&P 500 Index, the Indexes will be capitalization-weighted, and the methodology used to calculate their value is identical to the methodology used to calculate the value of the S&P 500 Index. The level of each Index is calculated as follows:

$$\text{Index Level} = \frac{\text{Current Market Value}}{\text{Adjusted Base Period Market Value}} \times 10$$

$$\text{Adjusted Base Period Market Value} = \frac{\text{Current Market Value After Adjustments}}{\text{Current Market Value Before Adjustments}} \times \text{Previous Base Period Market Value}$$

The numeric value of each Index was established at 10 as of the close of the market on December 31, 1974.

The Indexes are calculated continuously by S&P or its designee, and their values will be disseminated by

the Options Price Reporting Authority ("OPRA") no less often than every fifteen seconds. S&P will also calculate the exercise settlement value for each expiring series of Value Index options and Growth Index options, and will

make these values available to CBOE for use by the Options Clearing Corporation ("OCC") in effecting settlement of exercises and assignments of the options.

<sup>3</sup> See Securities Exchange Act Release No. 33192 (November 12, 1993), 58 FR 61117 (November 19, 1993).

<sup>4</sup> In Amendment No. 1, the CBOE proposes to: (1) Establish position limits for options on the Growth and Value Indexes of 125,000 contracts on the same side of the market, with no more than 75,000 contracts in the series with the nearest expiration month; (2) establish 225,000 contracts on the same

side of the market as the maximum position size that will be eligible for treatment under the Exchange's hedge exemption rule provisions; and (3) aggregate positions in Growth Index options and Value Index options for purposes of position and exercise limits, including applicable hedge exemptions. Additionally, Amendment No. 1 amends proposed Interpretation .01(a)(v) and (vi) to Rule 24.9 to provide that the strike intervals between Growth Index and Value Index options

will be no less than \$2.50 only if the strike prices are less than \$200. See Letter from Eileen Smith, Director, Product Development, Research Department, CBOE, to Brad Ritter, Attorney, Office of Derivatives and Equity Oversight, Division of Market Regulation, Commission, dated May 25, 1994 ("Amendment No. 1").

The values of the Indexes, for purposes of settling outstanding options on the Growth and Value Indexes upon expiration, will be calculated based upon the regular way opening sale prices for each of the Indexes' component stocks on the last trading day prior to expiration.<sup>5</sup> Once all of the component stocks have opened, the value of each Index will be determined and that value will be used as the final settlement value for expiring options contracts on that Index. If any of the component stocks do not open for trading on the last trading day before expiration, then the last reported sale price of such security will be used in any case where that security does not trade on that day.<sup>6</sup>

#### D. Contract Specifications

The proposed options on the Indexes will be cash-settled, European-style options.<sup>7</sup> Standard options trading hours (9:30 a.m. to 4:15 p.m. New York time) will apply to the contracts. The multiplier for each Index will be 100. The strike price interval will be \$2.50 for Index options with strike prices of less than \$200.<sup>8</sup> The Exchange intends to list up to three near-term calendar months and three additional calendar months at three month intervals.<sup>9</sup> As described in more detail below, the Exchange also intends to list Index LEAPS on each Index that will expire 12 to 36 months from the date of their issuance.

Options on each Index (including full-value and reduced-value Index LEAPS) will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). Because options on the Indexes will settle based upon the opening prices of the component stocks on the last trading day before expiration (normally a Friday), the last trading day for an expiring Index option series will normally be the second to the last business day before expiration (normally a Thursday).<sup>10</sup>

#### E. Listing of Long-Term Options on the Full-Value or Reduced-Value Growth and Value Indexes

The Exchange may list Index LEAPS on the Growth and Value Indexes that expire 12 to 36 months from date of issuance on either the full-value of the Growth and Value Indexes or reduced-values of the Indexes that will be computed at one-tenth the value of the

full-value Indexes.<sup>11</sup> The current and closing values for reduced-value Index LEAPS on the Indexes will be computed by dividing the value of the full-value Index by 10 and rounding the resulting figure to the nearest one-hundredth. For example, a Growth Index value of 60.54 would be 6.05 for the Growth Index LEAPS and 60.56 would become 6.06. The reduced-value Index LEAPS on the Indexes will have a European-style exercise and will be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures. The strike price interval for the reduced-value Index LEAPS will be no less than \$2.50.<sup>12</sup>

The same Exchange rules which are applicable to the trading of full-value Index LEAPS on the Indexes will be applicable to the trading of reduced-value Index LEAPS on the Indexes. For example, both full-value and reduced-value Index LEAPS may expire from 12 to 36 months from the date of issuance, and there may be up to six expiration months beyond one year to expiration. Moreover, full-value or reduced-value Index LEAPS on either Index may be issued at six month intervals and new strike prices will either be near or bracketing the current value of each Index. Strike price interval, bid/ask differential, and continuity rules will not apply to the trading of the full-value or reduced-value Index LEAPS on the Indexes until their time to expiration is less than 12 months.<sup>13</sup> Lastly, Index LEAPS series on each Index may be added when the value of the underlying Index increases or decreases by ten to fifteen percent.<sup>14</sup>

#### F. Position and Exercise Limits, Margin Requirements, and Trading Halts

Position limits for the options (including Index LEAPS) on the Growth and Value Indexes will be set at no more than 125,000 contracts on the same side of the market, provided that no more than 75,000 of such contracts are in series in the nearest expiration month, and further provided that options positions in the Indexes will be aggregated.<sup>15</sup> Exercise limits will be set at the same level as position limits.<sup>16</sup> For purposes of calculating applicable position and exercise limits, positions in reduced-value options on the Growth and Value Indexes will be aggregated

with each other and with positions in the full-value Index options. For these purposes, ten reduced-value contracts will equal one full-value contract for purposes of aggregating these positions. Also, CBOE hedge exemption provisions will apply to options and Index LEAPS on both Indexes.<sup>17</sup>

Exchange rules applicable to options on the Growth and Value Indexes will be identical to the rules applicable to other broad-based index options for purposes of trading rotations, halts, and suspensions,<sup>18</sup> and margin treatment.<sup>19</sup>

#### G. Surveillance

The Exchange will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in Index options and Index LEAPS on the Growth and Value Indexes. These procedures include complete access to trading activity in the underlying securities.

#### H. Disclaimer

The CBOE has agreed with S&P to revise the disclaimer of liability on behalf of S&P that is currently in the Exchange's rules so that it covers Barra as well as S&P, and the growth Index and Value Index. The disclaimer would provide that S&P, Barra, and all of their affiliates do not make any warranties as to the results obtained from the Growth and Value Indexes, any opening, intra-day or closing value therefore, any related data, or any errors or delays in calculating or disseminating the value of either Index, in connection with the trading of option contracts based on the Indexes.<sup>20</sup>

### III. Commission Findings and Conclusions

The Commission has reviewed the proposal to list and trade options and full-value and reduced-value Index LEAPS on the Growth and Value Indexes. As discussed below, the Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Indexes are broad-based, the proposed options are designed to reduce the potential for manipulation, and the proposal to list and trade options and Index LEAPS on the Growth and Value Indexes is consistent

<sup>5</sup> See CBOE Rule 24.9(a)(4).

<sup>6</sup> *Id.*

<sup>7</sup> A European-style option can be exercised only during a specified period before the option expires.

<sup>8</sup> See Amendment No. 1, *supra* note 4.

<sup>9</sup> See CBOE Rule 24.9(a)(2).

<sup>10</sup> See *supra* notes 5 and 6.

<sup>11</sup> See CBOE Rule 24.9(b).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> See Amendment No. 1, *supra* note 4.

<sup>16</sup> See CBOE Rule 24.5.

<sup>17</sup> See CBOE Rule 24.4(a); Interpretation .01 to Rule 24.4; and Amendment No. 1, *supra* note 4.

<sup>18</sup> See CBOE Rule 24.7.

<sup>19</sup> See CBOE Rule 24.11.

<sup>20</sup> See CBOE Rule 24.14.

with the CBOE's obligation to promote investor protection.<sup>21</sup>

The Commission finds that the trading of options on the Indexes, including full-value and reduced-value Index LEAPS, will permit investors to participate in the price movements of the securities on which the respective Indexes are based. Further, trading of options on each Index will allow investors holding positions in some or all of the securities underlying that Index to hedge the risks associated with their portfolios. Accordingly, the Commission, believes options on the Growth and Value Indexes will provide investors with an important trading and hedging mechanism that should reflect accurately the overall movement of the securities contained in this partition of the S&P 500 Index. By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of options on the Growth and Value Indexes will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets.<sup>22</sup>

<sup>21</sup> The CBOE is a member of the Intermarket Surveillance Group ("ISG"), which was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the Amex; the Boston Stock Exchange, Inc.; the CBOE; the Chicago Stock Exchange, Inc.; the National Association of Securities Dealers, Inc.; the New York Stock Exchange, Inc.; the Pacific Stock Exchange, Inc.; and the Philadelphia Stock Exchange, Inc. Because of potential opportunities for trading abuses involving stock index futures, stock options, and the underlying stock and the need for greater sharing of surveillance information for these potential intermarket trading abuses, the major stock index futures exchanges (e.g., the Chicago Mercantile Exchange and the Chicago Board of Trade) joined the ISG as affiliate members in 1990. The Commission understands that the ISG Agreement, as amended, covers investigations and inquiries regarding trading activity in options on the Indexes and component securities of the Indexes.

<sup>22</sup> Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of any new option or warrant proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options on the Growth and Value Indexes will provide investors with a hedging vehicle that should reflect the overall movement of securities contained in the Indexes.

The trading of options on the Growth and Value Indexes, including the trading of full-value and reduced-value Index LEAPS, however, raises several concerns, namely issues related to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the DBOE has addressed these concerns adequately.

#### A. Index Design and Structure

The Commission finds that the Indexes are broad-based indexes,<sup>23</sup> and thus it is appropriate to permit Exchange rules applicable to the trading of broad-based index options to apply to options on the Indexes, including Index LEAPS. Specifically, the Commission believes the Indexes are broad-based because they (1) are a partition of the S&P 500 Index, which is a broad-based index on which options have been approved for trading since 1983,<sup>24</sup> and (2) reflect a substantial segment of the U.S. equities market.

The Commission also finds that the large capitalizations, liquid markets, and relative weightings of the component stocks of each Index significantly minimize the potential for manipulation of either Index. First, the Indexes collectively represent and consist of the common stock values of 500 actively traded U.S. companies. Second, no one particular stock or group of stocks dominates either Index. Specifically, as of May 3, 1994, no one stock comprised more than 4.65% of the Value Index's total value or 5.12% of the Growth Index's total value, and the percentage weighting of the five largest issues in the Indexes accounted for 15.19% of the Value Index's value and 19.47% of the Growth Index's value. Third, the market capitalizations of the stocks in the Indexes are very large. Specifically, the market capitalizations (1) for the Value Index ranged from a high of \$76.05 billion to a low of \$97.23 million as of May 3, 1994, with the mean and median being \$5.27 billion and \$2.96 billion, respectively, and (2) for the Growth Index ranged from a high of \$82.09 billion to a low of \$506.63 million as of that date, with the mean and median being \$8.43 billion and \$4.28 billion, respectively. Fifth, each Index is comprised of stocks representing a diverse group of industries, including, among others,

<sup>23</sup> The reduced-value Growth and Value Indexes, which are composed of the same components as the Growth and Value Indexes, respectively, and calculated by dividing the full-value Index values by 10, are identical to the full-value Growth and Value Indexes.

<sup>24</sup> See Securities Exchange Act Release No. 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983).

pharmaceuticals, communications, entertainment, various consumer and computer products and services. Sixth, an overwhelming proportion of the component stocks in each Index currently are eligible for options trading.<sup>25</sup> Finally, the Commission believes that, as discussed below, existing mechanisms to monitor trading activity in those securities will help deter as well as detect illegal trading activity involving options on the Indexes.

#### B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as options on the Growth and Value Indexes (including full-value and reduced-value Index LEAPS), can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things; that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the options and Index LEAPS on the Growth and Value Indexes will be subject to the same regulatory regime as the other standardized options currently traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in options and Index LEAPS on the Indexes.

#### C. Surveillance

The Commission generally believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchanges trading the stocks underlying the derivative product is an important measure for the surveillance of the derivatives and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses.

<sup>25</sup> The CBOE's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) The public float must be at least 7,000,000; (2) there must be a minimum of 2,000 stockholders; (3) trading volume must have been at least 2.4 million over the preceding twelve months; and (4) the market price must have been at least \$7.50 for a majority of the business days during the preceding three calendar months. See CBOE Rule 5.3, Interpretation .01.

thereby making the stock index product less readily susceptible to manipulation.<sup>26</sup> In this regard, the New York Stock Exchange, the American Stock Exchange, and the National Association of Securities Dealers, Inc. Automated Quotation system ("NASDAQ"), which currently are the primary markets for all of the component securities in the Indexes, are members of the ISG, which provides for the exchange of all necessary surveillance information.<sup>27</sup>

#### D. Market Impact

The Commission believes that the listing and trading on the CBOE of options on the Growth and Value Indexes, including full-value and reduced-value Index LEAPS, will not adversely impact the underlying securities markets.<sup>28</sup> First, as described above, the Indexes are broad-based and each is presently comprised of at least 190 stocks with no one stock dominating either Index. Second, as noted above, the stocks contained in the Indexes have large capitalizations and are actively traded. Third, the proposed position and exercise limits, coupled with the requirement that positions in both Indexes be aggregated, will serve to minimize potential manipulation and market impact concerns. Fourth, the risk to investors of contra-party non-performance will be minimized because the Index options will be issued and guaranteed by the OCC just like any other standardized option traded in the United States. Fifth, existing CBOE stock index options rules and surveillance procedures will apply to options on the Growth and Value Indexes.

Lastly, the Commission believes that settling expiring options on the Growth and Value Indexes (including full-value and reduced-value Index LEAPS) based on the opening prices of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing expiring index options for exercise settlement purposes based on opening prices rather than closing prices may help reduce adverse effects

<sup>26</sup> See Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992).

<sup>27</sup> See *supra* note 21.

<sup>28</sup> In addition, the CBOE has represented that the CBOE and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to support those new series of index options that would result from the introduction of options and LEAPS on the Growth and Value Indexes. See letter from Charles J. Henry, President and Chief Operating Officer, CBOE, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated January 4, 1993 and memorandum from Joe Corrigan, Executive Director, OPRA, to Eileen Smith, CBOE, dated January 4, 1993.

on the securities underlying options on the Indexes.<sup>29</sup>

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof in the *Federal Register*. Specifically, Amendment No. 1 maintains the proposed options position limits on the Indexes but requires that positions in options on the Indexes (including Index LEAPS) be aggregated for purposes of position and exercise limits. As stated above, the Commission believes that these position and exercise limits have the effect of minimizing the potential for market manipulation and other adverse impacts on the market for the securities underlying the Indexes as a result of the trading of options on the Indexes. Amendment No. 1 also clarifies that strike intervals of \$2.50 will only be used for strike prices of less than \$200 for full-value options and Index LEAPS on the Indexes. This amendment merely conforms the proposal to existing CBOE rules.<sup>30</sup> As a result, the Commission believes that good cause exists for approving Amendment No. 1 on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1. Persons making written submissions, should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File Number SR-CBOE-93-36 and should be submitted by June 27, 1994.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,<sup>31</sup> that the

<sup>29</sup> See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

<sup>30</sup> See CBOE Rule 24.9, Interpretation and Policy .01(a).

<sup>31</sup> 15 U.S.C. 78s(b)(2) (1988).

proposed rule change (SR-CBOE-93-36) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>32</sup>

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-13603 Filed 6-3-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-34132; File No. SR-CBOE-93-55]

#### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing and Trading Options on the Israeli Index

May 31, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 8, 1993, the Chicago Board Options Exchange ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Exchange filed Amendment No. 1 to the proposed rule change on April 29, 1994, and Amendment No. 2 on May 12, 1994.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>32</sup> 17 CFR 200.30-3(a)(12) (1993).

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

<sup>2</sup> 17 CFR 240.19b-4 (1991).

<sup>3</sup> Amendment No. 2, which supersedes Amendment No. 1, proposes to: (1) reduce the number of components of the proposed Israeli Index ("Index") from 20 to 15; (2) require that the Index be maintained such that at least 85% of the Index, by weight, and at least 80% of the number of components of the Index be eligible for standardized options trading pursuant to CBOE Rule 5.3; (3) classify the Index as a narrow-based index for purposes of CBOE's rules; (4) provide position and exercise limits of 7,500 contracts on the same side of the market for Index options pursuant to CBOE Rule 24.4A; and (5) provide that the Exchange shall submit a proposed rule change pursuant to Section 19 of the Act and Rule 19b-4 thereunder prior to increasing the number of components of the Index to greater than 20 or fewer than 10. See Letter from Eileen Smith, Director, Product Development, Research Department, CBOE, to Brad Ritter, Attorney, Office of Derivatives and Exchange Oversight, Division of Market Regulation, Commission, dated May 12, 1994 ("Amendment No. 2").

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

As provided in Exchange Rule 24.2, "Designation of the Index,"<sup>4</sup> the CBOE proposes to list for trading options on the Israeli Index ("Index"). The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

### (A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style<sup>5</sup> index options on the Israeli Index ("Index"). The Index will initially consist of fourteen stocks issued by Israeli companies, and one American Depositary Receipt ("ADR")<sup>6</sup> overlying an Israeli company.<sup>7</sup> According to the Exchange, no proxy for the performance of the Israeli economy is currently available in the U.S. derivative markets. Therefore, the Exchange believes, options on the Index will provide investors with a low-cost means of participating in the performance of the

<sup>4</sup> Exchange Rule 24.2 provides, in part, that the Commission must approve a particular index upon which options are traded.

<sup>5</sup> European-style options can only be exercised during a specified period before the options expire.

<sup>6</sup> An American Depositary Receipt is a negotiable receipt which is issued by a depository, generally a bank, representing shares of a foreign issuer that have been deposited and are held, on behalf of holders of the ADRs, at a custodian bank in the foreign issuer's home country.

<sup>7</sup> The component securities of the Index are: Biotechnology General Corp.; Comverse Technology Inc.; Fourth Dimension Software Ltd.; ECI Telecom Ltd.; Elbit Ltd.; Elron Electronic Industries Ltd.; Geotek Industries Inc.; IIS Intelligent Information Systems Ltd.; Lannet Data Communications Ltd.; Orbotech Ltd.; Scitex Corp. Ltd.; Sapiens International Corp.; Tadiran Ltd.; Teva Pharmaceutical Industries Ltd. (ADR); and Teledata Communication Ltd.

Israeli economy or to hedge against the risk of investing in that economy.

### Index Design

One of the components of the Index currently trades on the New York Stock Exchange and fourteen (including one ADR representing 11.37% of the weight of the Index as of March 31, 1994) currently are National Market securities traded through the facilities of the National Association of Securities Dealers, Inc. Automated Quotation System ("NASDAQ"). The 14 non-ADR components of the Index are listed for trading only in the United States, and for the ADR component, more than 50% of the combined world-wide trading volume for the ADR and the underlying security occurs in the U.S. through NASDAQ.<sup>8</sup> Accordingly, the Exchange believes that options on the Index should not raise the types of surveillance concerns that may be raised by options on an index of non-U.S. traded stocks.

As of March 31, 1994, the securities comprising the Index ranged in market capitalization from a low of \$124.11 million to a high of \$2.08 billion. The average capitalization as of that date was \$566.83 million. The component accounting for the largest percentage of the total weighting of the Index on that date was Elbit Ltd. (13.12%), while the smallest was Biotechnology General Corp. (1.92%).

### Calculation

The Index is price-weighted and reflects changes in the prices of the component stocks relative to the base date of January 2, 1992. The Index value is calculated by summing the prices of the component securities and then dividing by a divisor that yielded an index value of 100.00 as of that date.

The Index will be calculated by CBOE or its designee on a real-time basis using last-sale prices and will be disseminated every 15 seconds by the Exchange. If a component stock of the Index is not currently being traded, the most recent price at which the stock traded will be used in the Index calculation.

### Maintenance

The Index will be maintained by the Exchange. To maintain continuity in the Index following an adjustment to a component security, the divisor will be adjusted. Changes which may result in divisor changes include, but are not limited to, spin-offs, certain rights issuances, and mergers and acquisitions.

The Exchange states that the Index will be reviewed on approximately a

<sup>8</sup> See Amendment No. 2, *supra* note 3.

monthly basis by the CBOE staff. The Exchange may change the composition of the Index at any time or from time to time to reflect the changes affecting the components of the Index or the Israeli economy generally. If it becomes necessary to remove a stock from the Index (generally due to a takeover or merger), every effort will be made to add to the Index an Israeli stock that is traded in the U.S. and not in Israel. (According to the Exchange, there are currently 46 Israeli stocks trading in the United States, of which five are also traded in Israel.) In such circumstances, CBOE will take into account the capitalization, liquidity, volatility, and name recognition of the proposed replacement stock. The Exchange will most likely maintain fifteen stocks in the Index at all times.<sup>9</sup>

### Long-Term Index Options

In addition to Index options on the full-value of the Index, the Exchange also proposes to list long-term Index option series ("LEAPS") as provided in CBOE Rule 24.9, and reduced-value Index LEAPS for which the underlying value would be computed at one-tenth (1/10th) of the value of the Index. The current and closing index value of any such reduced-value Index LEAPS will, after such initial computation, be rounded to the nearest one-hundredth. Other than the reduced value, all other specifications and calculations for the reduced-value Index LEAPS will remain the same.

### Exercise and Settlement

Index options will have European-style exercise and will be "A.M.-settled index options" within the meaning of the rules in Chapter XXIV of the Exchange's rules.<sup>10</sup> The CBOE proposes to amend Rule 24.9 to refer specifically to Israeli Index options. The Exchange states that the proposed Index options would expire on the Saturday following the third Friday of the expiration month. Thus, the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

### Exchange Rules Applicable

Except as modified in the proposal, the Rules in Chapter XXIV of the

<sup>9</sup> The Exchange will notify the Commission of changes in the number of components in the Index. Prior to increasing the number of components of the Index to more than 20 or decreasing the number of components to less than 10, the Exchange will be required to submit a rule filing pursuant to Section 19 of the Act and Rule 19b-4 thereunder. *Id.*

<sup>10</sup> Under CBOE Rule 24.9, A.M.-settled index options are settled based on an index value derived from opening prices on the last day of trading prior to expiration.

Exchange's rules regarding narrow-based or industry indexes will be applicable to Index options. Index option contracts based on the Israeli Index will be subject to position limits on 7,500 contracts on the same side of the market pursuant to CBOE Rule 24.4A. For purposes of position and exercise limits Index LEAPS will be aggregated with Index options on a one for one basis. Under the proposal, ten reduced-value Index LEAPS contracts will equal one full-value Index option or Index LEAPS for purposes of aggregating positions. The Exchange represents that it has the necessary systems capacity to support new options series that would result from the introduction of Israeli Index options and Index LEAPS.

The Exchange believes that the proposed rule change is consistent with section 6 of the Act, in general, and furthers the objectives of section 6(b)(5) of the Act,<sup>11</sup> in particular, in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and thereby will provide investors with the ability to invest in options based on an additional index.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments on the proposed rule change were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

- (a) By order approve such proposed rule change, or
- (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

<sup>11</sup> 15 U.S.C. 78f(b)(5) (1988).

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE.

All submissions should refer to File No. SR-CBOE-93-55 and should be submitted by June 27, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-13604 Filed 6-3-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-34131; File No. SR-PSE-93-26]

**Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 4 to a Proposed Rule Change Relating to the Size of Orders Eligible for Entry in the Auto-Ex System**

May 27, 1994.

On October 15, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to permit the PSE's Options Floor Trading Committee ("OFTC") to increase, in one or more classes of multiply-traded equity options, the size of orders eligible for entry into the PSE's Automatic

<sup>12</sup> 17 CFR 200.30-3(a)(12) (1993).

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1982).

<sup>2</sup> 17 CFR 240.19b-4 (1993).

Execution System ("Auto-Ex") to the extent necessary to match the size of orders eligible for entry into any other exchange's automated execution system.<sup>3</sup> Notice of the proposed rule change appeared in the *Federal Register* on December 22, 1993.<sup>4</sup> No comments were received on the proposed rule change. The PSE subsequently filed Amendments Nos. 1 and 2 to the proposed rule change on December 21, 1993, Amendment No. 3 on March 28, 1994, and Amendment No. 4 on May 25, 1994.<sup>5</sup> This order approves the proposal, as amended.

The PSE proposal adds Commentary .01 to PSE Rule 6.87(a) relating to the operation of Auto-Ex in equity options. Interpretation .01 would permit the OFTC to increase, in one or more classes of multiply-traded equity options, the size of orders eligible for entry into Auto-Ex to the extent that other options exchanges permit such larger-size orders in multiply-traded equity options of the same class or classes to be entered into their own automated execution systems.<sup>6</sup> The proposal further provides that any such increase in the order eligibility size will be conditioned on PSE's filing the specific terms of the increase for immediate effectiveness under section 19(b)(3)(A) of the Act. The proposal requires that the PSE include in any such filing, representations that Auto-Ex has the capacity to accommodate the increase in the order eligibility size. Such representations shall cover systems capacity as well as the market-making capacity of market-makers participating in Auto-Ex.<sup>7</sup> Any

<sup>3</sup> Under Auto-Ex, eligible small public customer market or marketable limit orders are routed through the system and automatically executed at the prevailing market quote. Currently, Auto-Ex applies to orders of 10 contracts or less.

<sup>4</sup> See Securities Exchange Act Release No. 33340 (December 15, 1993), 58 FR 67887 (December 22, 1993).

<sup>5</sup> Amendment Nos. 1, 2, and 3, contained various changes to the proposed rule change as originally filed; however, these changes were withdrawn and superseded by Amendment No. 4 to the proposed rule change. See Letter from Michael Pierson, Senior Attorney, PSE, to Brad Ritter, Attorney, Office of Derivatives and Equity Oversight, Division of Market Regulation, Commission, dated May 25, 1994 ("Amendment No. 4"). In Amendment No. 4, the PSE also proposes to adopt Rule 6.87(c) which would provide that firms entering orders for execution on Auto-Ex may not divide them up in order to make their parts eligible for entry into Auto-Ex.

<sup>6</sup> Any proposed increase that is initiated by the PSE and not made in response to matching an increase effectuated by another market would have to be filed pursuant to sections 19(b)(1) or 19(b)(2) of the Act.

<sup>7</sup> The PSE represents that it has more than adequate market-making capacity to handle any reasonably expected increase in orders. Telephone conversation between Michael Pierson, Senior Attorney, Market Regulation, PSE, and Brad Ritter

proposed increase that is initiated by the PSE and not made in response to matching an increase effectuated by another market would have to be filed with the Commission for review under section 19(b) of the Act.

Finally, the proposal would add Rule 6.87(c) which would prohibit the splitting of orders for purposes of making the parts eligible for entry into Auto-Ex. The Exchange believes this is necessary in order to comply with the purpose behind the Auto-Ex system which is to allow for the execution of small customer orders. Additionally, when large orders are split and then routed through Auto-Ex, market makers do not have the opportunity to adjust their markets to reflect the order flow. Finally, the PSE believes that this provision is consistent with the rule adopted by the Chicago Board Options Exchange ("CBOE") regarding orders routed through its Retail Automatic Execution System ("RAES").<sup>8</sup>

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and 11A.<sup>9</sup> Specifically, the Commission notes that the proposed rule change is substantively identical to a proposal recently approved by the Commission relating to RAES at the CBOE.<sup>10</sup> The Commission believes that the rationale supporting approval of the CBOE proposal applies equally to the PSE's proposed rule change. In particular, the Commission continues to believe that the development and implementation of the Auto-Ex system provides for more efficient handling and reporting of orders in PSE equity options through the use of new data processing and communications techniques, thereby improving order processing and turnaround time.

Further, the Commission believes that providing the PSE with an efficient method by which to increase Auto-Ex order size eligibility to match another market's increase is consistent with sections 6(b)(5) and 11A(a)(1)(C) of the Act in that it facilitates transactions in securities and promotes fair competition among options markets by enhancing the benefits available to investors of a multiple trading environment. The Commission also believes that the

proposal adequately protects investors and the public interest by conditioning the increase in order size eligibility on the PSE's filing with the Commission, under section 19(b)(3)(A) of the Act, of the specific terms of the increase. The Commission believes that requiring the PSE to provide it with such a filing will provide sufficient opportunity for the Commission to determine whether the PSE has adequate system and market maker capacity to accommodate the proposed increase and request appropriate modification of the increase if necessary. Finally, the Commission notes that the PSE has represented that Auto-Ex currently has adequate system and market-maker capacity to accommodate any reasonably anticipated increase in order size eligibility.<sup>11</sup>

Amendment No. 4 provides that orders may not be split for purposes of making the parts eligible for entry into Auto-Ex. The Commission agrees with the Exchange that this is necessary in order to assure compliance with the purpose of Auto-Ex, which is to allow for a more efficient method of executing small market and limit orders.<sup>12</sup> Additionally, the rule change proposed in Amendment No. 4 is consistent with CBOE Rule 6.8(a)(i), which the Commission previously approved.<sup>13</sup>

The Commission finds good cause for approving Amendment No. 4 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the *Federal Register*.<sup>14</sup> For the reasons stated above, the Commission believes it is consistent with section 6(b)(5) of the Act to approve Amendment No. 4 to the PSE's proposal on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than

those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-PSE-93-26 and should be submitted by June 27, 1994.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-PSE-93-26) is approved, as amended.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>16</sup>

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-13607 Filed 6-3-94, 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-34130; File No. SR-Phlx-94-01]

**Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3, and 4 to the Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Listing and Trading of Options on the Phlx Phone Index**

May 27, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 3, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx.<sup>1</sup> The Commission

<sup>15</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>16</sup> 17 CFR 200.30-3(a)(12) (1993).

<sup>1</sup> On February 18, 1994, the Phlx amended the proposal: (1) To provide that the Index will be updated during the trading day at least once every 15 seconds, rather than once every minute; (2) to provide that the exercise prices will be set at five point Index intervals rather than 2.5 point Index intervals as stated in the original filing; (3) to specify that the expiration cycle applicable to options on the Index will be three expiration months from the March, June, September, December cycle plus two additional near-term months; (4) to clarify the Exchange's obligations with respect to delisting and replacing components of the Index; (5) to clarify that all of the proposed Index's component stocks are, and any future replacement or added component securities will be, traded either on NASDAQ National Market, the New York Stock Exchange ("NYSE"), or the American Stock Exchange (non-ECM); and (6) to clarify that all of the current Index component stocks have overlying exchange traded options on them. See Letter from Michele R. Weisbaum, Associate General Counsel,

Continued

Attorney, Office of Derivatives Regulation, Division of Market Regulation, SEC, on March 15, 1994.

<sup>8</sup> See CBOE Rule 6.8(a)(i).

<sup>9</sup> 15 U.S.C. 78f and 78k-1 (1988).

<sup>10</sup> See Securities Exchange Act Release No. 32956 (September 24, 1993), 58 FR 51893 (October 5, 1993).

<sup>11</sup> See *supra* note 7.

<sup>12</sup> See Securities Exchange Act Release No. 32703 (July 30, 1993), 58 FR 42117, (August 6, 1993).

<sup>13</sup> See Securities Exchange Act Release No. 28411 (September 6, 1990), 55 FR 37784 (September 13, 1990).

<sup>14</sup> As noted previously, Amendment No. 3 withdraws and supersedes Amendment Nos. 1, 2, and 3. See Amendment No. 4, *supra* note 5.

is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b-4 under the Act, proposes to list and trade options on the Phlx Phone Index ("Index"), an index developed by the Phlx and comprised of eight common stocks representing the companies created as a result of the divestiture of the American Telephone & Telegraph Co. ("AT&T") in 1983, as well as AT&T itself.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

Phlx, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated February 16, 1994 ("Amendment No. 1"). On February 24, 1994, the Phlx amended the proposal to change the name of the Index from the Phlx Baby Bell Index to the Phlx Phone Index. See Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Michael Walinskas, Staff Attorney, Division of Market Regulation, SEC, dated February 24, 1994 ("Amendment No. 2"). On April 6, 1994, the Phlx amended the proposal to represent that the Phlx will submit a Rule 19b-4 filing to the Commission prior to opening any new series of options on the Index for trading if at any time less than 90 percent of the component securities, by weight, are eligible for exchange options tradings, or if at any time the number of stocks in the Index increases to more than ten or decreases to less than eight. See Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated March 3, 1994 ("Amendment No. 3"). On April 11, 1994, the Phlx amended the proposal: (1) To change the manner in which the current index value would be calculated; (2) to represent that the surveillance procedures currently used to monitor trading in each of the Exchange's other index options, which include having complete access to trading activity in the underlying securities comprising the Index (all of which are traded on the NYSE), also will be used to monitor trading in options on the Index; (3) to provide that the Intermarket Surveillance Group Agreement dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index; and (4) to confirm that the trading hours for the Index will be 9:30 a.m. to 4:10 p.m. (New York time). See Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Thomas McManus, Esq., Division of Market Regulation, SEC, dated April 7, 1994 ("Amendment No. 4").

#### (A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to list for trading an American-style option on the Index. The Index, which is comprised of the common stocks of the eight companies created as a result of the divestiture of AT&T in 1983, includes the seven regional telephone companies spun off from AT&T as well as AT&T. AT&T and the spun-off regional telephone companies represent some of the largest and most widely-held U.S. common stocks. If at any time the number of stocks comprising the Index increases to more than ten or decreases to less than eight, the Exchange will submit a filing to the Commission pursuant to Rule 19b-4 under the Act prior to opening any new option series on the Index.

The Phlx believes that there is a need for an index option that represents solely AT&T and its spun-off regional telephone companies. In this regard, the Phlx states that there is a significant segment of the investing community that avidly follows these companies. The Phlx believes that the Index, therefore, would fill a current market void by creating a pure U.S. telephone industry index that would not be diluted with other telecommunications stocks.

The Index will be calculated using a capitalization-weighting methodology. The value of the Index was set to equal 200 on December 1, 1993. The formula for calculating the Index value is as follows:

$$\text{Current Index Value} = \frac{\text{Total Capitalization}}{\text{Divisor}}$$

Where:

Total Capitalization = Sum of Market Values (price x shares outstanding) for all component securities  
 Divisor = The number which, when divided from the total capitalization when the Index was initially calculated (on December 1, 1993), yielded an Index value of 200

The Index divisor will be adjusted for changes in the capitalization of any of the component securities resulting from mergers, acquisitions, delistings, substitutions, and other like corporate events. The formula for adjusting the divisor is as follows:

Adjustments in the value of the Index which are necessitated by the addition and/or deletion of an issue from the Index are made by adding and/or subtracting the market value (price x shares outstanding) of the relevant issues.

The Index value will be updated dynamically and disseminated at least once every 15 seconds during the trading day. The Phlx has retained Bridge Data, Inc. to compute the value of the Index. Pursuant to Phlx Rule 1100A, updated Index values will be disseminated and displayed by means of primary market prints reported by the Consolidated Tape Association and over the facilities of the Options Price Reporting Authority. The Index value also will be available on broker/dealer interrogation devices to subscribers of the option information.

$$\text{Divisor} = \frac{\text{Total Capitalization (as result of adjustments)}}{\text{Index Value}}$$

In accordance with Phlx Rule 1009A, if any change in the nature of any stock in the Index occurs as a result of delisting, merger, acquisition, or otherwise, the Exchange will take appropriate steps to delete this stock from the Index and replace it with another stock which the Exchange believes would be compatible with the intended market character of the Index.

Index options will be traded pursuant to the current Phlx rules governing the trading of index options, particularly Phlx Rules 1000A through 1103A, and generally, Phlx Rules 1000 through 1070.

Index options will be "A.M.-settled index options" and will expire on the Saturday following the third Friday of the expiration month, and the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

The Phlx proposes to employ position and exercise limits pursuant to Phlx Rule 1001A(b)(i) and 1002A, respectively.<sup>2</sup> Exercise price intervals will be set initially at five point intervals, and additional exercise prices will be added in accordance with Phlx Rule 1101A(a).

The Phlx will trade consecutive and cycle month series pursuant to Phlx Rule 1101A. Specifically, there will be three expiration months from the March, June, September, December cycle plus two additional near-term months so that the three nearest-term months always will be available.

All of the component securities in the Index currently are eligible to have, and do have, overlying exchange traded options on them. The Exchange

<sup>2</sup> Because, as of March 11, 1994, AT&T represented 31.15 percent of the Index, the position and exercise limits applicable to options on the Index are 5,500 contracts, respectively. See Phlx Rules 1001A(b)(i) and 1002A.

represents that, if at any time less than 90 percent of the component securities, by weight, are eligible for options trading, the Exchange will submit a filing to the Commission pursuant to Rule 19b-4 under the Act prior to opening any new series of options on the Index.

The Exchange represents that surveillance procedures currently used to monitor trading in each of the Exchange's other index options also will be used to monitor trading in options on the Index. These procedures include having complete access to trading activity in the underlying securities comprising the Index, all of which are traded on the NYSE. In addition, the Exchange represents that the Intermarket Surveillance Group Agreement dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index.

The exchange believes that the proposed rule change is consistent with Section 6 of the Act in general, and with Section 6(b)(5) in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-94-01 and should be submitted by June 27, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>3</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. 94-13605 Filed 6-3-94; 8:45 am]

BILLING CODE 8010-01-M

**SMALL BUSINESS ADMINISTRATION**

**[Declaration of Disaster Loan Area #2721]**

**Maine, Declaration of Disaster Loan Area (Amendment #1)**

The above-numbered Declaration is hereby amended, effective May 19, 1994, to establish the incident period for this disaster as beginning on April 15, 1994 and continuing through May 9, 1994.

All other information remains the same, i.e., the termination date for filing applications for physical damage is July 12, 1994 and for economic injury the deadline is February 14, 1995.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 31, 1994.

**Bernard Kulik,**  
*Assistant Administrator for Disaster Assistance.*

[FR Doc. 94-13708 Filed 6-3-94; 8:45 am]

BILLING CODE 8025-01-M

**[Declaration of Disaster Loan Area #2712]**

**Tennessee, Declaration of Disaster Loan Area (Amendment #2)**

The above-numbered Declaration is hereby amended, effective May 25, 1994, to include McMinn County in the State of Tennessee as a disaster area as a result of damages caused by extensive rainfall and flash flooding which occurred March 25 through April 3, 1994.

In addition, applications for economic injury loans from small businesses located in the contiguous county of Roane, Tennessee, may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, i.e., the termination date for filing applications for physical damage is June 13, 1994 and for economic injury the deadline is January 17, 1995.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 31, 1994.

**Bernard Kulik,**  
*Assistant Administrator for Disaster Assistance.*

[FR Doc. 94-13709 Filed 6-3-94; 8:45 am]

BILLING CODE 8025-01-M

**Revocation of License of Small Business Investment Company**

Pursuant to the authority granted to the United States Small Business Administration by the Order of the United States District Court for the District of Columbia, dated January 26, 1994, the United States Small Business Administration hereby revokes the license of Housing Capital Corporation, a District of Columbia corporation, to function as a small business investment company under the Small Business Investment Company License No. 03/03-0119, issued to Housing Capital Corporation on September 3, 1975, and said license is hereby declared null and void as of May 26, 1994.

Dated: May 26, 1994.

**Darryl Hairston,**  
*Deputy Associate Administrator for Investment.*

[FR Doc. 94-13710 Filed 6-3-94; 8:45 am]

BILLING CODE 8025-01-M

<sup>3</sup> 17 CFR 200.30-3(a)(12) (1993).

## DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements  
Filed During the Week Ended May 27,  
1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

*Docket Number:* 49570.

*Date filed:* May 24, 1994.

*Parties:* Members of the International Air Transport Association.

*Subject:* TC12 Telex Mail Vote 686.

*Proposed Effective Date:* July 1, 1994.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94-13649 Filed 6-3-94; 8:45 am]

BILLING CODE 4910-62-P

Notice of Applications for Certificates  
of Public Convenience and Necessity  
and Foreign Air Carrier Permits Filed  
Under Subpart Q During the Week  
Ended May 27, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* 49571.

*Date filed:* May 24, 1994.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* June 7, 1994.

*Description:* Application of Continental Micronesia, Inc., pursuant to section 401 of the Act and subpart Q of the regulations, applies for an amendment to its certificate of public convenience and necessity for Route 171, authorizing Continental Micronesia to provide scheduled foreign air transportation of persons, property and mail between Honolulu and Osaka, Japan. Continental Micronesia also requests the right to combine this authority with its authority in other markets to the extent permitted by applicable bilateral agreements.

*Docket Number:* 49573.

*Date filed:* May 26, 1994.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* June 22, 1994.

*Description:* Application of USAir, Inc., pursuant to section 401 of the Act and subpart Q of the regulations, applies for a five-year renewal of its certificate of public convenience and necessity for Route 575 authorizing USAir to engage in scheduled foreign air transportation of persons, property and mail between Philadelphia, Pennsylvania and the coterminal points Montreal, Canada and Toronto, Canada.

*Docket Number:* 49575.

*Date filed:* May 26, 1994.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* June 23, 1994.

*Description:* Application of Tower Air, Inc., pursuant to section 401 of the Act and subpart Q of the regulations, requests authority to operate scheduled passenger, property, and mail air service between New York, N.Y. and London, England (to be served through Stansted Airport).

*Docket Number:* 49577.

*Date filed:* May 27, 1994.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* June 24, 1994.

*Description:* Application of American International Airways, Inc., pursuant to section 401 of the Act and subpart Q of the regulations, applies for certificate authority to conduct scheduled foreign air transportation of property and mail between a point or points in the United States, via intermediate points, and a point or points in the following countries: Costa Rica, Venezuela, Colombia, Hong Kong, Taiwan, Australia and New Zealand and beyond, pursuant to the route descriptions and any conditions and restrictions contained in the relevant bilateral agreements.

*Docket Number:* 49578.

*Date filed:* May 27, 1994.

*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* June 24, 1994.

*Description:* Application of Helivia, S.A., pursuant to section 402 of the Act and subpart Q of the regulations, seeks a foreign air carrier permit for authority to conduct non-scheduled foreign air transportation of property and mail between a point or points in Ecuador, on the one hand, and Miami, Florida, on the other hand, via intermediate points.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94-13650 Filed 6-3-94; 8:45 am]

BILLING CODE 4910-62-P

Order Adjusting International Cargo  
Rate Flexibility Level

Policy Statement PS-109, implemented by Regulation ER-1322 of the Civil Aeronautics Board and adopted by the Department, established geographic zones of cargo pricing flexibility within which certain cargo rate tariffs filed by carriers would be subject to suspension only in extraordinary circumstances.

The Standard Foreign Rate Level (SFRL) for a particular market is the rate in effect on April 1, 1982, adjusted for the cost experience of the carriers in the applicable ratemaking entity. The first adjustment was effective April 1, 1983. By Order 94-3-54, the Department established the currently effective SFRL adjustments.

In establishing the SFRL for the two-month period beginning June 1, 1994, we have projected non-fuel costs based on the year ended December 31, 1993 data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 94-5-41 cargo rates may be adjusted by the following adjustment factors over the April 1, 1982 level:

Atlantic .....	1.0936
Western Hemisphere .....	1.1079
Pacific .....	1.5627

For further information contact: Keith A. Shangraw (202) 366-2439.

By the Department of Transportation: May 27, 1994.

Robert S. Goldner,

Special Counsel to the Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. 94-13622 Filed 6-3-94; 8:45 am]

BILLING CODE 4910-62-P

## [Docket 37554]

Order Adjusting the Standard Foreign  
Fare Level Index

The International Air Transportation Competition Act (IATCA), Public Law 96-192, requires that the Department, as successor to the Civil Aeronautics Board, establish a Standard Foreign Fare Level (SFFL) by adjusting the SFFL base periodically by percentage changes in actual operating costs per available seat-mile (ASM). Order 80-2-69 established the first interim SFFL, and Order 94-3-50 established the currently effective two-month SFFL applicable through May 31, 1994.

In establishing the SFFL for the two-month period beginning June 1, 1994, we have projected non-fuel costs based on the year ended December 31, 1993

data, and have determined fuel prices on the basis of the latest available experienced monthly fuel cost levels as reported to the Department.

By Order 94-5-40 fares may be increased by the following adjustment factors over the October 1979 level:

Atlantic .....	1.2979
Latin America .....	1.3199
Pacific .....	2.0040
Canada .....	1.4164

For further information contact: Keith A. Shangraw (202) 366-2439.

By the Department of Transportation: May 27, 1994.

**Robert S. Goldner,**

*Special Counsel to the Acting Assistant Secretary for Aviation and International Affairs.*

[FR Doc. 94-13623 Filed 6-3-94; 8:45 am]

BILLING CODE 4910-82-P

## Federal Aviation Administration

[Summary Notice No. PE-94-21]

### Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

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

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before June 27, 1994.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-200), Petition Docket No. \_\_\_\_\_, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket

and are available for examination in the Rules Docket (AGC-200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frederick M. Haynes, Office of Rulemaking (ARM-1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on May 31, 1994.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

### Petitions for Exemption

*Docket No.:* 26178.

*Petitioner:* Continental Airlines, Inc.

*Sections of the FAR Affected:* 14 CFR 121.358.

*Description of Relief Sought/*

*Disposition:* To extend the December 31, 1995, compliance date permitted in Exemption No. 5256 for installation of required windshear equipment in its aircraft in order to develop, certificate, and implement predictive windshear devices in lieu of installing existing reactive systems.

*Docket No.:* 27608.

*Petitioner:* Delta Air Line, Inc.

*Sections of the FAR Affected:* 14 CFR 25.813(e) and 121.310(f)(5).

*Description of Relief Sought/*

*Disposition:* To amend existing Exemption 5413, which permits the installation of a door between passenger compartments on the McDonnell Douglas MD-11 airplane, to permit the same installation on five different interior configurations of the MD-11.

*Docket No.:* 27616.

*Petitioner:* Wright Air Services, Inc.

*Sections of the FAR Affected:* 14 CFR 135.181(a)(1).

*Description of Relief Sought:* To

permit Wright Air Services, Inc., to operate a single-engine aircraft, the Cessna 208B Grand Caravan, while carrying passengers in instrument flight rule (IFR) conditions for compensation or hire.

*Docket No.:* 27671.

*Petitioner:* Boeing Commercial Airplane Group.

*Sections of the FAR Affected:* 14 CFR 21.195(d)(2).

*Description of Relief Sought:* Would

authorize Boeing to obtain an Experimental Airworthiness Certificate on all models of transport category aircraft, for the purpose of market

survey, with less than 5 flight hours on the aircraft.

*Docket No.:* 27691.

*Petitioner:* Cessna Aircraft Company.

*Sections of the FAR Affected:* 14 CFR 91.609(e).

*Description of Relief Sought/*

*Disposition:* To permit Cessna Aircraft Company to operate Cessna Model 525 Citationjet airplanes without an installed cockpit voice recorder during demonstration flights conducted by Cessna personnel.

*Docket No.:* 27696.

*Petitioner:* Atlantic Aero, Inc. & Mid-Atlantic Freight, Inc.

*Sections of the FAR Affected:* 14 CFR 135.181(a)(1).

*Description of Relief Sought:* To

permit Atlantic Aero, Inc., and Mid-Atlantic Freight, Inc., to conduct passenger carrying operations under part 135, in over-the-top and in instrument flight rule conditions, in a single engine Cessna C208/208B airplane.

*Docket No.:* 27702.

*Petitioner:* Gee Bee, Inc.

*Sections of the FAR Affected:* 14 CFR 45.22(b)(1)(ii).

*Description of Relief Sought/*

*Disposition:* To allow Gee Bee, Inc., to utilize the registration number NR2101 on an airplane certificated in the experimental category, instead of NX2101.

### Dispositions of Petitions

*Docket No.:* 15590.

*Petitioner:* Embry-riddle Aeronautical University.

*Sections of the FAR Affected:* 14 CFR Appendixes A, C, D, F, and H of part 141.

*Description of Relief Sought/*

*Disposition:* To allow ERAU to train certain of its students to a performance standards without meeting the prescribed minimum flight time requirements.

GRANT, May 18, 1994, Exemption No. 2329J

*Docket No.:* 23653.

*Petitioner:* University of North Dakota.

*Sections of the FAR Affected:* 14 CFR Appendixes A, C, D, F, and H of part 141.

*Description of Relief Sought/*

*Disposition:* To extend the termination date of Exemption No. 3825, which allows the University of North Dakota to graduate students who have been trained to a specific performance level rather than the minimum flight time requirements of part 141.

GRANT, May 20, 1994, Exemption No. 3825G

*Docket No.:* 25242.

*Petitioner:* Experimental Aircraft Association.

*Sections of the FAR Affected:* 14 CFR 61.58(c) and 91.5.

*Description of Relief Sought:* To extend the termination date of Exemption No. 4941, which allows members of the Experimental Aircraft Association to continue to complete a training course in lieu of a pilot proficiency check.

GRANT, May 13, 1994, Exemption No. 4941C

*Docket No.:* 26160.

*Petitioner:* Massachusetts Institute of Technology.

*Sections of the FAR Affected:* 14 CFR 91.319(c).

*Description of Relief Sought:* To extend the termination date of Exemption No. 5210, which permits the Massachusetts Institute of Technology to operate five aircraft having experimental airworthiness certificates in a congested airway or over densely populated areas.

GRANT, May 19, 1994, Exemption No. 5210B

*Docket No.:* 26515.

*Petitioner:* ERA Helicopters.

*Sections of the FAR Affected:* 14 CFR 43.3(a) and 135.443(b)(3).

*Description of Relief Sought/Disposition:* To allow ERA's helicopter flight crews to perform any daily checks, or checks occurring at intervals of 10 or fewer hours, as called out in the manufacturers' Service Bulletins or FAA Airworthiness Directives.

DENIAL, May 18, 1994, Exemption No. 5898

*Docket No.:* 26636.

*Petitioner:* Carson City Sheriff's Department.

*Sections of the FAR Affected:* 14 CFR 61.118.

*Description of Relief Sought:* To extend the termination date of Exemption No. 5416, which would permit members of the Carson City Sheriff's Aero Squadron to be reimbursed for fuel, oil, and maintenance expenses while performing official duties invoking the use of member-provided aircraft on authorized search and location missions for the Carson City Sheriff's Department.

PARTIAL GRANT, May 17, 1994, Exemption No. 5416A

*Docket No.:* 26696.

*Petitioner:* Ryan International Airlines, Inc.

*Sections of the FAR Affected:* 14 CFR 121.503(b) and 121.511(a).

*Description of Relief Sought:* To extend the termination date of

Exemption No. 5461, which permits Ryan's pilots and flight engineers to complete certain west coast to east coast transcontinental flight sequences with B-727 aircraft before being provided with at least 16 hours of rest, provided crewmembers satisfy the requirements of § 121.505(a) subject to conditions and limitations.

GRANT, May 17, 1994, Exemption No. 5461A

*Docket No.:* 27434.

*Petitioner:* General Electric Aircraft Engines.

*Sections of the FAR Affected:* 14 CFR 21.325(b)(1).

*Description of Relief Sought/Disposition:* To allow three export airworthiness approvals to be issued for Class I products (engines) at the Airbus Industries RIE facility in Toulouse, France.

GRANT, May 20, 1994, Exemption No. 5900

*Docket No.:* 27589.

*Petitioner:* ABX Air, Inc.

*Sections of the FAR Affected:* 14 CFR 121.305(j) and 121.343(c).

*Description of Relief Sought/Disposition:* To permit ABX to operate 11YS-11 aircraft after October 17, 1994, that are not equipped with a third gyroscopic bank-and-pitch indicator (third artificial horizon) and after May 26, 1994, that are not equipped with an approved flight recorder that utilizes a digital method to record 11 aircraft performance parameters.

DENIAL, May 17, 1994, Exemption No. 5897

*Docket No.:* 27609.

*Petitioner:* M. Shannon & Associates.

*Sections of the FAR Affected:* 14 CFR 91.9(a) and 91.531(a) (1) and (2).

*Description of Relief Sought:* To permit operators of Cessna Citation 500 models (for Serial Nos. 0001 through 0349 only) to be operated by one pilot without a second in command (SIC).

GRANT, May 18, 1994, Exemption No. 5899

*Docket No.:* 27659.

*Petitioner:* Mid Pacific Air Corporation.

*Sections of the FAR Affected:* 14 CFR 121.343(c).

*Description of Relief Sought:* To allow Mid Pacific Air Corporation to continue operating until December 20, 1994, its YS-11 aircraft that may not be fitted by May 26, 1994, with digital flight data recorders capable of simultaneously recording at least 11 flight parameters.

DENIAL, April 29, 1994, Exemption No. 5889

*Docket No.:* 27689.

*Petitioner:* Roesch Aviation, Inc.

*Sections of the FAR Affected:* 14 CFR 135.143(c)(2).

*Description of Relief Sought/Disposition:* To permit RAI to operate without a TSO-C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.

GRANT, May 19, 1994, Exemption No. 5901

[FR Doc. 94-13700 Filed 6-3-94; 8:45 am]

BILLING CODE 4910-13-M

## Maritime Administration

### Approval of Applicant as Trustee

Notice is hereby given that First Interstate Bank of Nevada, N.A., with offices at 3800 Howard Hughes Parkway, suite 1500, Las Vegas, Nevada 89109, has been approved as Trustee pursuant to Public Law 100-710 and 46 CFR part 221.

Dated: May 26, 1994.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 94-13599 Filed 6-3-94; 8:45 am]

BILLING CODE 4910-81-M

## DEPARTMENT OF THE TREASURY

### Public Information Collection Requirements Submitted to OMB for Review

May 25, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

### Comptroller of the Currency

OMB Number: 1557-0180.

Form Number: None.

Type of Review: Extension.

Title: (MA)-Minimum Security Devices and Procedures; Criminal Referral Form; Bank Secrecy Act Procedures (12 CFR Part 21).

*Description:* These records and reports are needed to promote and monitor bank security and to ensure bank safety. The information is used by banks, the OCC, and other agencies for bank security and law enforcement purposes. National banks are the affected public.

*Respondents:* Businesses or other for-profit, Small businesses or organizations.

*Estimated Number of Respondents/Recordkeepers:* 3,600.

*Estimated Burden Hours Per Respondent/Recordkeeper:* 30 minutes.

*Frequency of Response:* On occasion, annually.

*Estimated Total Reporting/Recordkeeping Burden:* 33,700 hours.

*Clearance Officer:* John Ference (202) 874-4697, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

*OMB Reviewer:* Gary Waxman (202) 395-7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.  
**Lois K. Holland,**

*Departmental Reports, Management Officer.*  
[FR Doc. 94-13609 Filed 6-3-94; 8:45 am]

**BILLING CODE: 4810-33-P-M**

### Public Information Collection Requirements Submitted to OMB for Review

May 27, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 2110, 1425 New York Avenue NW., Washington, DC 20220.

#### Departmental Offices/Executive Office for Asset Forfeiture

*OMB Number:* New.

*Form Number:* TD F 92-22.46.

*Type of Review:* New Collection.

*Title:* Request for Transfer of Property Seized/Forfeited by a Treasury Agency.

*Description:* The form is necessary for the application for receipt of seized assets by Federal, State, and local Law

Enforcement agencies and Program Management.

*Respondents:* State or local governments, Federal agencies or employees.

*Estimated Number of Respondents/Recordkeepers:* 577.

*Estimated Burden Hours Per Response/Recordkeeper:* 1 hour.

*Frequency of Response:* Other (one submission per requested asset sharing).

*Estimated Total Reporting/Recordkeeping Burden:* 4,670 hours.

*Clearance Officer:* Lois K. Holland (202) 622-1563, Departmental Offices, room 2110, 1425 New York Avenue NW., Washington, DC 20220.

*OMB Reviewer:* Milo Sunderhauf (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*  
[FR Doc. 94-13610 Filed 6-3-94; 8:45 am]

**BILLING CODE 4810-25-P-M**

# Sunshine Act Meetings

Federal Register

Vol. 59, No. 107

Monday, June 6, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

## FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

**TIME AND DATE:** 10 a.m. June 20, 1994.

**PLACE:** 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

**STATUS:** Open.

### MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the May 16, 1994, Board meeting.
2. Thrift savings Plan activity report by the Executive Director.
3. Review of KPMG Peat Marwick audit report entitled "Executive Summary of Fiscal Year 1993 Federal Agency Fiduciary Compliance Reviews."

**CONTACT PERSON FOR MORE INFORMATION:** Tom Trabucco, Director, Office of External Affairs, (202) 942-1640.

Dated: June 1, 1994.

**Roger W. Mehle,**  
Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 94-13749 Filed 6-1-94; 5:03 pm]

**BILLING CODE 6760-01-M**

## UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-94-19; Emergency Notice]

**TIME AND DATE:** Tuesday, June 7, 1994 at 2:30 p.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436.

**STATUS:** Open to the public.

### MATTER TO BE CONSIDERED:

1. Agenda for future meeting.
2. Minutes.
3. Ratification List.
4. Inv. No. 731-TA-652 (Final) (Aramid Fiber Formed of Poly Para-Phenylene

Terephthalamide from the Netherlands)—briefing and vote.

5. Outstanding action jacket:

1. ID-94-011; Inv. No. 332-351 (Monitoring of U.S. Imports of Peppers).

**CONTACT PERSON FOR MORE INFORMATION:** Donna R. Koehnke, Secretary, (202) 205-2000.

Dated: June 1, 1994.

**Donna R. Koehnke,**  
Secretary.

[FR Doc. 94-13754 Filed 6-2-94; 9:47 am]

**BILLING CODE 7020-02-P**

## PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors' Meeting

**AGENCY:** Pennsylvania Avenue Development Corporation.

**ACTION:** The Pennsylvania Avenue Development Corporation announces the date of their forthcoming meeting of the Board of Directors.

**DATE:** The meeting will be held Wednesday, June 22, 1994, at 10 a.m.

**ADDRESSES:** The meeting will be held at the Pennsylvania Avenue Development Corporation, Suite 1220 North, 1331 Pennsylvania Avenue, NW., Washington, DC.

**SUPPLEMENTARY INFORMATION:** This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public.

Dated: May 31, 1994.

**Lester M. Hunkele III,**  
Executive Director.

[FR Doc. 94-13827 Filed 6-2-94; 3:44 pm]

**BILLING CODE 7630-01-M**

## SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94-409, that

the Securities and Exchange Commission will hold the following meeting during the week of June 6, 1994.

A closed meeting will be held on Thursday, June 9, 1994, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Thursday, June 9, 1994, at 10 a.m., will be:

- Institution of injunctive actions.
- Settlement of injunctive actions.
- Institution of administrative proceedings of an enforcement nature.
- Settlement of administrative proceedings of an enforcement nature.
- Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Carrie Dwyer (202) 942-0100.

Dated: June 2, 1994.

**Jonathan G. Katz,**  
Secretary.

[FR Doc. 94-13830 Filed 6-02-94; 4:05 pm]

**BILLING CODE 8010-01-M**

Monday  
June 6, 1994



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**Part II**

**Department of  
Housing and Urban  
Development**

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**Office of the Secretary**

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**24 CFR Part 42, et al.  
Technical and Conforming Amendments  
to the Displacement, Relocation  
Assistance and Real Property Acquisition  
Regulations for HUD and HUD-Assisted  
Programs; Rule**

**DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

**Office of the Secretary**

24 CFR Parts 42, 215, 221, 236, 510,  
850, 880, 881, 882, 883, 884, 900, and  
941

[Docket No. R-94-1366; FR-2357-F-01]

RIN 2501-AB69

**Technical and Conforming  
Amendments to the Displacement,  
Relocation Assistance and Real  
Property Acquisition Regulations for  
HUD and HUD-Assisted Programs**

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

**SUMMARY:** This final rule revises a number of the Department's regulations covering programs subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended by the Uniform Relocation Act Amendments of 1987 (1987 Amendments), to conform these regulations to these authorities and to the government-wide URA implementing regulations at 49 CFR part 24.

**EFFECTIVE DATE:** July 6, 1994.

**FOR FURTHER INFORMATION CONTACT:** H.J. Huecker, Director, or Mel Geffner, Deputy Director, Relocation and Real Estate Division, room 7174, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone number (202) 708-0336. Hearing- or speech-impaired persons may call the TDD number—(202) 708-2565. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:**

**Paperwork Reduction Act Statement**

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 and have been assigned OMB Control Number 2506-0121.

**I. Statutory and Regulatory Background**

The Uniform Relocation Act Amendments of 1987 (Title IV, Pub. L. 100-17, April 2, 1987) (1987 Amendments) amended the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA).

Principal among the 1987 Amendments is an expanded definition of the term "displaced person" to include any person who has moved or moved his personal property "as a direct result of rehabilitation or

demolition" or privately undertaken acquisition.

Under the revised definition, an "unlawful occupant" or a person occupying a displacement dwelling "for the purpose of obtaining assistance," or a short-term renter who begins occupancy of the property with knowledge of its acquisition for a project that involves displacement, is not a "displaced person." (Section 402, 1987 Amendments.)

In section 402(e) of the 1987 Amendments, the term "comparable replacement dwelling" is defined, in part, as a dwelling that is adequate, decent, safe, and sanitary, functionally equivalent and generally in as desirable a location as the location of the displaced person's dwelling. Also added by section 402(e) is a definition of the term "displacing agency", which means "any Federal agency carrying out a program or project, and any State, State agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person."

Section 405 of the 1987 Amendments added a new paragraph 4 to section 202(a) of the URA to provide a maximum reestablishment payment of \$10,000 for a displaced farm, nonprofit organization, or small business. Section 202(c) of the URA also was amended to change the range of the fixed payment that is available as an alternative to a payment for actual reasonable moving and related expenses. The new fixed payment ranges from \$1,000 to \$20,000. The former payment ranged from \$2,500 to \$10,000.

Section 406 of the 1987 Amendments amended section 203(a) of the URA to increase the maximum payment under section 203 from \$15,000 to \$22,500 with respect to replacement housing for a homeowner, and under section 204, amended by section 407 of the 1987 Amendments, the maximum payment was increased to \$5,250 for a renter. However, when such amounts are not sufficient to provide a comparable replacement dwelling as required by section 205(c)(3), agencies must provide additional or alternative assistance to the displaced person. Such additional or alternative assistance is authorized under section 206 (amended by section 409 of the 1987 Amendments).

Section 412 of the Amendments authorized the lead agency (Department of Transportation (DOT)) to issue, with the active participation of HUD and other Federal agencies, regulations to implement the URA. On March 2, 1989, DOT issued a government-wide final rule (see 54 FR 8912) to follow an interim rule issued by that agency on

December 17, 1987 (see 52 FR 47994). On February 19, 1988 (53 FR 4964), HUD published an interim rule advising that it would make effective as of April 2, 1989 "all the rule changes necessary to implement amendments" to the URA. (Section 418 of the 1987 Amendments mandated that the amendments take effect no later than April 2, 1989.)

**II. Public Comment on Interim HUD Rule**

HUD received only one comment in response to the interim rule. The comment concerned the fact that HUD did not join with DOT and certain other Federal agencies in the December 17, 1987 DOT interim final rule that implemented several of the 1987 Amendments. The commenter thought that HUD's delay would result in lower replacement housing payments for displaced persons.

The DOT interim rule did not increase the amount of replacement housing assistance to be provided to a person displaced from a dwelling. The URA "common rule" jointly published in the *Federal Register* (51 FR 7000) by HUD and 16 other Federal agencies on February 27, 1986, set forth an open-ended "make whole" standard as the basis for determining the amount of replacement housing assistance to be provided to displaced persons.

Under the "make whole" approach, the displacing agency must provide assistance sufficient to enable the displaced person to purchase or rent (for a 42-month period) a comparable replacement dwelling, irrespective of the payment limits under section 203 (raised to \$22,500 from \$15,000) or section 204 (raised to \$5,250 from \$4,000) of the URA.

Given the open-ended "make whole" approach to providing replacement housing assistance under the "common rule" and subsequent DOT interim and final rules, the sole impact of the DOT interim rule on the provision of replacement housing assistance was the reduction of rental assistance payments by 12.5 percent (caused by reducing the period of assistance from 48 to 42 months).

Section 407 of the 1987 Amendments requires that URA rental assistance payments to lower income persons "take into account such person's income." This change, implemented in the DOT final rule (but not in the DOT interim rule) substantially increased the amount of replacement housing assistance to very low-income persons. During the period between implementation of the DOT interim and final rule, URA replacement housing payments to tenants were higher under

the now removed HUD URA rule at 24 CFR part 42 than under the DOT interim rule.

### III. Public Comment on Proposed Section 8 Project-Based Certificate Program Rule

On February 24, 1993, HUD published proposed relocation requirements (58 FR 11319) for the Section 8 Project-Based Certificate Program (PBC). The requirements were published with a proposed rule to conform Section 8 tenant-based rental certificate and rental voucher rules. The proposed PBC relocation policies were similar to those followed in other HUD-assisted programs. Three comments were received.

The first comment addressed the current PBC requirement that prohibits the displacement of any residential tenant of a unit to be assisted under the PBC Program. On February 24, 1993, HUD proposed revising this policy to conform it to the standard applicable to other HUD-assisted programs. That standard allows displacement, provided it is consistent with the other goals and objectives of the program, and property owners take all reasonable steps to minimize it. One commenter opposed this proposal, stating that the current regulation works well to prevent displacement and, in extreme cases, can be waived.

HUD believes that the current PBC displacement prohibition eliminates many projects where the failure to carry out timely rehabilitation leads to property deterioration that ultimately increases displacement—displacement without assistance to those forced to relocate. Under the proposed rule, persons displaced by rehabilitation for an assisted project would receive relocation assistance at URA levels, obtaining standard housing at a cost that is usually lower than what they had been paying for substandard housing. Accordingly, HUD did not adopt the comment, and the final rule reflects the “minimize displacement” standard that is followed in other HUD programs and described in the proposed rule. Also, it is noted that a public housing agency or Indian housing authority (HA) could opt to provide a unit selection preference for units where the rehabilitation will not result in the displacement of a family.

The second comment addressed PBC relocation policy regarding “partially-assisted buildings.” The term “partially-assisted” is used to describe a building in which some, but not all, of the units will be “assisted” with a project-based subsidy upon completion of the rehabilitation. Under the current PBC

policy, only the occupants of units to be assisted under the section 8 HAP contract are protected by the URA. HUD proposed revising this policy to conform it to policy in other HUD-assisted rehabilitation programs where the tenants in all rehabilitated units in the building are protected, whether or not the units they occupy will receive a PBC subsidy.

One commenter opposed the application of URA protections to occupants of non-assisted units in a partially-assisted building. The commenter was concerned about the cost and indicated that the policy would subsidize discrimination because families who don't want to live with assisted families would “grab a pot of money and move.” This observation reflects a misunderstanding of the proposed rule. A tenant who is offered the opportunity to occupy the property upon completion of the rehabilitation under reasonable terms and conditions is not entitled to relocation assistance if he or she elects to relocate. Given the limited amount of rehabilitation (and relocation) that can be supported with PBC subsidies, HUD does not anticipate significant displacement under the PBC program and, therefore, does not expect significant relocation costs under the program. More importantly, those costs which do occur as a result of a project should not be borne by the tenant. Accordingly, HUD did not adopt this comment.

The third commenter asked that § 882.712(g)(3), which allows an HA to request HUD's determination as to whether a displacement is or would be covered by the regulations, should include a requirement for a 30-day response time by HUD. HUD will endeavor to respond to all HA requests as quickly as practicable and certainly within 30 days after all relevant information is received. A regulatory requirement for a 30-day HUD response time would not be meaningful, however, because HUD's failure to respond within that period could not serve as a basis for the HA to conclude that the person was not eligible for relocation assistance.

The final rule is similar to the proposed rule. As with other HUD-assisted programs, in-place tenants, who will not be displaced from the building/complex, must be provided a written notice, which offers the opportunity to lease a unit in the building/complex under reasonable terms and conditions after the rehabilitation has been completed. As described in § 882.712(g)(1)(iii)(A), such reasonable terms and conditions include a post-rehabilitation rent that does not exceed the greater of: (1) The rent charged prior

to the agreement, or (2) an affordable rent based on the tenant's income.

Such reasonable terms and conditions also include reimbursement for reasonable out-of-pocket expenses incurred by an in-place tenant who is required to relocate temporarily or to move permanently to another unit in the building/complex so the rehabilitation can be carried out. If these conditions are not met and the in-place tenant moves permanently from the building/complex, the tenant will be considered to have been displaced by the project and to be entitled to relocation assistance at URA levels.

### IV. This Final Rule

This rule is being issued to conform existing HUD program regulations to the DOT final rule at 49 CFR part 24. This rule does not reissue the DOT rule, but, for the benefit of HUD program users, adds definitions or descriptions that are peculiar to HUD's programs. Also, the rule does not change any of the environmental program requirements or the compliance requirements of 24 CFR parts 50 and 58. Users are urged to consult the DOT final rule (49 CFR part 24) for a more detailed description of, and guidance for, all matters relating to displacement covered by the URA.

As indicated in the interim rule published by this agency on February 19, 1988, and now adopted by this rule, parts 42 and 43 have been removed, except that § 42.1 (the only section in 24 CFR part 42) remains as a guide-post to readers. It advises readers to consult the DOT rule at 49 CFR part 24 for the regulations implementing the URA and the 1987 Amendments.

Certain terms, although treated in the DOT rule, are nonetheless defined, where appropriate, in the several parts of this rule. See, for example, the definitions contained in this rule for the terms “displaced person” and “initiation of negotiations.” (These terms are defined in the DOT rule at 49 CFR 24.2(g) and 49 CFR 24.2(k), respectively.) The terms “displaced person” and “initiation of negotiations” are defined in this rule in order to cover circumstances unique to HUD's programs.

#### *Economic Displacement, Temporary Relocation and Moves Within Project*

In some areas, HUD program regulations reflect policy determinations which go beyond the letter of the URA. The URA and the regulations at 49 CFR part 24 do not directly create eligibility for relocation assistance (as a “displaced person”) for a tenant-occupant who is permitted to remain in the property but moves from the property because he or

she cannot afford the rent charged upon completion of a project (economic displacement); who is required to relocate temporarily, but not permanently, while the project is underway; or who must move permanently to other space in the building/complex.

Therefore, to protect such tenant-occupants, these program regulations provide that a tenant who moves permanently because the terms and conditions of continued occupancy, temporary relocation, or relocation within the building/complex are unreasonable will qualify as a "displaced person" who is entitled to relocation assistance at levels identical to those required in 49 CFR part 24.

For purposes of determining whether the economic displacement of a tenant has occurred, these regulations establish as "reasonable," a rent/utility charge that does not exceed the greater of: (1) A specified share of the person's income (e.g., 30 percent of income), or (2) the tenant's old monthly rent and estimated average monthly utility costs. A tenant who is required to pay a higher cost upon completion of the project may elect to remain in the project or move permanently and obtain relocation assistance at URA levels.

The revisions to the various program regulations made by this rule reflect basic HUD policy. The HUD URA rule at 24 CFR part 42 (now superseded) contained similar policies, as do regulations covering other HUD-assisted programs (e.g., the Community Development Block Grant (CDBG), Program regulations at 24 CFR part 570).

#### *Minimizing Displacement*

Because of statutory requirements (not superseded by the URA) governing some of HUD's programs, this rule provides, where necessary, that grantees minimize displacement. See, e.g., 24 CFR 510.52(a). This standard HUD policy urges grantees, consistent with the goals and objectives of the HUD program, to assure that they take reasonable steps to minimize direct and indirect displacement as a result of a project. For example, if feasible, residential occupants of buildings to be rehabilitated must be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary and affordable dwelling unit in the building/complex following completion of the project. No comparable provision is to be found in the DOT rule. That rule's purpose is to implement the URA.

#### *Other Matters*

##### *Environmental Review*

At the time of publication of the interim rule, a finding of no significant impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The proposed rule is adopted by this final rule without significant change. Accordingly, the initial finding of no significant impact remains applicable, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

##### *Regulatory Flexibility Act*

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule revises existing regulations to comport with recent legislation that treats individuals and businesses more favorably.

##### *Executive Order 12606, The Family*

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule ensures that families that are affected by displacement activity receive adequate assistance with respect to their relocation.

##### *Executive Order 12612, Federalism*

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government. The rule's major effects are on individuals and businesses. States or their political subdivisions are affected by this rule only to the extent that they act as grantees of Federal funds, disbursing these funds to the ultimate recipients—businesses and individuals.

This rule was listed as Item 1535 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20436) pursuant to

##### *Executive Order 12866 and the Regulatory Flexibility Act.*

The Catalog of Federal Domestic Assistance program numbers are 14.134, 14.146, 14.156, 14.219, 14.221, 14.225, and 14.227.

#### **List of Subjects**

##### *24 CFR Part 42*

Administrative practice and procedure, Grant programs, Loan programs, Manufactured homes, Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements.

##### *24 CFR Part 215*

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

##### *24 CFR Part 221*

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

##### *24 CFR Part 236*

Grant programs—housing and community development, Low and moderate income housing, Mortgage insurance, Rent subsidies, Reporting and recordkeeping requirements.

##### *24 CFR Part 510*

Lead poisoning, Loan programs—housing and community development, Relocation assistance, Reporting and recordkeeping requirements, Social security, Urban renewal.

##### *24 CFR Part 850*

Grant programs—housing and community development, Low and moderate income housing, Reporting and recordkeeping requirements.

##### *24 CFR Part 880*

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

##### *24 CFR Part 881*

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

##### *24 CFR Part 882*

Grant programs—housing and community development, Homeless, Lead poisoning, Manufactured homes, Rent subsidies, Reporting and recordkeeping requirements.

##### *24 CFR Part 883*

Grant programs—housing and community development, Rent

subsidies, Reporting and recordkeeping requirements.

**24 CFR Part 884**

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

**24 CFR Part 900**

Grant programs—housing and community development, Rent subsidies.

**24 CFR Part 941**

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

For the reasons set out in the preamble, the Department amends 24 CFR parts 42, 215, 221, 236, 510, 850, 880, 881, 882, 883, 884, 900, and 941, as follows:

1–2. 24 CFR part 42 is revised to read as follows:

**PART 42—DISPLACEMENT, RELOCATION ASSISTANCE, AND REAL PROPERTY ACQUISITION FOR HUD AND HUD-ASSISTED PROGRAMS**

Authority: 42 U.S.C. 3535(d) and 4601.

**§ 42.1 Applicable rules.**

HUD-assisted programs and projects are subject to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Pub. L. 91–646, 84 Stat. 1894, 42 U.S.C. 4601), as amended (URA) (42 U.S.C. 4601 note) and implementing regulations issued by the Department of Transportation at 49 CFR part 24. Applicable program regulations contain additional relocation provisions.

**PART 215—RENT SUPPLEMENT PAYMENTS**

3. The authority citation for part 215 continues to read as follows:

Authority: 12 U.S.C. 1701s; 42 U.S.C. 3535(d).

4. A new § 215.80 is added to read as follows:

**§ 215.80 Displacement, relocation, and acquisition.**

(a) *Minimizing displacement.*

Consistent with the other goals and objectives of this part, Owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential

tenants who will not be required to move permanently but who must relocate temporarily to permit rehabilitation or other work for a project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing, any increase in monthly rent/utility costs, and incidental expenses.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the rehabilitation; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A displaced person (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201–4655) and implementing regulations at 49 CFR part 24. A “displaced person” shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601–19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such persons also shall be given, if possible, referrals to comparable and suitable, decent, safe and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the Owner’s determination concerning whether the person qualifies as a “displaced person,” or with the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the Owner. A person who is dissatisfied with the Owner’s determination on his or her appeal may submit a written request for review of

that determination to the HUD Field Office.

(f) *Responsibility of Owner.* (1) The Owner shall certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that the Owner will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The Owner shall ensure such compliance notwithstanding any third party’s contractual obligation to the Owner to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. The cost of relocation assistance also may be paid from funds available from other sources.

(3) The Owner shall maintain records in sufficient detail to demonstrate compliance with these provisions. The Owner shall maintain data on the race, ethnic, gender, and disability status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term “displaced person” means any person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term “displaced person” includes, but may not be limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the Owner’s execution of the agreement covering the rehabilitation, demolition or acquisition, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the amount approved by HUD;

(ii) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(iii) A tenant-occupant of a dwelling who moves from the building/complex, permanently, after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(iv) Any person, including a person who moves before the Owner's execution of the agreement covering the rehabilitation, demolition, or acquisition, if the Owner or HUD determines that the displacement resulted directly from rehabilitation, demolition or acquisition for the assisted project.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the execution of the agreement covering the rehabilitation, demolition or acquisition and, before signing a lease and commencing occupancy, received written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that he or she would not qualify as a "displaced person" (or for any assistance provided under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition of the project.

(3) The Owner may ask HUD, at any time, to determine whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of private-owner rehabilitation, demolition, or acquisition of the real property, the term *initiation of negotiations* means the

Owner's execution of the agreement covering the rehabilitation, demolition, or acquisition.

(Approved by Office of Management and Budget under OMB Control Number 2506-0121)

**PART 221—LOW COST AND MODERATE INCOME MORTGAGE INSURANCE**

5. The authority citation for part 221 continues to read as follows:

**Authority:** 12 U.S.C. 1715b and 1715f; 42 U.S.C. 3535(d); sec. 221.544(a)(3) is also issued under 12 U.S.C. 1707(a).

6. A new § 221.795 is added to read as follows:

**§ 221.795 Displacement—below market interest rate mortgages.**

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, Owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily to permit rehabilitation or other work for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing, any increase in monthly rent/utility costs and any incidental expenses.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the rehabilitation; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A "displaced person" (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201-4655)

and implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601-19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the Owner's determination concerning whether the person qualifies as a "displaced person," or with the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the Owner. A person who is dissatisfied with the Owner's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(f) *Responsibility of Owner.* (1) The Owner shall certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that the Owner will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The Owner shall ensure such compliance notwithstanding any third party's contractual obligation to the Owner to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs also may be paid with funds available from other sources.

(3) The Owner shall maintain records in sufficient detail to demonstrate compliance with these provisions. The Owner shall maintain data on the race, ethnic, gender, and disability status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/

complex, permanently, after the Owner executes the agreement covering the rehabilitation, demolition or acquisition, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the amount approved by HUD;

(ii) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(iii) A tenant-occupant of a dwelling who moves from the building/complex, permanently, after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(iv) Any person, including a person who moves before the Owner's execution of the agreement covering the rehabilitation, demolition, or acquisition, if the Owner or HUD determines that the displacement resulted directly from rehabilitation, demolition or acquisition for the assisted project.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the execution of the agreement covering the rehabilitation, demolition or acquisition and, before

signing a lease and commencing occupancy, received written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that he or she would not qualify as a "displaced person" (or for any assistance provided under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The Owner may ask HUD, at any time, to determine whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term *initiation of negotiations* means the Owner's execution of the agreement covering the rehabilitation, demolition, or acquisition.

(Approved by Office of Management and Budget under OMB Control Number 2506-0121)

#### **PART 236—MORTGAGE INSURANCE AND INTEREST REDUCTION PAYMENTS FOR RENTAL PROJECTS**

7. The authority citation for part 236 continues to read as follows;

**Authority:** 12 U.S.C. 1715b and 1715z-1; 42 U.S.C. 3535(d).

8. A new subpart F consisting of § 236.1001 is added, to read as follows:

##### **Subpart F—Uniform Relocation Assistance**

###### **§ 236.1001 Displacement, relocation, and acquisition.**

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, mortgagors shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily to permit rehabilitation or other work for the assisted project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing, any increase in monthly rent/utility costs, and any incidental expenses.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A "displaced person" (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201-4655) and implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601-19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the mortgagor's determination concerning whether the person qualifies as a "displaced person," or with the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the mortgagor. A person who is dissatisfied with the mortgagor's determination on his or her appeal may submit a written request for review of the determination to the HUD Field Office.

(f) *Responsibility of mortgagor.* (1) The mortgagor shall certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that it will comply with the URA, the regulations at 49 CFR part

24, and the requirements of this section. The mortgagor shall ensure such compliance notwithstanding any third party's contractual obligation to the mortgagor to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs may also be paid for with funds available from other sources.

(3) The mortgagor shall maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The mortgagor shall maintain data on the race, ethnic, gender, and disability status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means any person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the mortgagor executes the agreement covering the rehabilitation, demolition or acquisition, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the amount approved by HUD;

(ii) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(iii) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(iv) Any person, including a person who moves before the mortgagor's execution of the agreement covering the rehabilitation, demolition, or acquisition, if the mortgagor or HUD determines that the displacement resulted directly from rehabilitation, demolition or acquisition for the assisted project.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the execution of the agreement covering the rehabilitation, demolition or acquisition and, before signing a lease or commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any assistance provided under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project;

(3) The mortgagor may request, at any time, HUD's determination of whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition or acquisition of the real property, the term *initiation of negotiations* means the mortgagor's execution of the agreement covering the rehabilitation, demolition or acquisition.

(Approved by Office of Management and Budget under OMB Control Number 2506-0121)

## PART 510—SECTION 312 REHABILITATION LOAN PROGRAM

9. The authority citation for part 510 is revised to read as follows:

**Authority:** 42 U.S.C. 1452b, 3535(d). Sec. 510.106 is also issued under 42 U.S.C. 3543.

10. Section 510.52 is revised to read as follows:

### § 510.52 Displacement and relocation.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, the local processing agency must assure that it has taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing, any increase in monthly rent/utility costs and any incidental costs.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the repairs; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A "displaced person" (defined in paragraph (h) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601-4655), implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601-19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such person also shall be given, if possible, referrals to

comparable and suitable, decent, safe and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(e) *Application of residential antidisplacement and relocation assistance plan requirements.* If CDBG or HOME funds are used to pay any part of the cost of the rehabilitation activities, as defined in 24 CFR 570.202(b), the project is subject to the regulations at 24 CFR part 43.

(f) *Appeals.* A person who disagrees with the local processing agency's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is found to be eligible, may file a written appeal of that determination with the local processing agency. A person who is dissatisfied with the local processing agency's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(g) *Responsibility of local processing agency.* (1) The local processing agency shall certify that it will comply (i.e., provide assurance of compliance as required by 49 CFR part 24) with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding the property owner's contractual obligation to the local processing agency to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. However, such costs may also be paid for with funds available from other sources.

(3) The local processing agency must maintain records in sufficient detail to demonstrate compliance with these provisions. The local processing agency is required to maintain data on the race, ethnic, gender and disability status of displaced persons.

(h) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A person that moves permanently from the real property after receiving a

notice from the local processing agency or property owner that requires such move, if the move occurs on or after the date that the property owner (or persons in control of the site) submits the application to the local processing agency for a loan that is later approved;

(ii) Any person, including a person who moves before submission of the application for a loan to the local processing agency, if the local processing agency or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the project; or

(iii) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after execution of the loan agreement, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant's monthly rent before execution of the agreement and estimated average monthly utility costs; or

(B) 30 percent of gross household income; or

(iv) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(v) A tenant-occupant of a dwelling who moves from the building/complex, permanently, after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(2) Notwithstanding the provisions of paragraph (g) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and the local processing agency determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the application for the loan and before signing a lease and commencing occupancy, the person was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any assistance provided under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The property owner or local processing agency may request, at any time, a HUD determination of whether a displacement is or would be covered by this section.

(i) *Definition of initiation of negotiations.* For purposes of determining the formula for computing a replacement housing payment to be provided to a displaced residential tenant, the term *initiation of negotiations* means the execution of the loan agreement between the property owner and HUD.

(Approved by Office of Management and Budget under OMB Control Number 2506-0121)

## PART 850—HOUSING DEVELOPMENT GRANTS

11. The authority citation for part 850 is revised to read as follows:

Authority: 42 U.S.C. 1437o, 3535(d).

12. A new § 850.34 is added to read as follows:

### § 850.34 Tenant assistance, displacement, relocation, and acquisition.

(a) *General policies.* The grantee shall:

(1) Ensure that the rehabilitation will not cause the displacement of any very low-income household by a household that is not a very low-income household.

(2) Consistent with the other goals and objectives of this part, minimize the displacement of persons as a result of a project assisted under this part.

(3) Administer all phases of the Housing Development Grant Program, including the selection of projects and the provision of notices, counseling, referrals, other advisory services and relocation payments, in a manner that does not result in discrimination because of race, color, religion, sex, age, disability, familial status or national origin.

(4) Adopt and make public a written tenant assistance policy (TAP) that describes the assistance that will be provided to tenants who reside in the project and which includes a statement of nondiscrimination policy consistent with paragraph (a)(3) of this section. The TAP shall comply with the provisions of this section. Each tenant in the project shall be provided a copy of the TAP and advised of the impact of the project on him or her. For privately owned projects, such notice shall be given immediately after submission of the application by the Owner of the property, or earlier. For publicly owned projects, such notice shall be given immediately after the firm project commitment (defined in § 850.3), or earlier.

(b) *Relocation assistance for displaced persons.* A "displaced person" (defined in paragraph (f) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601-4655) and implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his/her rights under the Fair Housing Act (42 U.S.C. 360119), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(c) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(d) *Appeals.* A person who disagrees with the grantee's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the grantee. A person who is dissatisfied with the grantee's determination on his or her appeal may submit a written

request for review of that determination to the HUD Field Office.

(e) *Responsibility of grantee.* (1) The grantee shall certify that it will comply (i.e., provide assurance of compliance, as required by 49 CFR part 24) with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The grantee shall ensure such compliance notwithstanding any third party's (e.g., the property owner's) contractual obligation to the grantee to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. However, such assistance also may be paid for with funds available from other sources.

(3) The grantee must maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The grantee shall maintain data on the race, ethnic, gender, and disability status of displaced persons.

(f) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A person that moves permanently from the real property after receiving a notice requiring such move, if the move occurs on or after:

(A) If the notice is provided by the property owner, the date that the property owner (or person in control of the site) submits a request for assistance to the grantee that is later approved and funded;

(B) If the notice is provided by the grantee, the date of the firm project commitment to a specific local project.

(ii) Any person, including a person who moves before the date described in paragraph (f)(1)(i) of this section that HUD or the grantee determines was displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(iii) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the firm project commitment, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include

a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant's monthly rent before execution of the agreement and estimated average monthly utility costs; or

(B) 30 percent of gross household income; or

(iv) A tenant-occupant of a dwelling, who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(v) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(C) The tenant is required to move to another dwelling unit in the same building/complex but is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move, or other conditions of the move are not reasonable; or

(2) Notwithstanding the provisions of paragraph (f)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and the grantee determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the Owner's submission of the request for assistance and, before signing a lease or commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person will not qualify as a "displaced person" (or for any

assistance provided under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) The grantee determines that the person was not displaced as a direct result of rehabilitation, acquisition, or demolition for the project, and the HUD Field Office concurs in that determination.

(3) The grantee may ask HUD, at any time, to determine whether a specific displacement is or would be covered by this section.

(g) *Definition of initiation of negotiations.* For purposes of determining the formula for computing a replacement housing payment and issuing related notices, the term *initiation of negotiations* means the firm project commitment to a specific local project as defined in § 850.3.

(Approved by Office of Management and Budget under OMB Control Number 2506-0121)

#### § 850.35 [Amended]

13. In § 850.35, paragraph (d) is removed and reserved.

#### PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

14. The authority citation for part 880 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611-13619.

15. Section 880.209 is revised to read as follows:

#### § 880.209 Displacement, relocation, and real property acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, Owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing, any increase in monthly rent/utility costs and any incidental expenses.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the rehabilitation, and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A "displaced person" (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201-4655) and implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his/her rights under the Fair Housing Act (42 U.S.C. 360119), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the PHA's or private owner's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is found to be eligible, may file a written appeal of that determination with the PHA. A person who is dissatisfied with the PHA's or private-owner's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(f) *Responsibility of PHA/Owner.* (1) The private-owner, (in the case of a private-owner/HUD project or a private-owner/PHA project) or the PHA (in the case of a PHA-owner/HUD project) shall certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section. The private-owner or PHA, as appropriate, shall ensure such compliance notwithstanding any third party's

contractual obligation to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. The cost of relocation assistance may also be paid for with funds available from other sources.

(3) The Owner shall maintain records in sufficient detail to demonstrate compliance with these provisions. The Owner shall maintain data on the race, ethnic, gender, and disability status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the Owner executes the agreement covering the rehabilitation, demolition or acquisition, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) the tenant's monthly rent before execution of the agreement and estimated average monthly utility costs; or

(B) 30 percent of gross household income; or

(ii) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(iii) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after execution of the agreement covering the rehabilitation, demolition, or acquisition and, before signing a lease and commencing occupancy, was provided written notice of the project, its potential impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any assistance provided under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The PHA or private owner may request, at any time, a HUD determination of whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing a replacement housing payment to be provided to a person displaced as a direct result of rehabilitation, demolition, or non-State agency acquisition of the real property, the term *initiation of negotiations* means the execution of the agreement covering the rehabilitation, demolition or acquisition.

(Approved by Office of Management and Budget under OMB Control Number 2506-0121)

#### PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

16. The authority citation for part 881 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611-13619.

17. Section 881.209 is revised to read as follows:

#### § 881.209 Displacement, relocation, and real property acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, Owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing, any increase in monthly rent/utility costs and incidental expenses.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary temporary housing made available;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex upon completion of the project; and

(iv) The provisions of paragraph (b)(i) of this section.

(c) *Relocation assistance for displaced persons.* A "displaced person" (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), as amended (42 U.S.C. 4201-4655) and implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his/her rights under the Fair Housing Act (42 U.S.C. 360119), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real

property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the PHA's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is found to be eligible, may file a written appeal of that determination with the PHA. A person who is dissatisfied with the PHA's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(f) *Responsibility of Owner.* (1) The Owner shall certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that he or she will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to the Owner to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. The cost of relocation assistance also may be paid with funds available from other sources. The Owner shall maintain records in sufficient detail to demonstrate compliance with these provisions.

(3) The Owner shall maintain data on the race, ethnic, gender, and disability status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the Owner executes the agreement covering the rehabilitation, demolition or acquisition, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) the tenant's monthly rent before execution of the agreement and

estimated average monthly utility costs; or

(B) 30 percent of gross household income; or

(ii) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(iii) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violations of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the Owner's execution of the agreement covering the rehabilitation, demolition, or acquisition, and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any assistance provided under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The Owner may request, at any time, a HUD determination of whether

a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing a replacement housing payment to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation, demolition, or acquisition of the real property, the term *initiation of negotiations* means the Owner's execution of the agreement covering the rehabilitation, demolition, or acquisition.

(Approved by Office of Management and Budget under OMB Control Number 2506-0121)

#### PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

18. The authority citation for part 882 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d). In addition, Subpart H is also issued under 42 U.S.C. 11361 and 11401.

19. Section 882.406 is revised to read as follows:

##### § 882.406 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* (1) Consistent with the other goals and objectives of this part, Owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part. To the extent feasible, residential tenants shall be provided a reasonable opportunity to lease and occupy a suitable, decent, safe, sanitary, and affordable dwelling unit in the project upon its completion.

(2) Whenever a building/complex is rehabilitated and some, but not all, of the rehabilitated units will be assisted upon completion of the rehabilitation, the relocation requirements described in this section cover the occupants of each rehabilitated unit, whether or not Section 8 assistance will be provided for the unit.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing, and any increase in monthly rent/utility costs.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the project upon its completion; and

(iv) The assistance required under paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A "displaced person" (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201-4655) and implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his/her rights under the Fair Housing Act (42 U.S.C. 360119), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the PHA's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is found to be eligible, may file a written appeal of that determination with the PHA. A person who is dissatisfied with the PHA's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(f) *Responsibility of PHA.* (1) The PHA shall certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to the PHA to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in

the same manner and to the same extent as other project costs. Such costs also may be paid for with local public funds or funds available from other sources. The cost of PHA advisory services for temporary relocation of tenants may be paid from preliminary administrative funds.

(3) The PHA shall maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The PHA shall maintain data on the race, ethnic, gender, and disability status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A person who moves permanently from the real property after receiving a notice from the owner requiring such move, if the move occurs on or after the date of the submission to the PHA of the Owner proposal that is later approved;

(ii) A person, including a person who moves permanently before the submission of the Owner proposal to the PHA, if the PHA or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the assisted project; or

(iii) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the execution of the Agreement between the Owner and the PHA, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant's monthly rent before execution of the agreement and estimated average monthly utility costs; or

(B) 30 percent of gross household income; or

(iv) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the

cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(v) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and the PHA determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the preliminary proposal (or application, if there is no preliminary proposal) and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any assistance provided under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The PHA may request, at any time, HUD's determination of whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing a replacement housing payment to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation or demolition of the real property, the term *initiation of negotiations* means the execution of the Agreement between the Owner and the PHA.

(Approved by Office of Management and Budget under OMB Control Number 2506-0121)

20. Section 882.712 is revised to read as follows:

**§ 882.712 Displacement, relocation, and acquisition.**

(a) *Minimizing displacement.* (1) Consistent with the other goals and objectives of this subpart, an owner must assure that it has taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a rehabilitation project assisted under this subpart.

(2) Whenever a building/complex is rehabilitated and some, but not all, of the rehabilitated units will be assisted upon completion of the rehabilitation, the relocation requirements described in this section cover the occupants of each rehabilitated unit, whether or not section 8 assistance will be provided for the unit.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing and any increase in monthly rent/utility costs;

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe and sanitary dwelling to be made available for the temporary period;

(iii) The terms under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the project upon completion of the project; and

(iv) The assistance required under paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A "displaced person" (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4201-4655) and implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his/her rights under the Fair Housing Act (42 U.S.C. 3600-3620), and, if the representative comparable

replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority is located in an area of minority concentration, such person must also be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the PHA's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the PHA. A person who is dissatisfied with the PHA's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office responsible for administering the URA requirements in the jurisdiction.

(f) *Responsibility of PHA.* (1) The PHA must provide assurance of compliance as required by 49 CFR part 24 that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and must ensure such compliance notwithstanding any third party's contractual obligation to the PHA to comply with these provisions.

(2) The cost of required relocation assistance may be paid for by the owner, or with local public funds, or with funds available from other sources. The cost of PHA advisory services for temporary relocation of tenants may be paid from preliminary fees or ongoing administrative fees.

(3) The PHA must maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The PHA must maintain data on the race, ethnic, gender, and disability status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A person who moves permanently from the real property after receiving a notice from the Owner requiring such move, if the move occurs on or after the

date of the submission of the Owner application to the PHA;

(ii) A person, including a person who moves permanently before the submission of the Owner application to the PHA, if the PHA or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the assisted project; or

(iii) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after execution of the Agreement between the Owner and the PHA, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant's monthly rent before execution of the agreement and estimated average monthly utility costs; or

(B) The total tenant payment, as determined under 24 CFR 813.107, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income; or

(iv) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit and any increased housing costs; or

(B) Other conditions of the temporary relocation are not reasonable; or

(v) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the rehabilitation or construction, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of

applicable Federal, State or local law, or other good cause, and the PHA determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the Owner application to the PHA and, before signing a lease and commencing occupancy, was provided written notice of the Owner application, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" (or for any assistance provided under this section) if the Owner application is approved;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The PHA may request, at any time, HUD's determination of whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing a replacement housing payment to be provided to a residential tenant displaced as a direct result of privately undertaken rehabilitation or demolition of the real property, the term *initiation of negotiations* means the execution of the Agreement between the Owner and the PHA.

(Approved by Office of Management and Budget under OMB Control Number 2506-0121)

21. In § 882.720, paragraph (b)(3)(v) is revised to read as follows:

**§ 882.720 PHA unit selection policy.**

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(v) A statement identifying:

(A) The number of persons (families, individuals, businesses, and nonprofit organizations) occupying the property on the date of the submission of the application;

(B) The number of persons to be displaced, temporarily relocated, or moved permanently within the building or complex;

(C) The estimated cost of relocation payments and services, and the source of funding; and

(D) The organization(s) that will carry out the relocation activities;

\* \* \* \* \*

**§ 882.721 [Amended]**

22. In § 882.721, paragraph (c) is amended by removing the phrase "can be rehabilitated without causing displacement of residential tenants from units to be assisted (see § 882.712);".

23. In § 882.803, paragraph (d), introductory text, is revised to read as follows:

**§ 882.803 Project eligibility and other requirements.**

\* \* \* \* \*

(d) *Relocation.* A project assisted under this subpart H is subject to the requirements of § 882.810.

\* \* \* \* \*

24. A new § 882.810 is added to read as follows:

**§ 882.810 Displacement, relocation, and acquisition.**

(a) *Minimizing displacement.* (1) Consistent with the other goals and objectives of this part, Owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(2) Whenever a building/complex is rehabilitated and some, but not all, of the rehabilitated units will be assisted upon completion of the rehabilitation, the relocation requirements described in this section cover the occupants of each rehabilitated unit, whether or not Section 8 assistance will be provided for the unit.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied housing, any increase in monthly rent/utility costs, and incidental expenses.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the project upon completion of the rehabilitation, and

(iv) The assistance required under paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A "displaced person" (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601-4655) and implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601-19) and, if the comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the PHA's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the PHA. A person who is dissatisfied with the PHA's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(f) *Responsibility of PHA.* (1) The PHA shall certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section and shall ensure such compliance notwithstanding any third party's contractual obligation to the PHA to comply with these provisions.

(2) The cost of required assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs also may be paid for with local public funds or funds available from other sources. The cost of PHA advisory services for temporary relocation of tenants to be assisted under the program also may be paid from preliminary administrative funds.

(3) The PHA shall maintain records in sufficient detail to demonstrate compliance with the provisions of this section. The PHA shall maintain data on the race, ethnic, gender, and disability status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person

(household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A person that moves permanently from the real property after receiving notice requiring such move, if the move occurs on or after the date the Owner submits to the PHA the Owner proposal that is later approved;

(ii) Any person, including a person who moves from the property before the date the Owner submits the proposal to the PHA, if the PHA or HUD determines that the displacement resulted directly from acquisition, rehabilitation, or demolition for the assisted project; or

(iii) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the "initiation of negotiations" (see paragraph (h) of this section), if the move occurs before the tenant is provided a written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon its completion. Such reasonable terms and conditions shall include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant's monthly rent before the "initiation of negotiations" and estimated average monthly utility costs; or

(B) The total tenant payment, as determined under 24 CFR 813.107, if the tenant is low-income, or 30 percent of gross household income, if the tenant is not low-income; or

(iv) A tenant-occupant of a dwelling, who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, or

(B) Other conditions of the temporary relocation are not reasonable; or

(v) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the building/complex, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable.

(2) Notwithstanding the provisions of paragraph (d)(7)(i) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and the PHA determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the preliminary proposal (or application, if there is no preliminary proposal), and, before signing a lease and commencing occupancy, received written notice of the project and its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that he or she would not qualify as a "displaced person" (or for any assistance provided under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The PHA may request, at any time, HUD to determine whether a displacement is or would be covered by paragraph (d)(7) of this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of private-owner rehabilitation or demolition of the real property, the term *initiation of negotiations* means the execution of the Agreement between the Owner and the PHA.

(Approved by Office of Management and Budget under OMB Control Number 2506-0121)

**PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES**

25. The authority citation for part 883 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611-13619.

26. Section 883.311 is revised to read as follows:

**§ 883.311 Displacement, relocation, and acquisition.**

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, Owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing, any increase in monthly rent/utility costs, and any incidental expenses;

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable decent, safe, and sanitary dwelling in the building/complex following completion of the rehabilitation, and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A "displaced person" (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601-4655) and implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601-19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the Agency's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is found to be eligible, may file a written appeal of that determination with the Agency. A person who is dissatisfied with the Agency's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(f) *Responsibility of Agency.* (1) The Agency shall certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to the Agency to comply.

(2) The cost of relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs, however, may be paid from local funds or funds available from other sources.

(3) The Agency shall maintain records in sufficient detail to demonstrate compliance with these provisions. The Agency shall maintain data on the race, ethnic, gender, and disability status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after execution of the agreement covering the rehabilitation, demolition or acquisition, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant's monthly rent before execution of the agreement and estimated average monthly utility costs; or

(B) 30 percent of gross household income; or

(ii) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(iii) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(2) Notwithstanding the provision of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the proposal to HUD and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that he or she would not qualify as a "displaced person" (or for any assistance provided under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project;

(3) The Agency may request, at any time, a HUD determination of whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant

displaced as a direct result of private-owner rehabilitation, demolition, or acquisition of the real property, the term *initiation of negotiations* means the Owner's execution of the agreement covering the rehabilitation, demolition, or acquisition.

(Approved by Office of Management and Budget under OMB Control Number 2506-0121)

**PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS**

27. The authority citation for part 884 continues to read as follows:

**Authority:** 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611-13619.

28. Section 884.112 is revised to read as follows:

**§ 884.112 Displacement, relocation, and acquisition.**

(a) *Minimizing displacement.*

Consistent with the other goals and objectives of this part, Owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing, any increase in monthly rent/utility costs, and any incidental expenses;

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe, and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable decent, safe, and sanitary dwelling in the building/complex following completion of the rehabilitation, and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A "displaced person" (defined in paragraph (f) of this section) must be provided relocation assistance at the

levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601-4655) and implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his or her rights under the Fair Housing Act (42 U.S.C. 3601-19), and, if the representative comparable dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such person shall be given, if possible, referrals to comparable and suitable, decent, safe and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements described in 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the PHA's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the PHA. A person who is dissatisfied with the PHA's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(f) *Responsibility of Owner/PHA.* (1) The private-owner (in the case of a Private-Owner project or a Private-Owner/PHA project) or the PHA (in the case of a PHA-Owner Project) shall certify (i.e., provide assurance of compliance as required by 49 CFR part 24) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section and shall ensure such compliance notwithstanding any third party's contractual obligation to the Owner or the PHA to comply with these provisions.

(2) The cost of required relocation assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs may also be paid for with funds available from other sources.

(3) The Owner shall maintain records in sufficient detail to demonstrate compliance with these provisions. The Owner and the PHA shall maintain data on the race, ethnic, gender, and disability status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property,

permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after execution of the agreement covering the rehabilitation, demolition or acquisition, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant's monthly rent before execution of the agreement and estimated average monthly utility costs; or

(B) 30 percent of gross household income; or

(ii) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(iii) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(2) Notwithstanding the provision of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and HUD determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the submission of the proposal to HUD and, before signing a lease and commencing occupancy, was provided written notice of the project and its possible impact on the person (e.g., the person may be displaced, temporarily relocated or suffer a rent increase) and the fact that he or she would not qualify as a "displaced person" (or for any assistance provided under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project;

(3) The PHA or private owner may request, at any time, a HUD determination of whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of private-owner rehabilitation, demolition or acquisition of the real property, the term *initiation of negotiations* means the Owner's execution of the agreement covering the rehabilitation, demolition or acquisition.

(Approved by Office of Management and Budget under OMB Control Number 2506-0121)

#### **PART 900—SECTION 23 HOUSING ASSISTANCE PAYMENTS PROGRAM—NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION**

29. The authority citation for part 900 is revised to read as follows:

**Authority:** 42 U.S.C. 1410(b) and 3535(d).

30. A new § 900.105 is added, to read as follows:

##### **§ 900.105 Displacement, relocation, and acquisition.**

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, Local Housing Authorities and Owners shall assure that they have taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* The following policies cover residential tenants who will not be required to move permanently but who must relocate temporarily for the project. Such tenants must be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing, any increase in monthly rent/utility costs and incidental expenses.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe and sanitary dwelling to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex upon completion of the project; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A "displaced person" (defined in paragraph (g) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) (42 U.S.C. 4601-4655) and implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his/her rights under the Fair Housing Act (42 U.S.C. 3601-19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements of 49 CFR part 24, subpart B.

(e) *Appeals.* A person who disagrees with the Local Housing Authority's (LHA's) determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person eligible, may file a written appeal of that determination with the LHA. A person who is dissatisfied with the LHA's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(f) *Responsibility of LHA.* (1) The Local Housing Authority (LHA) shall certify that it will comply (i.e., provide assurance of compliance as required by 49 CFR part 24) with the URA, the

regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance notwithstanding any third party's contractual obligation to the LHA to comply with these provisions.

(2) The cost of required assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs also may be paid for with funds available from other sources.

(3) The LHA shall maintain records in sufficient detail to demonstrate compliance with the provisions of this section and include data indicating the race, ethnic, gender, and disability status of displaced persons.

(g) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the Owner's execution of the agreement covering the rehabilitation, demolition or acquisition, if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the greater of:

(A) The tenant's monthly rent before execution of the agreement and estimated average monthly utility costs; or

(B) 30 percent of gross household income; or

(ii) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(iii) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been

required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(iv) Any person, including a person who moves before the owner's execution of the agreement covering the rehabilitation, demolition, or acquisition, if the Owner, the LHA or HUD determines that the displacement resulted directly from rehabilitation, demolition or acquisition for the assisted project.

(2) Notwithstanding the provisions of paragraph (g)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and the LHA determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the execution of the agreement covering the rehabilitation, demolition, or acquisition, and, before signing a lease and commencing occupancy, was provided written notice of the project, its possible impact on the person (e.g., the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that the person would not qualify as a "displaced person" (or for assistance under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The Owner or LHA may request, at any time, HUD's determination of whether a displacement is or would be covered by this section.

(h) *Definition of initiation of negotiations.* For purposes of determining the formula for computing the replacement housing assistance to be provided to a residential tenant displaced as a direct result of private-owner rehabilitation, demolition, or acquisition of the real property, the term *initiation of negotiations* means the Owner's execution of the agreement

covering the rehabilitation, demolition, or acquisition.

(Approved by Office of Management and Budget under OMB Control Number 2506-0121)

## PART 941—PUBLIC HOUSING DEVELOPMENT

31. The authority citation for part 941 continues to read as follows:

**Authority:** 42 U.S.C. 1437b, 1437c, 1437g, and 3535(d).

32. Section 941.207 is revised to read as follows:

### § 941.207 Displacement, relocation, and acquisition.

(a) *Minimizing displacement.* Consistent with the other goals and objectives of this part, the PHA shall assure that it has taken all reasonable steps to minimize the displacement of persons (households, businesses, nonprofit organizations, and farms) as a result of a project assisted under this part.

(b) *Temporary relocation.* Only residential tenants who are eligible under 24 CFR 913.103 and who meet the PHA standards for tenancy established pursuant to 24 CFR 960.204 will be permitted to continue in occupancy. Any residential tenant who (though not required to move permanently) must relocate temporarily (e.g., to permit rehabilitation or major reconstruction) shall be provided:

(1) Reimbursement for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporary housing, any increase in monthly rent/utility costs and incidental expenses.

(2) Appropriate advisory services, including reasonable advance written notice of:

(i) The date and approximate duration of the temporary relocation;

(ii) The location of the suitable, decent, safe and sanitary housing to be made available for the temporary period;

(iii) The terms and conditions under which the tenant may lease and occupy a suitable, decent, safe, and sanitary dwelling in the building/complex following completion of the project; and

(iv) The provisions of paragraph (b)(1) of this section.

(c) *Relocation assistance for displaced persons.* A "displaced person" (defined in paragraph (h) of this section) must be provided relocation assistance at the levels described in, and in accordance with the requirements of, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as

amended (URA) (42 U.S.C. 4601-4655) and implementing regulations at 49 CFR part 24. A "displaced person" shall be advised of his/her rights under the Fair Housing Act (42 U.S.C. 3601-19), and, if the representative comparable replacement dwelling used to establish the amount of the replacement housing payment to be provided to a minority person is located in an area of minority concentration, such person also shall be given, if possible, referrals to comparable and suitable, decent, safe, and sanitary replacement dwellings not located in such areas.

(d) *Real property acquisition requirements.* The acquisition of real property for a project is subject to the URA and the requirements in 49 CFR part 24, subpart B. With respect to the Turnkey method of development (see 24 CFR 941.102(b)), 49 CFR 24.101(a) (1) and (2) apply to the PHA/developer and developer/owner transactions, respectively.

(e) *Notices.* (1) As soon as possible after the date described in paragraph (h)(1)(i) of this section, the PHA shall issue a general information notice (described in 49 CFR 24.203(a)) to each occupant of the property.

(2) At the time of the initiation of negotiations (defined in paragraph (i) of this section), the PHA shall issue an appropriate written notice to each person occupying the property. Those to be displaced shall be issued a notice of eligibility for relocation assistance. (This notice may be combined with the 90-day notice under 49 CFR 24.203(c).) Tenants (eligible under 24 CFR 913.103 and the standards for tenancy established in accordance with 24 CFR 960.204) who will not be displaced shall be issued a notice offering the tenant the opportunity to enter into a lease to continue in occupancy of the property under reasonable terms and conditions. (Also, see paragraph (h)(1)(iii) of this section.)

(f) *Appeals.* A person who disagrees with the PHA's determination concerning whether the person qualifies as a "displaced person," or the amount of relocation assistance for which the person is eligible, may file a written appeal of that determination with the PHA. A person who is dissatisfied with the PHA's determination on his or her appeal may submit a written request for review of that determination to the HUD Field Office.

(g) *Responsibility of PHA.* (1) The PHA shall certify (i.e., provide assurance of compliance, as required by 49 CFR part 24) that it will comply with the URA, the regulations at 49 CFR part 24, and the requirements of this section, and shall ensure such compliance

notwithstanding any third party's contractual obligation to the PHA to comply. The certification in the PHA's "Resolution in Support of Public Housing Project" that the PHA will comply with all the requirements of 24 CFR part 941 shall constitute the PHA's certification of compliance with the URA, the implementing regulations at 49 CFR part 24, and this section.

(2) The cost of required assistance is an eligible project cost in the same manner and to the same extent as other project costs. Such costs may also be paid from funds available from other sources.

(3) The PHA must maintain records in sufficient detail to demonstrate compliance with this section, including data indicating the race, ethnic, gender and disability status of displaced persons.

(h) *Definition of displaced person.* (1) For purposes of this section, the term *displaced person* means a person (household, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property, permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted under this part. The term "displaced person" includes, but may not be limited to:

(i) A person who moves permanently from the real property after receiving a notice from the PHA or property owner that requires such move, if the move occurs on or after:

(A) For conventional or acquisition projects, the date of approval by HUD of the PHA proposal incorporating the site, or for scattered sites, the date HUD approves the applicable site;

(B) For turnkey projects, the date the PHA proposal is submitted to HUD; or

(C) For major reconstruction of obsolete public housing projects, the date the PHA issues the invitation for bids for the project;

(ii) Any person, including a person who moves before the date described in paragraph (h)(1)(i) of this section, that the PHA or HUD determines was displaced as a direct result of acquisition, rehabilitation, or demolition for the assisted project; or

(iii) A tenant-occupant of a dwelling unit who moves from the building/complex, permanently, after the "initiation of negotiations," (defined in paragraph (i) of this section), if the move occurs before the tenant is provided written notice offering him or her the opportunity to lease and occupy a suitable, decent, safe, and sanitary dwelling in the same building/complex, under reasonable terms and conditions, upon completion of the project. Such

reasonable terms and conditions include a monthly rent and estimated average monthly utility costs that do not exceed the amount determined in accordance with 24 CFR 913.107; or

(iv) A tenant-occupant of a dwelling who is required to relocate temporarily, but does not return to the building/complex, if either:

(A) The tenant is not offered payment for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including the cost of moving to and from the temporarily occupied unit, any increased housing costs and incidental expenses; or

(B) Other conditions of the temporary relocation are not reasonable; or

(v) A tenant-occupant of a dwelling who moves from the building/complex permanently after he or she has been required to move to another dwelling unit in the same building/complex in order to carry out the project, if either:

(A) The tenant is not offered reimbursement for all reasonable out-of-pocket expenses incurred in connection with the move; or

(B) Other conditions of the move are not reasonable; or

(2) Notwithstanding the provisions of paragraph (h)(1) of this section, a person does not qualify as a "displaced person" (and is not eligible for relocation assistance under the URA or this section), if:

(i) The person has been evicted for serious or repeated violation of the terms and conditions of the lease or occupancy agreement, violation of applicable Federal, State or local law, or other good cause, and the PHA determines that the eviction was not undertaken for the purpose of evading the obligation to provide relocation assistance;

(ii) The person moved into the property after the date described in paragraph (h)(1)(i) of this section, but before commencing occupancy, received written notice of the project, its possible impact on the person (e.g., that the person may be displaced, temporarily relocated, or suffer a rent increase) and the fact that he or she would not qualify as a "displaced person" (or for assistance under this section) as a result of the project;

(iii) The person is ineligible under 49 CFR 24.2(g)(2); or

(iv) HUD determines that the person was not displaced as a direct result of acquisition, rehabilitation, or demolition for the project.

(3) The PHA may, at any time, ask HUD to determine whether a displacement is or would be covered by this section.

(i) *Definition of initiation of negotiations.* For purposes of this section, the term "initiation of negotiations" means:

(1) For conventional or acquisition projects:

(i) Where the PHA purchases the real property through an arm's-length transaction (as described in 49 CFR 24.101(a)(1)), the seller's acceptance of the PHA's written offer to purchase the property (i.e., the seller's execution of form HUD-51971-II), provided the PHA later purchases the property; or such other date, as may be determined by the

PHA with the approval of the HUD Field Office; or

(ii) Where the PHA's purchase of the real property does not qualify as an arm's-length transaction under 49 CFR 24.101(a)(1), the delivery of the initial written purchase offer from the PHA to the Owner of the property (i.e., the PHA executed form HUD-51971-II). However, if the PHA issues a notice of intent to acquire the property, and a person moves after that notice, but before the initial written purchase offer, the "initiation of negotiations" is the actual move of the person from the property;

(2) For turnkey projects, HUD Field Office approval of the PHA's proposal incorporating the developer's proposal, provided the contract of sale is later executed; or

(3) For major reconstruction of obsolete projects, the PHA's issuance of the invitation for bids for the project.

(Approved by Office of Management and Budget under OMB Control Number 2506-0121)

Dated: May 23, 1994.

**Henry G. Cisneros,**

*Secretary.*

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# Federal Register

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Monday  
June 6, 1994

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## Part III

### Department of Labor

Mine Safety and Health Administration

### Department of Health and Human Services

Centers for Disease Control and Prevention

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Mine Shift Atmospheric Conditions;  
Respirable Dust Sample and Coal Mine  
Respirable Dust Standard Noncompliance  
Determinations; Notices

**DEPARTMENT OF LABOR****Mine Safety and Health Administration****DEPARTMENT OF HEALTH AND HUMAN SERVICES****Centers for Disease Control and Prevention****Mine Shift Atmospheric Conditions; Respirable Dust Sample**

**AGENCIES:** Mine Safety and Health Administration, Labor. National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention, Department of Health and Human Services.

**ACTION:** Notice of public hearing.

**SUMMARY:** The Mine Safety and Health Administration (MSHA) and the National Institute for Occupational Safety and Health (NIOSH) will hold a joint public hearing to receive comments on the February 18, 1994, (59 FR 8357) notice addressing the joint finding by the Secretary of Labor and the Secretary of Health and Human Services that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be measured accurately over a single shift. This hearing is being held pursuant to section 101 of the Federal Mine Safety and Health Act of 1977 (Mine Act). The hearing will be held in Morgantown, West Virginia.

This notice should be read in conjunction with the notice on noncompliance determinations published separately by MSHA today elsewhere in the *Federal Register*.

**DATES:** All requests to make oral presentations for the record should be submitted at least 5 days before the hearing date. Immediately before the hearing, any unallotted time will be made available to persons making late requests. The public hearing will be held on Wednesday, July 6, 1994. The hearing will be held from 9 a.m. to 12 p.m.

**ADDRESSES:** The hearing will be held at the following location: Department of Energy, Morgantown Energy Technology Center (METC), room 51-C, 3610 Collins Ferry Road, Morgantown, West Virginia 26507-0880.

Send requests to make oral presentations to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235-1910.

**SUPPLEMENTARY INFORMATION:** On February 18, 1994, the Secretary of Labor and the Secretary of Health and Human Services jointly published a notice in the *Federal Register* (59 FR 8357) announcing a new finding that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift in accordance with section 202(f)(2) of the Federal Mine Safety and Health Act of 1977. Based on this finding, the Secretaries are proposing to rescind the finding issued on July 17, 1971, and affirmed on February 23, 1972, which is discussed below.

Concurrently, MSHA published a notice in the *Federal Register* (59 FR 8356) announcing its intention to use both single, full-shift respirable dust measurements, and the average of multiple, full-shift respirable dust samples, to determine noncompliance and issue citations for violations of the respirable dust standard under the MSHA coal mine respirable dust program.

The comment periods for these notices were scheduled to close on April 19, 1994, but, in response to requests from the mining community for additional time in which to prepare their comments, MSHA extended the comment period to May 20, 1994 (59 FR 16958).

The purpose of the public hearing is to receive relevant comments and to answer questions concerning the notices. The hearing will be conducted in an informal manner by a panel of MSHA and NIOSH officials. Although formal rules of evidence or cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearing and may exclude irrelevant or unduly repetitious material and questions.

The hearing will begin with an opening statement from MSHA and NIOSH, followed by an opportunity for members of the public to make oral presentations. The hearing panel will be available to address relevant questions. At the discretion of the presiding official, speakers may be limited to a maximum of 20 minutes for their presentations. In the interests of conducting a productive hearing, MSHA and NIOSH will schedule speakers in a manner that allows all points of view to be heard as effectively as possible.

Verbatim transcripts of the proceedings will be prepared and made a part of the rulemaking record. Copies of the hearing transcripts will be made available to the public for review.

MSHA and NIOSH will also accept for the record additional written comments and other appropriate data from any interested party, including those not presenting oral statements. Written comments and data submitted to MSHA or NIOSH will be included in the rulemaking record. To allow for the submission of any post-hearing comments, the record will remain open until August 5, 1994.

**Issues***Rescission of Joint 1971/1972 Finding*

Comments received to date have reflected some confusion over the MSHA and NIOSH decision to rescind the 1971 Notice of Finding which was affirmed in 1972. On July 17, 1971, a Notice of Finding under section 202(f)(2) of the Mine Act was published by the Secretaries of the Interior and Health, Education, and Welfare (36 FR 13286, July 17, 1971). This finding was based on an analysis of mine operator dust sample results from 2,179 working sections in compliance with the dust standard. Specifically, the average concentration of all 10 full-shift samples submitted from each working section under the regulations in effect at the time (referred to as "basic samples") " \* \* \* was compared with the average of the two most recently submitted samples \* \* \*, then to the three most recently submitted samples, then to the four most recently submitted samples, etc."

In discussing the results of these comparisons, the Secretaries stated that " \* \* \* the average of the two most recently submitted samples of respirable dust was statistically equivalent to the average concentration of the current basic samples for each working section in only 9.6 percent of the comparisons." The finding concluded that "[a] single shift measurement of respirable dust would not, after applying valid statistical techniques to such measurement, accurately represent the atmospheric conditions to which the miner is continuously exposed."

MSHA and NIOSH have concluded that the statistical analysis and the 1971 Finding itself were not germane to the Congressional intent as stated in section 202(f) of the Mine Act. On examination, it can be seen that the conclusion reached in the notice is not consistent with the title of the notice. Specifically, the title of the notice published in 1971 and affirmed in 1972 states the following: "Notice of Finding That Single Shift Measurements of Respirable Dust Will Not Accurately Represent Atmospheric Conditions During Such Shift". The conclusion reached in the

notice states that: "\* \* \* a single shift measurement would not, after applying valid statistical techniques, accurately represent the atmospheric conditions to which the miner is continuously exposed". Section 202(f) specifies a finding focused on the "atmospheric conditions on such shift," not the "atmospheric conditions during which the miner is continuously exposed." The analysis did not address the accuracy of a single full-shift measurement in representing atmospheric conditions during the shift on which it was taken. Therefore, the 1971/1972 finding does not establish that a single-shift measurement is invalid.

NIOSH and MSHA request additional comments on their decision to rescind the joint 1971/1972 finding and issue a new finding.

#### *Accuracy of Single Full-Shift Measurements*

The proposed joint finding is based on NIOSH and MSHA's position that a sample taken in accordance with the provisions of 30 CFR parts 70, 71, and 90 accurately represents the full-shift, average atmospheric dust concentration at the location where the sample is collected. These regulatory provisions were designed to assure that measurements taken with approved sampling devices in a prescribed manner would meet a level of accuracy acceptable to the Secretaries. Some commenters suggested that the joint finding was invalid because NIOSH and MSHA had no evidence that a single shift sample would accurately measure atmospheric conditions as required by section 202(f).

MSHA and NIOSH request further comments and data from the mining community concerning the accuracy of a single, full-shift respirable coal dust measurement.

Dated: May 27, 1994.

**J. Davitt McAteer,**

*Assistant Secretary for Mine Safety and Health.*

Dated: May 31, 1994.

**Linda Rosenstock,**

*Director, National Institute for Occupational Safety and Health.*

[FR Doc. 94-13664 Filed 6-3-94; 8:45 am]

BILLING CODE 4570-43-P

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

#### Coal Mine Respirable Dust Standard Noncompliance Determinations

**AGENCY:** Mine Safety and Health Administration, Labor.

**ACTION:** Notice of public hearing.

**SUMMARY:** The Mine Safety and Health Administration (MSHA) will hold a public hearing to receive public comments on the February 18, 1994, (59 FR 8356) notice proposing the use of single, full-shift respirable dust measurements to determine noncompliance under the MSHA coal mine respirable dust program. This hearing is being held pursuant to section 101 of the Federal Mine Safety and Health Act of 1977 (Mine Act). The hearing will be held in Morgantown, West Virginia.

This notice should be read in conjunction with the joint notice published elsewhere in today's *Federal Register* by the Department of Labor and the Department of Health and Human Services.

**DATES:** All requests to make oral presentations for the record should be submitted at least 5 days before the hearing date. Immediately before the hearing, any unallotted time will be made available to persons making late requests. The public hearing will be held on Wednesday, July 6, 1994, from 1 p.m. to 6 p.m.

**ADDRESSES:** The hearing will be held at the following location: Department of Energy, Morgantown Energy Technology Center (METC), room 51-C, 3610 Collins Ferry Road, Morgantown, West Virginia 26507-0880.

Send requests to make oral presentations to: Mine Safety and Health Administration, Office of Standards, Regulations and Variances, room 631, 4015 Wilson Boulevard, Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:**

Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA, (703) 235-1910.

**SUPPLEMENTARY INFORMATION:** On February 18, 1994, MSHA published a notice in the *Federal Register* (59 FR 8356) announcing its intention to use both single, full-shift respirable dust measurements and the average of multiple, full-shift respirable dust samples to determine noncompliance and issue citations for violations of the respirable dust standard under the MSHA coal mine respirable dust program.

Concurrently, the Secretary of Labor and the Secretary of Health and Human Services jointly published a notice in the *Federal Register* (59 FR 8357) announcing a new finding that the average concentration of respirable dust to which each miner in the active workings of a coal mine is exposed can be accurately measured over a single shift in accordance with section 202(f)(2) of the Federal Mine Safety and Health Act of 1977. Based on this finding, the Secretaries are proposing to rescind the finding issued on July 17, 1971, and affirmed on February 23, 1972, described in the accompanying notice elsewhere in today's *Federal Register*.

The comment periods for these notices were scheduled to close on April 19, 1994, but, in response to requests from the mining community for additional time in which to prepare their comments, MSHA extended the comment period to May 20, 1994 (59 FR 16958).

The purpose of the public hearing is to receive relevant comments and to answer questions concerning the notices. This hearing will be conducted in an informal manner by a panel of MSHA officials. Although formal rules of evidence or cross examination will not apply, the presiding official may exercise discretion to ensure the orderly progress of the hearing and may exclude irrelevant or unduly repetitious material and questions.

The hearing will begin with an opening statement from MSHA, followed by an opportunity for members of the public to make oral presentations. The hearing panel will be available to address relevant questions. At the discretion of the presiding official, speakers may be limited to a maximum of 20 minutes for their presentations. In the interests of conducting a productive hearing, MSHA will schedule speakers in a manner that allows all points of view to be heard as effectively as possible.

Verbatim transcripts of the proceedings will be prepared and made a part of the rulemaking record. Copies of the hearing transcripts will be made available to the public for review.

MSHA will also accept for the record additional written comments and other appropriate data from any interested party, including those not presenting oral statements. Written comments and data submitted to MSHA will be included in the rulemaking record. To allow for the submission of any post-hearing comments, the record will remain open until August 5, 1994.

**Issues**

To date MSHA has received comments from the mining industry on two major issues. The first major issue reflects differing interpretations of section 202(b) of the Mine Act. Some commenters assume the respirable coal mine dust standard applies to a long-term average concentration of coal dust. Consequently, they concluded that noncompliance determinations must take shift-to-shift variability into account. Other commenters maintain that the respirable coal dust standard applies to the coal dust concentration averaged over a single shift. They concluded, therefore, that MSHA is authorized to issue a citation whenever the dust standard is exceeded on a single shift, with no allowance made for any shift-to-shift variability.

The second major issue involves use of the Values Table, specified in the

February 18, 1994, notice, for making noncompliance determinations with respect to the respirable coal mine dust standard. Several commenters objected to the principle of citing for noncompliance only when noncompliance is indicated at a high confidence level, claiming that doing so would effectively result in an increase in the permissible exposure. Other commenters contended that the proposed values at which a citation would be issued do not sufficiently account for all sources of measurement uncertainty. MSHA specifically solicits additional comments and data from the mining community on the appropriate values at which a citation should be issued.

MSHA also requests comments and data from the mining community concerning the following:

1. The impact on mine environmental respirable dust levels of using the proposed values for noncompliance determinations;
2. Whether the proposed citation criteria, involving use of both single samples and the average of multiple samples, will reduce the incidence of overexposures on individual shifts; and
3. Other approaches that could be utilized to detect when the average concentration of respirable dust in the mine environment is not being maintained below the applicable standard during each shift.

Dated: May 27, 1994.

**J. Davitt McAteer,**

*Assistant Secretary for Mine Safety and Health.*

[FR Doc. 94-13663 Filed 6-3-94; 8:45 am]

BILLING CODE 4510-43-P

# Reader Aids

Federal Register

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**H.R. 2139/P.L. 103-262**  
 To authorize appropriations for the National Historical Publications and Records Commission for fiscal years 1994, 1995, 1996, and 1997. (May 31, 1994; 108 Stat. 706; 1 page)

**S. 1654/P.L. 103-263**  
 To make certain technical corrections. (May 31, 1994; 108 Stat. 707; 3 pages)

**S.J. Res. 179/P.L. 103-264**  
 To designate the week of June 12 through 19, 1994, as "National Men's Health Week". (May 31, 1994; 108 Stat. 710; 2 pages)

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## CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (\*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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<sup>2</sup>The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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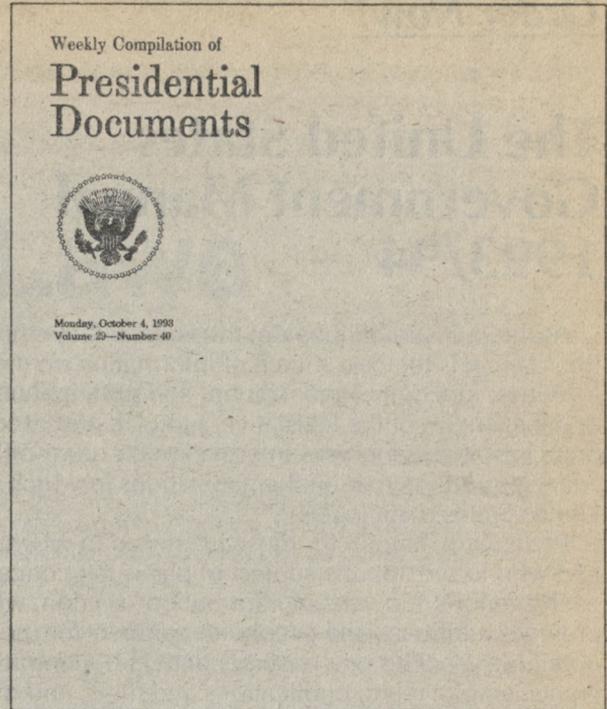
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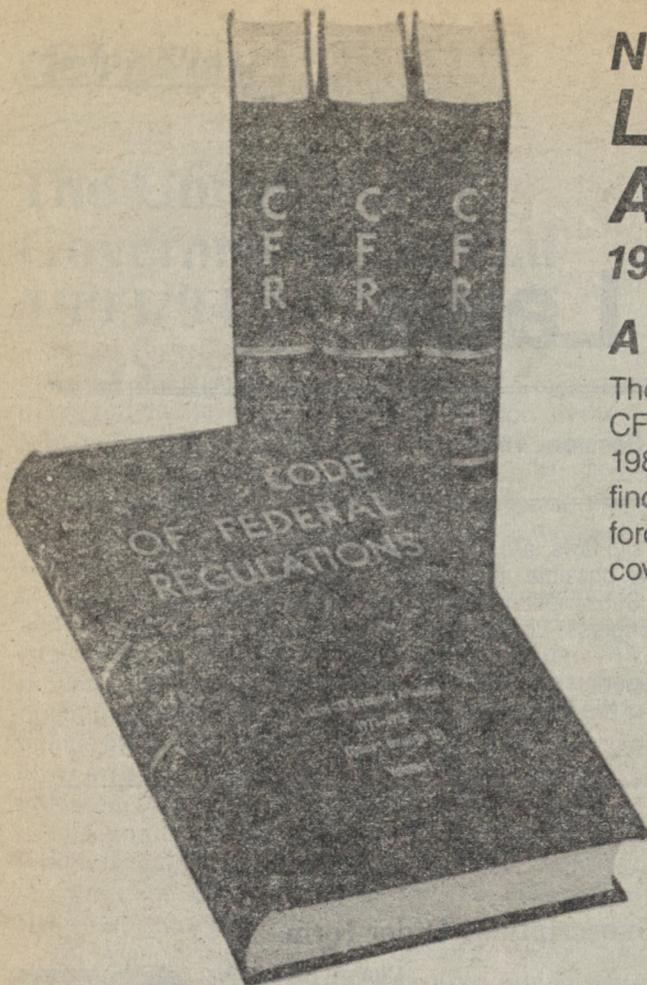
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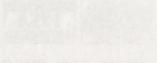
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