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DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 301, 318, and 320

[Docket No. 94–003F]

RIN 0583–AB76

Meat Produced by Advanced Meat/Bone Separation Machinery and Meat Recovery Systems

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal meat inspection regulations by amending the definition of "meat" to include as "meat," product resulting from advanced meat/bone separation machinery and recovery systems that do not crush, grind, or pulverize bones to remove attached skeletal tissue from the bones of livestock carcasses and parts of carcasses. This final rule also establishes the criteria, including that for calcium content, for meat from advanced meat/bone separation machinery and meat recovery systems to assure consistency with the characteristics and composition of meat, and establishes compliance procedures and recordkeeping requirements for the calcium content criteria. This action is being taken to update the definition of "meat" to acknowledge and include as "meat," product derived from the advances made in the modification of traditional mechanical means of separating meat from the bones of livestock and the development of advanced recovery systems that do not involve grinding, crushing, or pulverizing bones to remove the adhering skeletal tissue.

EFFECTIVE DATE: January 5, 1995.

FOR FURTHER INFORMATION CONTACT: John W. McCutcheon, Deputy Administrator, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–2709.

SUPPLEMENTARY INFORMATION:

Background

Introduction

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) requires that the Secretary of Agriculture administer an inspection program that assures consumers that meat and meat food products distributed in commerce and within designated States [1] are wholesome, not adulterated, and are properly marked, labeled, and packaged. Under the FMIA and regulations promulgated thereunder, FSIS provides mandatory inspection, except for certain exceptions, of meat and meat food products prepared for distribution in interstate and foreign commerce, as well as for distribution within designated States.

The Federal meat inspection regulations define meat in 9 CFR 301.2(rr) as follows:

> The part of the muscle of any cattle, sheep, swine, or goats, which is skeletal or which is found in the tongue, in the diaphragm, in the heart, or in the esophagus, with or without the accompanying and overlying fat, and the portions of bone, skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue and which are not separated from it in the process of dressing. It does not include the muscle found in the lips, snout, or ears. This term, as applied to products of equines, shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.

The Federal meat inspection regulations also establish a definition and standard of identity for a meat food product called "mechanically separated (species)" (MS(S)) in 9 CFR 319.5. "Species" refers to the species of livestock, e.g., beef or pork. At various times, this product has also been called mechanically deboned meat and mechanically processed (species) product. This meat food product is defined as "any finely comminuted product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of livestock carcasses and parts of carcasses" and meeting the other provisions specified in 9 CFR 319.5. This provision and other provisions in the Federal meat inspection regulations provide, among other things, for: (1) A definition and standard that classifies MS(S) as a meat food product, (2) limitations on the amount of MS(S) that can be used in permitted products (viz., 20 percent of the livestock and poultry product portion of the product), (3) prohibitions on the use of MS(S) in certain products (e.g., baby food), (4) limitations on certain components of MS(S), e.g., bone particle size, bone content (measured as calcium content), protein quality, and a maximum fat content and minimum protein content, (5) requirements for handling and for the production of MS(S) under an approved quality control program, and (6) a requirement that MS(S) be separately identified in the ingredients statement of a meat food product in which it is used (9 CFR 317.2(c) and (f), 318.18, 319.5, and 319.6). FSIS' 1982 final rulemaking on MS(S) (47 FR 28214) indicates that the Agency determined that material differences in the consistency and the composition of MS(S) place it outside the scope of product traditionally defined as meat (9 CFR 301.2(rr)), and that its differences are such that it should be defined as a distinctive standardized product. As such, it should be identified by a name that adequately differentiates it from meat, viz., MS(S). When MS(S) is used in meat food products, it must be separately listed in the ingredients statement by its standardized name, e.g., "mechanically separated beef (or pork)."

FSIS considered issues in regard to the lack of a regulatory definition and standard for certain poultry products produced by mechanical deboning—products which are deemed to be similar to MS(S). Poultry products produced by mechanical separation are similar to MS(S) in that they are finely comminuted and paste-like in consistency and form, and result from the mechanical separation and removal of most of the bone from attached skeletal muscle and other tissue of poultry carcasses and parts of carcasses.

[1] Designated States are States that have failed to develop or are not effectively enforcing requirements at establishments, within their jurisdiction, for the slaughter of livestock and/or the preparation of products thereof, that are at least equal to those of Subchapters I and IV of the FMIA. Once a State is designated, the provisions of Subchapters I and IV of the FMIA apply to the operations and transactions of establishments that operate solely within the State.

Over the years, the meat and poultry industries have referred to poultry product produced by mechanical separation as "mechanically deboned poultry" and "comminuted poultry," and have declared the product as poultry or poultry meat (e.g., "chicken" and "turkey meat") on the labels of products in which they are used as ingredients. The Agency first conducted a rulemaking regarding poultry products produced by mechanical separation in 1969. In subsequent years, the amount of such product being manufactured and the number and range of poultry products and meat food products in which it is used as an ingredient, has increased significantly. Moreover, the Agency has gained a great deal of knowledge from its rulemakings regarding the livestock product resulting from the mechanical separation and removal process, viz., MS(S). More recently, in a lawsuit, *Bob Evans Farm, Inc. et al.*, v. *Mike Espy, Secretary of Agriculture (D.D.C. Civil Action No. 93–0104)* several red meat sausage manufacturers alleged that, without a regulatory definition and standard for poultry products produced by mechanical separation, a disparate situation exists between labeling mechanically separated poultry and MS(S), the livestock product resulting from the mechanical separation and removal process, for which a regulatory definition and standard exist. The red meat sausage manufacturers have alleged that the disparate labeling situation poses an unfair advantage for the manufacturers of mechanically separated poultry products.

Actions in Response to Labeling Issues

FSIS considered the appropriate course for addressing these issues and initiated two actions in response to them. FSIS published an advance notice of proposed rulemaking in the **Federal Register** on March 3, 1994 (59 FR 10230), which solicited comments and requested data on various tentative positions on poultry products produced by mechanical separation. The second action was a proposed rule (59 FR 10246), also published on March 3, 1994, on which this final rule is predicated, that focused on the meat product derived from the advances in meat/bone separation machinery and recovery systems that is comparable to "meat" as traditionally defined in 9 CFR 301.2(rr).

Taking into account the information and experience acquired since 1969 and current regulatory policies, FSIS reviewed and reevaluated the existing poultry regulations, particularly in light of the labeling issues. As a result of its review and reevaluation, the Agency now believes that the method of deriving boneless poultry products by the mechanical separation and removal of most of the bone from the meat and other tissues of poultry carcasses and parts of carcasses results in a product whose physical form and texture differ materially from those of other boneless poultry products produced by traditional deboning techniques. Mechanically separated poultry is derived using a machine that operates on the differing resistance of bone and tissue to passage through small openings, whether it employs sieves, screens, or other devices. Such machines mechanically separate and remove most of the bone from poultry carcasses and parts of carcasses resulting in a finely comminuted, paste-like product. The starting materials, which may have undergone an initial bone breaking process, are pushed under high pressure through equipment with apertures that allow a small amount of powdered bone to pass through with the soft tissue. This is different than boneless poultry derived by traditional means, i.e., hand-deboning, and such differences have potential consequences for consumer expectations. FSIS has statutory responsibilities under the Poultry Products Inspection Act (PPIA) and the FMIA to assure that consumers receive poultry and meat food products that are not adulterated and that bear labeling that is not false or misleading. Mechanically separated poultry is produced by essentially the same technology and has characteristics (i.e., physical form and texture) similar to those of the livestock product, MS(S). Yet, the regulatory requirements for labeling these two products currently are inconsistent with one another. Therefore, the Agency is proposing that further regulatory action is necessary pursuant to its statutory responsibilities to protect the public and prevent the preparation and distribution in commerce of poultry products and meat food products which are misbranded or not properly marked, labeled, or packaged. As such, the Agency is proposing in a separate document in this issue of the **Federal Register** to amend the poultry products inspection regulations (9 CFR Part 381) to revise and supplement the requirements for the manufacture, characteristics, and labeling of poultry products produced by mechanical separation and the labeling of products in which they are used as ingredients.

As a result of data and information provided in response to the proposed rule on Meat Produced by Advanced Meat/Bone Separation Machinery and Meat Recovery Systems and otherwise acquired by FSIS, FSIS has determined that advances in meat/bone separation machinery and meat recovery systems, which do not grind, crush, or pulverize bone in order to remove skeletal muscle tissue adhering to bones of livestock (i.e., bones of cattle, sheep, swine, and goats) result in a product which, unlike MS(S), is comparable to "meat" as traditionally defined.

Since the 1970's, there has been increasing commercial production of processed meat products that are formulated with comminuted (i.e., ground) meat, e.g., hot dogs, in order to meet the demands of the market for such products. Most of the technology that has found commercial use will evolve in the form of improvements to meet the demands of consumers and industry. The demands of the industry have centered around the desire to harvest more usable protein, i.e., muscle tissue, and to find alternatives to recovering more usable protein, from livestock carcasses to meet consumer demands for the processed meat products formulated with skeletal muscle tissue obtained by mechanical removal. Mechanization also diminishes the economic implications of removing meat by hand caused by repetitive motion disorders for workers that hand-debone carcasses and parts of carcasses using knives, and by knife accidents. Industry data[2] indicate that over 300,000 cases of cumulative trauma disorder (e.g., Carpal Tunnel Syndrome) have occurred in the meat industry due to the strain of repetitive movements to remove meat from bones. The demands of the consumer and industry have resulted in improvements in meat/bone separation machinery and meat recovery systems to improve yields and, simultaneously, to make the process better ergonomically.

Over the past decade, FSIS has monitored the tremendous strides in modernizing the meat/bone separation machinery. FSIS has determined that there are meat/bone separators and meat recovery systems that are fundamentally different than the machines used to manufacture MS(S). These differences occur in terms of the efficiency and effectiveness of the process of separating skeletal muscle tissue from bone.

[2] Data received in comments from Longmont Foods and Butterball Turkey Company on Docket No. 93–008ANPR, "Labeling of Poultry Products Produced by Mechanical Deboning and Products in Which Such Poultry Product Is Used" (58 FR 33040), June 1993. These data are available for public inspection in the FSIS Docket Clerk's office.

The Removal of Muscle Tissue From Livestock Bones

Machines that are classified as meat/bone separators have been developed that emulate the physical action of hand-held high-speed knives for the removal of skeletal muscle tissue from bone, e.g., the Wizard knife. The advances in meat/bone separation have led to recovery systems that separate meat from bone without crushing, grinding, or pulverizing bones such that the meat is removed by shaving, pressing, or scraping the muscle tissue from the bone surface similar to the action of the hand-held high-speed knives. Thus, this meat is obtained in much the same manner as that which is obtained using traditional hand-deboning techniques, where the bones emerge essentially intact and in natural physical conformation separately from the meat. For example, the most commonly used bones would include rib bones and loin bones and would be recognized as such when they emerge from the meat/bone separation machinery. FSIS believes that the description of the bones from which muscle tissue has been removed as "essentially intact" is consistent with the description of the bones resulting from the removal of muscle tissue by hand-deboning using knives, including high-speed mechanical knives, such as the Wizard knife. FSIS recognizes that even when meat is removed with the use of hand-operated knives, e.g., those used in the processing establishment, at the supermarket meat counter, or by the consumer, there is the possibility of shaving, pressing, or scraping close to the bone surface so as to unavoidably remove a minute amount of the bone's surface. FSIS has determined that this is a normal occurrence because of the difficulty in exercising precision in hand-deboning operations, and, as such, it is still in conformance with good manufacturing practices that render products safe and wholesome. Because the bones emerge from the advanced meat/bone separators in their natural shape and structure, i.e., with the connective tissue linkages that normally occur in bones, FSIS maintains that they are in natural physical conformation. Furthermore, under FSIS' longstanding boneless meat inspection procedure for meat derived by hand-deboning techniques, it is expected that the finished comminuted (i.e., ground) meat product made from the meat removed from livestock bones contains no bone perceptible to sight or touch. This result would be expected for meat derived from the advanced meat/bone separation machinery and recovery systems.

In contrast, the mechanism of traditional mechanical deboning machines from which MS(S) results, involves mechanically separating and removing most of the bone from attached skeletal muscle of livestock through the application of high pressure to crush, grind, and pulverize bones from which most of the meat has already been removed, and then using high pressure to force the resulting paste through a sieve to separate bone particles and fragments that result from crushing and pulverizing bones during processing. Because of the mechanism of the machinery used to manufacture MS(S), bone and bone particles, including bone constituents such as bone marrow and certain minerals, are incorporated into the finished product.

The regulation on MS(S) in 9 CFR 319.5 does not specify the type of equipment used to separate and remove bone because it is intended to cover the product manufactured by any such machinery that operates on the differing resistance of hard bone and soft tissue to passage through small openings, whether it employs sieves, screens, or other devices and whether or not bones are pre-broken before being fed into such equipment. However, the regulation on MS(S) is not intended to apply to whole pieces of muscle tissue which have been removed from livestock bones by mechanical or other means (47 FR 28223). FSIS has determined that the consistency of MS(S) and its content of bone, including bone marrow, and certain minerals, as well as muscle tissue, are materially different from those of "meat," and that these differences have potential consequences for finished product quality and for health and safety which are addressed by the regulations for MS(S) (9 CFR 318.18, 319.5, and 319.6) and supported by the Agency's 1979 report on the health and safety aspects of mechanically deboned meat.[3]

Starting Materials

The starting materials from which the meat from advanced meat/bone separation machinery and meat recovery systems results are intact livestock bones with adhering skeletal muscle and other soft tissue. While it has been reported that it is possible to use whole carcasses, the raw materials for this type of processing generally are parts of carcasses with skeletal muscle attached. Adhering skeletal muscle tissue usually varies in amount, depending on the anatomical origin and size of the bones. Typically, the livestock bones with adhering skeletal tissue applicable to the advances in meat recovery are those where the adhering tissue cannot be efficiently or effectively removed by traditional hand-deboning techniques, and the bones are of sufficient hardness and of appropriate size compatible with the operation of the advanced meat/bone separator and meat recovery system. It is FSIS' understanding that the advanced machinery is capable of handling medium to smaller size bones, e.g., rib bones, button bones, loin bones, and feather bones. The fact that no bone crushing, grinding, or pulverizing occurs limits the types of bones that are used. The bones must be hard enough to emerge from the process essentially intact and in natural physical conformation.

In the traditional mechanical deboning process, described in the 1982 final regulations on MS(S) (47 FR 28214), it is possible to use whole carcasses; however, generally, the raw materials for the conventional process are parts of carcasses from which most of the skeletal muscle already has been removed by traditional hand-deboning methods. With the mechanical deboning technology described in the regulations on MS(S), these bones are broken up and pushed under high pressure through equipment with apertures that allow a small amount of powdered bone to pass through with the soft tissue.

Characteristics and Composition of Meat

FSIS has determined that the resulting product derived from advanced meat/bone separation machinery and meat recovery systems is comparable to meat derived by hand-deboning techniques, including the use of high-speed mechanical knives and that, as such it warrants classification as "meat." FSIS has also determined that current relevant Federal meat inspection regulations on labeling meat should apply and, as such, the product derived from advanced meat/bone separation machinery and recovery systems may be described by any term that accurately reflects it as "meat." Advanced meat/bone separation machinery and meat recovery systems apply a process mechanism that shaves, presses or scrapes adhering tissue from the surface of livestock bones. The machines do not grind, crush, or pulverize bones to separate muscle tissue, and the bones

[3] A copy of the report entitled, "Health and Safety Aspects of the Use of Mechanically Deboned Meat, Final Report and Recommendations Select Panel" and "Health and Safety Aspects of the Use of Mechanically Deboned Meat, Volume II. Background Materials and Details of Data" is available for public inspection in the FSIS Docket Clerk's office.

and the interconnecting soft tissues that link bones emerge from the process in a manner consistent with hand-deboning operations that use knives.

Meat products derived by advanced meat/bone separation are characterized by identifiable muscle fiber structure, visible differentiation of lean and fat, and components normally associated with and expected in meat obtained by hand-deboning, including that obtained by using mechanical knives. The advanced recovery systems produce distinct whole pieces of skeletal muscle tissue with a well-defined particulate size similar in consistency to (species) trimmings derived by hand-deboning and used to formulate processed meat products. The color of the meat derived from these systems is similar to that of (species) trimmings.[4] As such, the meat derived from the advanced meat/bone separation and recovery systems conforms to the definition of "meat" because it has the functional and chemical characteristics of meat; there are no powdered bone or constituents of bone, e.g., bone marrow, that are not in conformance with the definition and expectation of meat or that which would render the product adulterated or misbranded under the regulations. FSIS has determined that, unlike MS(S), consumer expectations of "meat" are met with regard to the product obtained from the advances in meat/bone separation machinery and recovery systems, because the product's characteristics, in terms of appearance and texture, and its composition are similar to those of "meat," as currently defined in 9 CFR 301.2(rr).

In contrast, MS(S) differs from hand-deboned meat and the meat derived from advanced meat/bone separation due to its highly comminuted, spread-like consistency and its content of varying amounts of bone, including bone marrow, and certain minerals, as well as muscle tissue. MS(S) is amorphous and lacks the characteristic components seen in meat, e.g., muscle fiber, the presence of connective tissue fibers in the way they occur naturally, and distinct lean and fat components. These characteristics render the product materially different than meat.

Characteristics of Meat/Bone Separation Machinery

Machinery of the type described as advanced meat/bone separation machinery and meat recovery systems has been developing over the past 15 years. FSIS believes that the use of such machines has been limited because of the uncertain regulatory status of the product from these machines. It has not been clearly defined through regulatory means that the product of these machines would continue to be declared as meat or if the product might be reclassified as MS(S) or some other unique ingredient that would be identified on the label of products in which it is used as an ingredient. In order to clarify this situation, the Agency decided to publish a proposal that clearly defines as "meat," product resulting from these advanced systems.

The Proposal

On March 3, 1994, FSIS published in the **Federal Register** a proposed rule (59 FR 10246) to amend the Federal meat inspection regulations by amending definition of "meat" set forth in 9 CFR 301.2(rr) to include as "meat," product resulting from advanced meat/bone separation machinery and recovery systems, establishing criteria for meat from advanced meat/bone separation machinery and recovery systems, and establishing requirements for the handling of meat derived from advanced meat/bone separation machinery and recovery systems, as well as the material from which it is derived. A summary of the proposed rule follows.

1. Definition of Meat

FSIS proposed to amend the definition of "meat" set forth in 9 CFR 301.2(rr) of the Federal meat inspection regulations to include as "meat," product meeting certain criteria, that is derived from the mechanical separation of skeletal muscle tissue from the bones of livestock by using advanced mechanical meat/bone separation machinery and meat recovery systems that do not crush, grind, or pulverize bones, and from which the bones emerge comparable to those resulting from hand-deboning, i.e., essentially intact and in natural physical conformation such that they are recognizable as loin bones, rib bones, etc., when they emerge from the machinery.

2. Criteria for Meat Derived From Advanced Meat/Bone Separation Machinery and Recovery Systems

FSIS proposed to establish protein quality and calcium content criteria for meat derived from advanced meat/bone separation machinery and meat recovery systems and assure its compliance with such criteria through a quality control program in order to assure conformance with consumer expectations of "meat" and production of "meat" comparable to that obtained by hand-deboning techniques. A maximum calcium content (as a measure of bone solids) of not more than 0.15 percent or 150 mg/100 gm of product (within a tolerance of 0.03 percent or 30 mg) and a minimum protein quality requirement of a protein digestibility-corrected amino acid score (PDCAAS) of not less than 40 expressed as a percent, or an alternative measure of at least 33 percent essential amino acids (EAA) of the total amino acids present, was proposed to be established for the product.

a. *Calcium content.* FSIS proposed to include in the amendment to the definition of "meat," criteria on maximum calcium content (as a measure of bone solids content) of this meat to assure that the meat derived from advanced meat/bone separation machinery and recovery systems is both consistent with consumer expectations of "meat," e.g., beef trimmings, and comparable to "meat," as traditionally defined, that is used to formulate further processed meat food products. The criteria is a measure designed to ensure that bones are not crushed, ground, or pulverized during processing. The maximum calcium content of 0.15 percent or 150 mg/100 gm of product is supported by data submitted to FSIS for the product derived from advanced meat/bone separation machinery.[5] Furthermore, based upon analytical repeatability studies conducted by the Agency for calcium, FSIS proposed to establish a tolerance, i.e., an allowance for statistical variability, of 0.03 percent or 30 mg/100 gm for individual samples.[6]

b. *Protein quality.* FSIS proposed to require that meat derived from advanced meat/bone separation machinery and recovery systems meet a minimum protein quality requirement—a PDCAAS of not less than 40 expressed as a percent and to accept as evidence of compliance with this requirement an alternative measurement—the content of 7 essential amino acids being at least 33 percent of the total of 17 amino acids present. The protein digestibility-corrected amino acid score was proposed to be determined by methods given in sections 5.4.1, 7.2.1, and 8.00 in the "Protein Quality Evaluation, Report of the Joint FAO/WHO Expert Consultation on Protein Quality

[4] Data provided to the Agency by Millbank Processing Machinery Inc., Englewood, Colorado, are available for public inspection in the FSIS Docket Clerk's office.

[5] A summary report of data provided to FSIS on the calcium content of meat from advanced meat/bone separation machinery and recovery systems is available for public inspection in the FSIS Docket Clerk's office.

[6] A copy of an FSIS report containing data on the repeatability of analyzing calcium content (June 1992) is available for public inspection in the FSIS Docket Clerk's office.

Evaluation" which was incorporated by reference in the proposed rule. The proposed protein digestibility-corrected amino acid score of not less than 40 expressed as a percent is consistent with nutrition labeling requirements for protein in foods for children older than one but less than four years of age. Protein quality is a measure of the content, proportion, and availability of essential amino acids in food protein and a measure of the ability of the food protein to support human growth and body protein maintenance.

FSIS proposed to permit an alternative measurement to the protein digestibility-corrected amino acid score method, which requires a digestibility measurement in addition to an amino acid analysis, to control the cost of monitoring compliance with the protein quality requirement. FSIS proposed that, for the purpose of measuring the protein quality of meat derived from advanced meat/bone separation machinery and recovery systems, an alternative measurement of protein quality would be allowed that is comparable to the protein digestibility-corrected amino acid score. This measure would be based on a comparison between the "essential amino acid content of meat" and "total amino acids present in meat," i.e., an essential amino acid content of at least 33 percent of the total amino acids present in the meat. Essential amino acid content includes isoleucine, leucine, lysine, methionine, phenylalanine, threonine, and valine content, and the total amino acids present include isoleucine, leucine, lysine, methionine, phenylalanine, threonine, valine, tyrosine, arginine, histidine, alanine, aspartic acid, glutamic acid, glycine, proline, serine, and hydroxyproline content. The proposed rule required essential amino acid content to be determined by methods given in sections 5.4.1, 7.2.1, and 8.00 in the "Protein Quality Evaluation, Report of the Joint FAO/WHO Expert Consultation on Protein Quality Evaluation" which was incorporated by reference in the proposed rule.

c. *Quality control.* FSIS proposed to require that meat derived from advanced meat/bone separation machinery and recovery systems be produced under an approved quality control program. The function of a quality control program would be to restrict potential deviations from the prescribed definition of meat by controlling the factors that can affect conformance with the definition. Thus, FSIS proposed to require that the quality control program provide the controls and information necessary to assure that the meat from advanced meat/bone separation and recovery systems will meet each of the requirements of the regulations and will enable establishment personnel and FSIS to monitor it for effectiveness. FSIS focused on methods that would maintain the uniformity of starting materials, and control the handling and processing of starting materials and resulting product. It was proposed that the methods of analysis for calcium and protein quality that were permitted and that were intended to be used should be identified in the quality control system.

Under the proposal, the owner or operator of an establishment that intends to manufacture meat from advanced meat/bone separation machinery and recovery systems would request the Administrator of FSIS to approve the establishment's quality control program. The procedures and criteria for receiving such requests and assessing the adequacy of programs for quality control, as well as for terminating approval, would be those set forth in 9 CFR 318.4.

To ensure that product satisfies the calcium requirement, FSIS proposed that a sample of at least 1 pound from each lot of production would be taken and analyzed for calcium. A lot would consist of the meat derived from advanced meat/bone separation machinery and recovery systems, designated as such by the operator of the establishment or his or her agent, from the product produced from a single species of livestock in no more than one continuous shift of up to 12 hours. The results from chemical analyses would be compared to the requirement of 150 mg/100 gm of product within a tolerance of 0.03 percent or 30 mg. If statistical evidence exists that product may not be in compliance, then further sampling of the product was required to demonstrate that the product is in compliance with requirements for meat derived from meat/bone separation and recovery systems.

FSIS proposed that statistical evidence of non-compliance exists when an individual analytical result is more than 0.03 percent (i.e., 30 mg) above the requirement, i.e., greater than 0.18 percent (i.e., 180 mg). (This tolerance is derived by equating it to three times the expected standard deviation (i.e., 0.1 percent) of the analytical procedure used by FSIS to measure the calcium contents in samples.)[7]

[7] Data from an FSIS study are available for public inspection in the FSIS Docket Clerk's office.

If any single analytical result is more than 0.18 percent, FSIS proposed that, before product from a production lot that is still at the establishment or one subsequently produced can be considered to be in compliance, at least three samples[8] from that lot must be taken and analyzed for calcium, either separately or as a composite (i.e., combining the three samples for analysis), at the option of the establishment. The average of the results or the composite result must comply with the requirement for calcium (i.e., less than or equal to 0.15 percent). Taking three samples from each subsequently produced lot would continue until five consecutive lots[9] have mean or composite results less than or equal to 0.15 percent. Individual results or an average of results would be rounded to the nearest 0.01 percent based on the precision of the methodology for measuring calcium. If the FSIS program official detects any results out of compliance, the program official may undertake normal compliance procedures.

FSIS proposed that, if the statistical evidence indicated that a production lot was not in compliance with the calcium requirement, the lot must be labeled as MS(S) and meet the requirements for MS(S) in 9 CFR 319.5. FSIS indicated that in this situation, it believed that the process was out of control, and that there was the likelihood that too much calcium had been incorporated in the recovered meat, and, therefore, it should be identified as MS(S).

FSIS proposed that at least 1 pound of product be sampled each week during production of a lot for conformance with protein quality criteria. It was proposed that once three consecutive results from three production lots were in compliance with the criteria on protein quality (i.e., a protein digestibility-corrected amino acid score or essential amino acid content), sampling of production lots could be reduced to a monthly basis. It was also proposed that after 6 months, sampling of production lots could be reduced to a quarterly basis.[10] Subsequently, if samples are out of compliance,

[8] Three samples, either analyzed as individual samples or as a composite sample (i.e., combining the three samples), are statistically representative for measuring calcium in a production lot.

[9] The provision for sampling five consecutive production lots is based on statistical sampling principles that ensure that the process is in control and that mean or composite calcium results are less than or equal to the calcium requirement.

[10] This sampling schedule ensures the statistical representation of the production lots is achieved in regard to measuring protein quality.

sampling each week would be repeated until the results are in compliance.

A major concern of FSIS is the assurance that consumers receive the quality of meat they expect in terms of the value of protein needed to sustain good nutrition. Therefore, FSIS proposed that product from advanced meat/bone separation machinery and recovery systems that did not meet the requirements of the criteria for protein quality be identified as "(species) fat" or "(species) connective tissue," and labeled in accordance with the applicable provisions in 9 CFR part 317. Protein quality values less than the proposed criteria are comparable to those associated with "(species) fat" and "(species) connective tissue."

3. Handling Requirements

FSIS proposed to specify requirements for the handling of material that is to be processed into meat derived from advanced meat/bone separation machinery and recovery systems and for handling such product. FSIS proposed that the handling of such material comply with the same provisions as are currently prescribed in 9 CFR 318.18 for handling material for mechanical processing. These requirements would provide that material to be processed into meat derived from advanced meat/bone separation machinery and meat recovery systems be processed within 1 hour from the time it is cut or separated from livestock carcasses or parts of carcasses, except that such product may be held for no more than 72 hours at 40 °F (4 °C) or less, or held indefinitely at 0 °F (−18 °C) or less. It was proposed that meat from advanced meat/bone separation machinery and recovery systems must be used as an ingredient in a meat food product directly after being processed, except that it may be held prior to such use for no more than 72 hours at 40 °F (4 °C) or less or indefinitely at 0 °F (−18 °C) or less.

Discussion of Comments

FSIS received 30 comments in response to the proposed rule. Fifteen comments were submitted by consumers, 9 by food manufacturers/distributors, 4 by trade associations, 1 by a member of academia, and 1 by a machinery manufacturer. The majority of the comments supported the proposed rule, provided that some modification or deletion is made with regard to the proposed requirements for protein quality, quality control, and handling.

Consumers Comments

All 15 consumers supported the proposed rule and stated that the new nutritional labeling on meat and poultry will help satisfy the informational needs of consumer's regarding the nutrient contents of meat and meat products containing meat as an ingredient, including meat produced by advanced meat/bone separation and meat recovery systems.

Food Manufacturers/Distributors Comments

Three food manufacturers/distributors who submitted comments did not provide comments that either support or take issue with any particular facet of the proposal; their comments were general in nature. They stated that they support harmonization of regulations for meat and poultry products and would endorse a regulation that would allow meat products with bone solids contents of less than or equal to 1 percent (measured as calcium) to be categorized as meat (i.e., "species"), regardless of the processing procedure, i.e., traditional mechanical deboning or advanced meat/bone separation and meat recovery systems.

The other six comments submitted by the food manufacturers/distributors supported the proposed rule, provided that some modifications are made in specific areas, i.e., the definition of meat, calcium content criteria, protein quality, quality control, handling requirements, and bone breakage tolerance and the new machinery.

All six food manufacturers/distributors to which the previous paragraph refers had some reservations about the definition of the meat derived from the advanced machinery and recovery systems and the types of machinery capable of producing such meat. Their statements indicated that it is not necessary to define meat by making distinctions based upon whether specific pieces of machinery do or do not crush, grind or pulverize bones; if product complies with finished product calcium requirements, the specific of the methods of processing should be irrelevant. This was based on a belief that there is equipment that can successfully separate "meat" where grinding, crushing, or pulverizing is part of the process. These same commenters suggested that incidental bone breakage occurs during any meat/bone separation operation, therefore, it should be clearly identified that incidental bone breakage would be acceptable and would be controlled by bone particle size limits. It was also suggested by one commenter that the word "crushing" should be substituted with the word "chopping" when describing meat and machinery systems that do not "chop," grind, or pulverize bones because such systems do result in some minor "crushing."

Of the six food manufacturers/distributors that supported the proposal with some condition for modification, three supported the calcium criteria in the proposed rule. The other three did not support it stating that (1) the Agency should develop a single calcium criteria applicable to all "meat" species, which should be applied to all products independent of the processing method or bone separation technique, (2) product should be from skeletal muscle tissue and contain no more than 1 percent bone solids or an equivalent calcium content of 250 mg/100 gm of product, and (3) any meat with 1 percent bone or more than 0.235 percent calcium should be called by its common or usual name regardless of species.

Of the six food manufacturers/distributors who supported the proposal with some condition, two supported the protein quality criteria in the proposed rule. The other four did not support the proposed criteria citing that (1) the nutritive value of meat is well recognized, and the amino acid content of meat separated by hand, or by machine, will be the same when the same beginning sources are used; (2) to segregate "meat" from a mechanical source from hand deboned "meat" by requiring an amino acid analysis casts undeserved doubts upon the meat from mechanical means, especially if it is asserted to be compositionally the same as hand-deboned meat; (3) if this ruling is to recognize meat from a mechanical process as "meat," then the protein quality requirement for mechanically "harvested" meat is unfounded; (4) the marketplace will determine the quality of the protein in the meat produced by meat/bone separation machinery and meat recovery systems; (5) protein quality was not an issue with the Nutrition Labeling and Education Act of 1990, so it should not be of concern as a processing control for a product that will eventually be nutritionally labeled; (6) if the protein quality is of such a concern, it should be a mandatory parameter and required to be labeled in the Nutrition Facts panel on all products; and (7) products that require such extensive testing will take 2 to 3 days turnaround just to ensure the product meets compliance.

Of the six food manufacturers/distributors who supported the proposal with some condition for modification, only one supported the quality control criteria in the proposed rule. The other five did not support the provisions for

quality control in the proposed rule and their statements included the following: (1) Mandatory quality control programs will be an additional burden for the meat processor in situations where special controls are not needed; (2) the process of separating meat from bones has been historically accepted by the Agency and the industry without mandatory programs; (3) the process is comparable to removing meat from bones by hand, a situation that does not require a mandatory quality control program; (4) if the definition of meat includes an evaluation of the physical condition of the bones after the meat has been removed plus the bone content of the meat as measured by calcium content, the proposal should be referring to a partial quality control program to ensure appropriate labeling requirements are met; (5) the Department can and should maintain its focus on food safety questions and not quality issues, possibly through the requirement of some type of Hazard Analysis Critical Control Point (HACCP) program; and (6) issues of product quality, as opposed to safety, should remain within the discretion of the processing establishment.

Of the six food manufacturers/distributors who supported the proposal with a condition for modification, three supported the handling requirements criteria in the proposed rule. The other three did not support the rule and their statements included the following: (1) If the current industry practices are reviewed, the Agency will find numerous processors that exceed the proposed 72-hour time limit for using starting materials and the meat derived from the advanced systems; (2) today, storage of meat from advanced systems at temperatures colder than 40° F (4° C) and pre-blending meat from advanced systems with curing ingredients allows the time necessary for transporting and processing; (3) requiring the proposed time/temperature criteria will change the nature of meat as traded today by restricting supply locations and will alter the economic balance of the market—some processors may discontinue use of these materials because they cannot receive adequate supplies in 72 hours; and (4) the producing plant should be responsible for controlling the environment around meat from advanced systems to ensure that microbial spoilage does not occur.

Trade Association Comments

Three of the four trade associations commenting on the proposed rule supported its provisions, provided that some modifications are made in specific areas (i.e., the definition of meat, calcium content criteria, protein quality, quality control, and handling requirements). The other trade association did not support the proposed rule and suggested that parity was the issue in defining meat and that the same labeling that is required for MS(S) should apply to MDP.

All four trade associations had some concerns regarding the proposed calcium content criteria and their statements included the following: (1) Establishing a uniform standard for calcium content for both meat and poultry (i.e., 250 mg/100 gm of product of calcium) would create comparability; and (2) a calcium content limit is unnecessary; the Department's nutrition labeling requirements will serve to ensure that all consumers will receive specific calcium information.

Three of the four trade associations had some reservations regarding the proposed protein quality requirements and their statements included the following: (1) A protein digestibility corrected amino acid score of not less than 40 expressed as a percent or an essential amino acid content of at least 33 percent of the total amino acids present in the meat should not be required by this or any other regulation because protein quality varies significantly throughout the meat and food supply as a whole; (2) protein quality is a marketplace issue and need not be regulated by an Agency which is focusing on direct food safety concerns; (3) the United States is not a protein deficient society which requires every protein source to be of highest "quality"; and (4) there should be no restrictions on protein and fat content for product qualified to be labeled as "meat" because the protein and fat content of finished products will either be dictated by existing regulatory finished product standards, or by manufacturing specifications, and/or will be fully delineated in nutrition labeling on finished food product packages.

Three of the four trade associations had some reservations regarding the proposed requirement for a mandatory quality control program to assure compliance with the provisions of the definition of meat derived from advanced systems. Their statements included the following: (1) This requirement would only serve to impose a special requirement upon a newer technology and a discrete sub-category of product in an arbitrary manner when other technology does not induce the same requirement; and (2) partial quality control programs should be a voluntary option.

Three of the four trade associations had some reservations regarding handling requirements and their statements included the following: (1) Proper product handling is a legitimate concern for both government and industry, but there is no apparent basis for singling out the product to be addressed by the regulation for special scrutiny; such detailed requirements are not in place for other meat products, e.g., ground beef; (2) issues which truly relate to food safety concerns will be addressed more frequently in industry HACCP programs as the Agency proceeds to clarify its HACCP strategy, and (3) because such refrigeration/freezing requirements may be more broadly applied to other red meat products, they should be developed separately from the current proposal, be broadly based, and preferably handled within a company's HACCP framework.

Machinery Manufacturer Comment

The manufacturer of machinery supported the proposed rule. The machinery manufacturer also stated that, with this new technology, meat processors will be able to fully utilize edible portions of meat carcasses by mechanical means without the incorporation of pulverized bone or otherwise introducing significant levels of bone that are of potential health consequence into meat systems.

Member of Academia Comment

The comment from academia provided an objection to the proposed protein quality criteria for meat derived from advanced meat/bone separation machinery and recovery systems. The commenter stated that "every available survey indicates that all meat eating groups in the U.S. far exceed their protein quality and quantity requirements" and suggested that the protein quality criteria be removed from the rule. Furthermore, the commenter provided literature to support this. The commenter also stated that they strongly agree with the red meat sausage manufacturers that have alleged that a disparate situation exists between labeling certain poultry products produced by mechanical separation and MS(S) which poses an unfair advantage for the manufacturers of poultry products. The commenter believes that standards for MS(S) and meat produced by advanced meat/bone separation machinery and meat recovery systems should be similar to the present ones for mechanically deboned poultry.

Response to Comments

1. The Definition of Meat

In response to the comments that it is not necessary to define meat by making distinctions based upon whether specific pieces of machinery do or do not crush, grind, or pulverize bones, FSIS has determined that such a distinction is important because the type of machinery affects the characteristics (in terms of appearance, texture, and composition) and functionality of the material produced. Such distinction is critical because machinery that crushes, grinds, and/or pulverizes bones from livestock to remove adhering muscle tissue results in a meat food product whose paste-like consistency and content of bone, including bone marrow and certain minerals, are materially different from those of "meat." Furthermore, these differences have potential consequences for finished product quality and health and safety. Because of the mechanism of this machinery, bone and bone particles, including bone marrow, are incorporated into the finished product which is not consistent with that of meat as traditionally defined.

In contrast, FSIS has determined, as discussed in the section of this document entitled "Characteristics and Composition of Meat," that the product derived from advanced meat/bone separation machinery and recovery systems that do not crush, grind, or pulverize bones to remove adhering muscle tissue is comparable to meat derived by hand-deboning techniques, including the use of mechanical knives, because it has the functional and chemical characteristics of "meat." As such, the product derived from the advanced systems warrants classification as "meat."

Some commenters expressed a need for clarifying the acceptability of "incidental" bone breakage with regard to the use of advanced meat/bone separation machinery and meat recovery systems. FSIS believes that the description of the bones from which muscle tissue has been removed that emerge from the advanced meat/bone separation machinery and meat recovery systems, set forth in the proposed regulations, sufficiently addresses this issue, and, thus, this description remains as proposed. The description in the proposed amendment to the definition of meat is consistent with the description of the bones resulting from the removal of muscle tissue by hand-deboning using knives, including high-speed hand-held mechanical knives. This description indicates that these bones emerge comparable to those resulting from hand-deboning (i.e., essentially intact and in natural physical conformation such that they are recognizable, such as loin bones and rib bones when they emerge from the machinery), thus, recognizing that some removal of a minute amount of the bone surface might unavoidably occur during this process.

FSIS recognizes that even with the use of hand-operated knives, e.g., at the supermarket meat counter to cut up large cuts of beef, there is the possibility of shaving, pressing, or scraping close to the bone surface so as to unavoidably remove a minute amount of the bone's surface when meat is removed. FSIS has determined that this is a normal occurrence because of the difficulty in exercising precision in hand-deboning operations and, as such, it is still in conformance with good manufacturing practices that render products safe and wholesome. The minor abrasion of bone edges or surfaces in removing meat from bone using hand-deboning techniques, including mechanical knives, and the advanced meat/bone separation machinery is not the same as bone crushing, grinding, or pulverizing which would result in bone and constituents in bone being incorporated in the finished product in a manner inconsistent with meat as traditionally defined.

In response to the suggested replacement of the word "crush" with the word "chop" in the proposed amendment of the definition of meat, i.e., product derived from advanced meat/bone separators that "do not crush, grind, or pulverize bones" to remove adhering muscle tissue, FSIS has concluded that "crush" is a more appropriate word. Crushing involves altering or destroying structure and, thus, is the action which must be avoided in order for bones to emerge essentially intact and in natural physical conformation from the advanced machinery. Therefore, the amendment to the definition of meat to include as "meat," product derived from advanced meat/bone separation machinery and recovery systems remains as proposed.

2. Calcium Content Criteria

The proposal to amend the definition of meat to include product derived from advanced meat/bone separation machinery and recovery systems included criteria on maximum calcium content, as a measure of bone solids. A maximum calcium content, as a measure of bone solids, of not more than 0.15 percent or 150 mg/100 gm of product (within a tolerance of 0.03 percent or 30 mg) was proposed. This equates to a bone solids content of 0.6 percent.

FSIS has determined that a maximum calcium content restriction for meat derived from advanced meat/bone separation and recovery systems is warranted. Because bones are composed primarily of calcium, calcium content is an indicator that the advanced meat/bone separation operation is in control and that the bones with adhering tissue are not ground, crushed, or pulverized during the process of removing the tissue from the bones. As such, by restricting the calcium content of the product resulting from the advanced meat/bone separation and recovery systems, in combination with the requirement that bones emerge from the advanced meat/bone separation systems essentially intact, there is an assurance that the product derived from the advanced systems is comparable to "meat" derived by traditional means, including that resulting from the use of mechanical knives. Moreover, calcium content criteria provides assurance that the meat derived from the advanced systems is consistent with consumer expectations of "meat," e.g., beef trimmings, as traditionally defined, that is used to formulate further processed meat food products.

FSIS has also concluded that the proposed maximum calcium content for meat derived from advanced meat/bone separation and recovery systems is supported by data that reflect its comparability with meat produced by hand-deboning techniques and other mechanical means of removing meat from bone that do not involve crushing, grinding, or pulverizing bone. The maximum calcium content reflects what is achievable when good manufacturing practices (GMP's) are followed. Additionally, the criteria reflect the expected statistical variability attributed to analytical methodology for determining calcium. These data were available for public inspection during the comment period. The criteria on which these data are based will assure that the meat derived from the advanced systems is both consistent with consumer expectations of "meat," e.g., beef trimmings, and comparable to "meat," as traditionally defined, that is used to formulate further processed meat food products.

In response to the suggestions that the criteria be changed to a calcium content of 235 mg/100 gm or a calcium content of 250 mg/100 gm (i.e., 1 percent bone solids content), these comments were not supported by data. These values were considered reasonable by the commenters because they relate to the current allowance for the maximum

bone solids content permitted in boneless poultry. However, FSIS believes that because there are inherent physical and compositional differences between the bones from poultry and bones from livestock species, one calcium criteria cannot be applied to both types of animals. The calcium criteria FSIS is adopting here and for mechanically separated poultry reflect these differences and what FSIS considers achievable when the respective technologies are applied in accordance with GMP's. Therefore, FSIS is maintaining the calcium criteria of 150 mg/100 mg of product (within a tolerance of 30 mg), as proposed.

3. Protein Quality

FSIS agrees with the commenters' views regarding the lack of need for a mandated protein quality requirement for the meat derived from the advanced meat/bone separation machinery.

In the proposed rule, FSIS proposed that meat derived from advanced meat/bone separation systems and recovery systems meet a minimum protein quality requirement, i.e., a protein digestibility corrected amino acid score of not less than 40 expressed as a percent or the alternative measurement of essential amino acids being at least 33 percent of the total 17 amino acids present. FSIS has concluded that the lack of the need for a protein quality requirement is founded on scientific literature provided and cited by comments from academia and statements made by other commenters regarding the status of the quality of protein in diets of individuals in the U.S. with which FSIS agrees. According to scientific literature,[11] there has not been an indication of health problems identified with protein quality—consumption of enough high-quality protein by humans in the U.S. is not a problem. In the preamble of the final nutrition labeling regulations, both FSIS and the Food and Drug Administration (FDA) stated that current evidence suggests that the diet typically consumed in the U.S. provides for an adequate protein intake of sufficiently high quality to meet the nutritional needs of adults and children 4 or more years of age (58 FR 632 and 2079). Furthermore, because there are no outstanding health implications requiring the establishment of protein quality criteria for food products, in general, it would be unnecessary to require such criteria for a specific product, viz., red meat. Therefore, FSIS is removing its proposed provision for a protein quality requirement which would include the requirement for identifying product as "(Species) fat" and "(Species) connective tissue."

4. Quality Control—Compliance Procedures

FSIS agrees with the commenters' views regarding the lack of need for a requirement for a mandatory approved quality control program. After reviewing the comments and re-examining the Agency's current regulatory agenda, FSIS has concluded that because there are efforts underway within the Agency to study and address ways of reducing the potential for situations that would render any meat or poultry product adulterated, unwholesome, and/or misbranded it is premature to address the need for a mandatory quality control program for meat derived by this one distinct type of system.

However, although FSIS has concluded that a mandatory quality control program is not needed, recordkeeping, a certain provision that would be part of any mandatory quality control program, as set forth in 9 CFR 318.4, is still needed to prevent noncompliance with the definition of meat and to minimize the likelihood of manufacturing products that do not comply with regulatory requirements. FSIS has concluded that a records maintenance program for assuring product complies with the calcium content criteria is still needed and that the records must reflect data compiled in a prescribed way, i.e., the compliance procedure set forth in its proposed regulation. In regard to this matter, the proposed regulation stated that a prerequisite for label approval for meat derived from advanced meat/bone separation machinery and recovery systems was that it should be produced by an establishment under an approved quality control program, which had to be approved in accordance with 9 CFR 318.4 (d)(1), (d)(2), and (e). The proposed regulation also indicated that the quality control system should provide the controls and information necessary to ensure it meets the requirements for the product and enables establishment personnel and program employees to monitor the system for effectiveness. Furthermore, as part of the approval process, 9 CFR 318.4(d) requires a letter to be submitted by the establishment which indicates that all data and information generated by the program will be maintained to enable the Department to monitor compliance and it also requires that the length of time the records will be maintained be stated. Thus, recordkeeping was clearly part of a quality control program.

The records of data from testing must be available to the inspector or any other duly authorized representative of the Agency. The availability of these types of records for review was part of FSIS' proposed regulations for a required quality control program. The quality control program was required to provide the information necessary to enable program personnel to monitor the system for effectiveness, and it set up the method for determining calcium content compliance, which is being adopted as part of this final rule.

The goal of preventing misbranding and adulteration are key issues with regard to meat products produced by mechanical meat/bone separation, and can be achieved effectively and efficiently where a monitoring and testing program incorporates appropriate methods and monitoring techniques, and adheres to good manufacturing practices. FSIS believes that product exceeding the calcium limit should not be classified as meat because it would reflect unacceptable incorporation of bone in the product during processing. To ensure that product satisfies the calcium requirement, FSIS is maintaining the position that a compliance program, as described below and set forth in its proposal, be used by manufacturers of meat from advanced systems.

In order to obtain the data to ensure compliance with the calcium requirement, a sample of at least 1 pound from each lot of production would be taken and analyzed for calcium. A lot would consist of the meat derived from advanced meat/bone separation machinery and recovery systems, designated as such by the operator of the establishment or his or her agent, from the product produced from a single species of livestock in no more than one continuous shift of up to 12 hours. The results from chemical analyses would be compared to the requirement of 150 mg/100 gm of product within a tolerance of 0.03 percent or 30 mg. If statistical evidence exists that product may not be in compliance, then further sampling of the product would ensue to demonstrate that the product is in compliance with requirements for meat derived from meat/bone separation and recovery systems.

Statistical evidence of non-compliance exists when an individual analytical result is more than 0.03 percent (i.e., 30 mg) above the requirement, i.e., greater than 0.18 percent (i.e., 180 mg). (This tolerance is

[11] Public comment, including attached research article, submitted by R.A. Field, University of Wyoming, is available for review in the FSIS Docket Clerk's office.

derived by equating it to three times the expected standard deviation (i.e., 0.1 percent) of the analytical procedure used by FSIS to measure the calcium contents in samples.) [12]

If any single analytical result is more than 0.18 percent, before product from a production lot that is still at the establishment or one subsequently produced would be considered to be in compliance, at least three samples [13] from that lot would be taken and analyzed for calcium, either separately or as a composite (i.e., combining the three samples for analysis), at the option of the establishment. The average of the results or the composite result must comply with the requirement for calcium (i.e., less than or equal to 0.15 percent). Taking three samples from each lot would continue until five consecutive lots [14] have mean or composite results less than or equal to 0.15 percent. Individual results or an average of results would be rounded to the nearest 0.01 percent based on the precision of the methodology for measuring calcium. If the FSIS program official detects any results out of compliance, the program official may undertake normal compliance procedures.

FSIS believes that, if the statistical evidence indicates that product derived from advanced meat/bone separation systems is not in compliance with the calcium requirement, the lot must be labeled as MS(S) and meet the requirements for MS(S) in 9 CFR 319.5. In this situation, the process is out of control, and there is the likelihood that too much calcium has been incorporated in the recovered meat and, therefore, it should be identified as MS(S).

5. Handling Requirements

FSIS believes that handling requirements are necessary to produce safe and wholesome product, and that potential bacterial hazards are diminished as long as handling accords with good manufacturing practices. Proper raw material and finished product handling is a concern for both the Agency and the meat industry. FSIS believes that it is the manufacturer's responsibility, in concert with FSIS', to assure that wholesome materials are used in the manufacture of its product within sound timeframes, and the safety of such product is not negatively affected. However, meat derived by advanced meat/bone separation machinery and recovery systems and the raw materials from which it is manufactured is not unique; all meat products that result from processes that involve cutting muscle tissue present opportunities for microbiological growth. Therefore, FSIS agrees with the commenters that there is a need to address the issue of handling requirements for all meat products, including meat derived from meat/bone separation techniques. FSIS is currently developing a separate rulemaking that will deal with this issue more fully and will include handling requirements for ground meat and meat trimmings, and the materials from which they are manufactured. These products are ones in which the meat derived from advanced meat/bone separation machinery and recovery systems is used. Therefore, FSIS will not include handling requirements for meat produced from advanced meat/bone separation systems in this rulemaking.

Executive Order 12866 [15]

This final rule has been determined to be significant and has been reviewed by the Office of Management and Budget under Executive Order 12866.

This rule formalizes the use of relatively new, advanced meat/bone separation machinery that increases the yield of meat trimmings from certain bones from livestock carcasses and probably also reduces the amount or type of hand-separation labor. The rule allows, but does not require, the use of the machinery. Thus, the decision to invest in this machinery rests with official meat establishments.

The product of the advanced meat/bone separation process is distinguished from the product identified as MS(S) because the advanced process does not crush or grind the bones, and meat output has characteristics comparable to those of hand-deboned meat. Qualifying product will be defined as "meat" and needs no other special designation or standard of identity. The product can be used in hamburger (beef), sausage, ground pork, and other products normally utilizing meat trimmings.

The advanced meat/bone separation machinery is currently in use in approximately 50 to 60 official establishments, all thought to be large firms. Product from such machinery is produced by several manufacturers using differing mechanisms, i.e., pressing, shaving, and scraping. An advanced meat/bone separation machine can process up to 400 beef carcasses an hour, yielding 3,500 to 4,000 pounds of product per hour. This calculates to 35 to 40 percent of meat from each carcass, about 1 to 1½ pounds more per beef carcass than that produced under a hand-deboning operation.

Costs of Final Rule

It is estimated that the annual cost for operating one machine for beef is $170,000, which includes depreciation, repair, maintenance, labor, and compliance costs. The cost per head or per unit of output depends upon capacity utilization, labor costs, and other factors. The cost of such machinery is $60,000 to $80,000 per unit, and requires one person to operate each unit. The cost of compliance with the calcium content, as a measure of bone solids, is assumed to be about $5,000 per machine annually. This includes costs for testing for calcium content and required recordkeeping to support the validity of the calcium content.

Use of the machinery requires replacement of a $600 belt each 24 to 40 hours of operation. In addition, manufacturers indicate that an establishment producing 100 head of cattle per hour (400 head per hour for pork) is the minimum size necessary to justify use of such machinery.

To the extent that advanced meat/bone separation machinery is already in use, a portion of the costs have already been incurred by those establishments currently using such machinery. If such establishments choose to continue using the advanced meat/bone separation machinery, their only additional cost would be related to compliance with the calcium content requirement. Because this is a permissive rule, other establishments would incur the new costs associated with the use of such machinery if increased net returns are anticipated.

Benefits of the Final Rule

The net benefits to the economy in the first year of implementation would be over $30 million, based on use of economic model for the U.S. livestock sector. It is estimated that annual net benefits would increase over time as the industry increases its use of this method which yields an additional 1 to 1½ pounds of output per carcass.

While establishments that already use advanced technology or those that adopt the new technology immediately may

[12] Data from a FSIS study are available in the FSIS Docket Clerk's Office.

[13] Three samples, either analyzed as individual samples or as a composite sample (i.e., combining the three samples), are statistically representative for measuring calcium in a production lot.

[14] Sampling five consecutive production lots is based on statistical sampling principles that ensure the process is in control and that mean or composite calcium results are less than or equal to the calcium requirement.

[15] A separate cost/benefit analysis has been prepared and is available from the FSIS Docket Clerk.

enjoy high returns, the primary long-run benefits of adoption of advanced technology accrue to consumers of meat and stem from a net increase in meat supply through increased yield from each animal processed. Under pure competition, depending upon price elasticity of demand and supply, packer cost savings will be passed forward to consumers or backward to producers in the marketing chain.

FSIS believes that adoption of advanced meat/bone separation machinery may reduce the incidence of cumulative trauma disorder among meatcutters by eliminating some tasks which contribute to the disorder. Thus, this final rule may result in a reduction in costs associated with any reduced incidence of cumulative trauma disorder among workers. The U.S. Department of Labor reported an incidence rate for repeated trauma of 1,493.7 per 10,000 workers in the meatpacking industry in 1991, the highest rate of any listed private industry segment.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) from imposing with respect to the premises, facilities, and operations of federally inspected establishments any requirements that are in addition to, or different than, those imposed under the FMIA. States and local jurisdictions may, however, impose recordkeeping and other requirements within the scope of section 202 of the FMIA, if consistent therewith, with respect to any such federally inspected establishment. States and local jurisdictions are also preempted under the FMIA from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat products that are in addition to, or different than, those imposed under the FMIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat products that are outside official establishments for the purpose of preventing the distribution of meat products that are misbranded or adulterated under the FMIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA, States that maintain meat inspection programs must impose requirements that are at least equal to those required under the FMIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

No retroactive effect will be given to this rule. The administrative procedures specified in 9 CFR 306.5 must be exhausted prior to any judicial challenge to the provisions of this rule, if the challenge involves any decision of a program official. The administrative procedures specified in 9 CFR Part 335 must be exhausted prior to any judicial challenge to the application of the provisions of this rule with respect to labeling decisions.

Effect on Small Entities

The Administrator has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). This rule does not require either large or small establishments to use advanced meat/bone separation machinery and meat recovery systems. Although there are initial costs involved with the purchase of machinery, there are no apparent direct competitive advantages that large establishments would have over small establishments.

Paperwork Requirements

Manufacturers producing "meat" resulting from advances in meat/bone separation machinery that does not grind, crush, or pulverize bone in order to remove skeletal muscle tissues (i.e., meat) adhering to livestock bones are required to maintain records of a compliance program for calcium content that provides the information necessary to assure that the product will meet the requirements as established by this final rule for such product. The paperwork requirements contained in this final rule have been approved by the Office of Management and Budget under control number 0583–0095.

List of Subjects

9 CFR Part 301

Meat inspection.

9 CFR Part 318

Recordkeeping requirements. Meat inspection.

9 CFR Part 320

Meat inspection, Reporting and recordkeeping requirements.

Final Rule

For the reasons set forth in the preamble, FSIS is amending 9 CFR parts 301, 318, and 320 of the Federal meat inspection regulations as follows:

PART 301—DEFINITIONS

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 301.2 is amended by revising paragraph (rr) to read as follows:

§ 301.2 Definitions.

* * * * *

(rr) *Meat.* (1) The part of the muscle of any cattle, sheep, swine, or goats, which is skeletal or which is found in the tongue, in the diaphragm, in the heart, or in the esophagus, with or without the accompanying and overlying fat, and the portions of bone, skin, sinew, nerve, and blood vessels which normally accompany the muscle tissue and which are not separated from it in the process of dressing. It does not include the muscle found in the lips, snout, or ears. This term, as applied to products of equines, shall have a meaning comparable to that provided in this paragraph with respect to cattle, sheep, swine, and goats.

(2) The product derived from the mechanical separation of the skeletal muscle tissue from the bones of livestock using the advances in mechanical meat/bone separation machinery and meat recovery systems that do not crush, grind, or pulverize bones, and from which the bones emerge comparable to those resulting from hand-deboning (i.e., essentially intact and in natural physical conformation such that they are recognizable, such as loin bones and rib bones, when they emerge from the machinery) which meets the criteria of no more than 0.15 percent or 150 mg/100 gm of product for calcium (as a measure of bone solids content) within a tolerance of 0.03 percent or 30 mg.

* * * * *

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS: REINSPECTION AND PREPARATION OF PRODUCTS

3. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

4. Part 318 is amended by adding a new § 318.24 to read as follows:

§ 318.24 Compliance procedures for meat derived from advanced meat/bone separation machinery and recovery systems.

(a) The product resulting from the separating process shall not have a calcium content exceeding 0.15 percent or 150 mg/100 gm of product within a tolerance of 0.03 percent or 30 mg, as prescribed in § 301.2(rr)(2) of this subchapter.

(b) To verify the calcium content in meat derived from advanced meat/bone separation machinery and recovery systems, a compliance program consisting of the following parameters shall be followed by manufacturers of meat defined in § 301.2(rr)(2) of this subchapter.

(1) An analysis of a sample of at least 1 pound from each lot shall be performed by the operator of the establishment or his or her agent. For purposes of this paragraph, a lot shall consist of the meat derived from advanced meat/bone separation machinery and recovery systems, designated as such by the operator of the establishment or his or her agent, from the product produced from a single species of livestock in no more than one continuous shift of up to 12 hours. Individual results from the chemical analyses shall be compared to the calcium limit, prescribed in paragraph (a) of this section, in order to demonstrate compliance. If compliance is not demonstrated, that is, if any single analytical result is more than 0.18 percent,[1] [2] before product from a production lot that is still at the establishment or one that is subsequently produced can be considered to be in compliance, at least three samples from that production lot shall be taken and analyzed for calcium, either separately, or, at the option of the establishment, as a composite (i.e., combining the three samples for analysis). The average of the results or the composite result must be less than or equal to 0.15 percent. Taking three samples from each subsequently produced lot and analyzing them in order to demonstrate compliance shall continue until five consecutive lots have mean or composite results less than or equal to 0.15 percent. If the statistical evidence indicates that a production lot is not in compliance with the calcium limit, as prescribed in § 301.2(rr)(2) of this subchapter, the lot must be labeled as MS(S) and meet all of the requirements for MS(S) in § 319.5 of this subchapter.

(2) The management of the establishment must maintain records to support the validity of the calcium content (as a measure of bone solids) to assure the process is in control. Such records shall be made available to the inspector or any other duly authorized representative of the Agency upon request. (Recordkeeping requirements were approved by the Office of Management and Budget under control number 0583–0095.)

[1] The value 0.18 percent was derived by multiplying by 3 the expected analytical standard deviation obtained by FSIS laboratories on the approved chemical procedure for measuring calcium which uses Ethylenediaminetetraacetic acid (EDTA) as provided in the "Official Methods of Analysis of the AOAC International" (formerly the Association of Official Analytical Chemists), 15th Ed. (1990).

[2] Individual or an average of results shall be rounded to the nearest 0.01 percent calcium.

PART 320—RECORDS, REGISTRATION, AND REPORTS

5. The authority citation for part 320 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

6. Section 320.1 is amended by adding a new paragraph (b)(10) to read as follows:

§ 320.1 Records required to be kept.

* * * * *

(b) * * *

(10) Records of calcium content in meat derived from advanced meat/bone separation machinery and meat recovery systems as required by § 318.24 of this subchapter.

Done at Washington, DC, on: November 30, 1994.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 94–29902 Filed 12–2–94; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

FEDERAL RESERVE SYSTEM

12 CFR Part 225

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 323

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 564

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 722

Real Estate Appraisal Exceptions in Major Disaster Areas

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury; and National Credit Union Administration.

ACTION: Statement and Order; temporary exceptions.

SUMMARY: Section 2 of the Depository Institutions Disaster Relief Act of 1992 (DIDRA), authorizes the Federal financial institutions regulatory agencies to make exceptions to statutory and regulatory requirements relating to appraisals for certain transactions. The exceptions are available for transactions that involve real property in major disaster areas when the exceptions would facilitate recovery from the disaster and would be consistent with safety and soundness. Expiration dates for certain transactions are set out in the **SUPPLEMENTARY INFORMATION** section.

DATES: This order is effective on December 6, 1994, and expires for specific areas on the dates indicated in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Office of the Comptroller of the Currency (OCC)

William C. Kerr, National Bank Examiner or Thomas E. Watson, National Bank Examiner (202) 874–5170, Office of the Chief National Bank Examiner; or Peter C. Liebesman, (202) 874–5300, Assistant Director, Bank Activities and Structure Division, 250 E Street, S.W., Washington, DC 20219.

Board of Governors of the Federal Reserve System (Board)

Rhoger H. Pugh, Assistant Director, (202) 728–5883, Stanley B. Rediger, Supervisory Financial Analyst, (202) 452–2629, Virginia M. Gibbs, Supervisory Financial Analyst, (202) 452–2521, Division of Banking Supervision and Regulation; or Deneen Donnley-Evans, Staff Attorney, (202) 736–5567, Legal Division. For the hearing impaired *only*, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), (202) 452–3544, 20th and C Streets, N.W., Washington, DC 20551.

Federal Deposit Insurance Corporation (FDIC)

Robert F. Miailovich, Associate Director, (202) 898–6918, James D. Leitner, Examination Specialist, (202) 898–6790, Division of Supervision; or Dirck A. Hargraves, Attorney, (202) 898–7049, Legal Division, 550 17th Street, N.W., Washington, DC 20429.

Office of Thrift Supervision, Treasury (OTS)

William J. Magrini, Project Manager, (202) 906–5744; Diana Garmus, Deputy

Assistant Director, Corporate Activities, (202) 906–5683; Ellen J. Sazzman, Attorney, Regulations and Legislation Division, Chief Counsel's Office, (202) 907–7133; 1700 G Street N.W., Washington, DC 20552.

National Credit Union Administration (NCUA)

Michael J. McKenna, Office of General Counsel, (703) 518–6540, or Herb Yolles, Office of Examination and Insurance, (703) 518–6360, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION:

Statement

Section 2 of DIDRA, 12 U.S.C. 3352, authorizes the agencies to make exceptions to statutory and regulatory appraisal requirements for transactions with respect to real property located in areas in which the President has determined, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170, that a major disaster exists, provided that the exception would facilitate recovery from the major disaster and is consistent with safety and soundness.[1] Such exceptions expire not later than three years after the date of the President's determination that a major disaster exists in the area.

Since October 18, 1994, and continuing, the President has declared several areas as Major Disaster Areas in certain Texas counties because of the extensive flooding that occurred and is continuing. The agencies believe that granting relief from the appraisal requirements for certain real estate transactions in all such areas affected by this flooding is consistent with the provisions of the DIDRA.

The agencies have determined that the disruption of real estate markets in all such affected areas interferes with the ability of depository institutions to obtain appraisals that comply with statutory and regulatory requirements and, therefore, may impede institutions in making loans and engaging in other transactions that would aid in the reconstruction and rehabilitation of the affected area. Accordingly, the agencies have determined that recovery from this major disaster would be facilitated by excepting transactions involving real estate located in the area directly affected by the flooding from the real estate appraisal requirements of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) as amended, 12 U.S.C. 3331 *et seq.*, and regulations promulgated thereto. This has the effect of excepting certain transactions from the definition of "federally related transactions."

The agencies have also determined that safety and soundness would not be adversely affected by such exceptions so long as the depository institution's records relating to any such excepted transaction clearly indicate either that the property involved was directly affected by the major disaster or that the transaction would facilitate recovery from the disaster and there is a binding commitment to fund the transaction within three years after the date the major disaster was declared. In addition, the transaction must continue to be subject to review by management and by the agencies in the course of examination of the institution under normal supervisory standards relating to safety and soundness, though the transactions need not comply with the specific requirements of Title XI of FIRREA and the agencies' appraisal regulations.

Expiration Dates

Any exceptions provided under the order shall expire not later than three years after the date on which the President determines, pursuant to 42 U.S.C. 5170, that a major disaster exists in the area. Accordingly, exceptions for the major disasters declared due to the flooding expire on October 18, 1997. Exceptions for any other counties that have been declared major disasters by the President as a result of the flooding that began in Texas on or about October 11, 1994, expire three years after the date of such declaration.

Order

In accordance with section 2 of DIDRA, relief is hereby granted from the provisions of Title XI of FIRREA and the agencies' appraisal regulations for any real estate-related financial transaction that requires the services of an appraiser under those provisions, provided that:

(1) The transaction involves real estate located in an area that the President has determined, pursuant to 42 U.S.C. 5170, is a major disaster area as a result of the October 1994 flooding in Texas, and has been designated eligible for Federal assistance by the Federal Emergency Management Agency (FEMA);[2]

(2)(a) The real property involved was directly affected by the major disaster, or

(b) The real property involved was not directly affected by the major disaster but the institution's records explain how the transaction would facilitate recovery from the disaster;

(3) There is a binding commitment to fund a transaction within three years after the date the major disaster was declared by the President; and

(4) The institution retains in its files, for examiner review, appropriate documentation supporting the property's valuation.

Appendix to Order

Texas: Angelina, Austin, Bastrop, Brazos, Brazoria, Burleson, Chambers, Fayette, Fort Bend, Galveston, Grimes, Hardin, Harris, Houston, Jackson, Jasper, Jefferson, Lee, Liberty, Madison, Matagorda, Montgomery, Nacagdoches, Orange, Polk, San Augustine, San Jacinto, Shelby, Trinity, Tyler, Victoria, Washington, Waller, Walker, Wharton.

Dated: November 7, 1994.

Eugene A. Ludwig,

Comptroller of the Currency.

Dated: November 23, 1994.

By order of the Board of Governors of the Federal Reserve System.

William W. Wiles,

Secretary of the Board.

Dated: November 18, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

Dated: November 23, 1994.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

Dated: November 8, 1994.

Becky Baker,

Secretary of the Board, National Credit Union Administration.

[FR Doc. 94–29959 Filed 12–5–94; 8:45 am]

BILLING CODES OCC, 4810–33–P (20%), BOARD 6210–01–P (20%), FDIC 6714–01–P (20%), OTS 6720–01–P (20%), NCUA 7535–01–P (20%)

[1] The agencies must make the exception no later than 30 months after the date on which the President determines that a major disaster exists in the area.

[2] The Texas counties affected are listed in the appendix to this order. The exception would also include any other such areas that the President subsequently declares are major disaster areas as a result of the flooding.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–174–AD; Amendment 39–9087; AD 94–25–03]

Airworthiness Directives; Fokker Model F28 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Fokker Model F28 series airplanes. This action requires a revision to the Airplane Flight Manual that prohibits takeoff in certain icing conditions unless either a tactile inspection is performed or specific takeoff procedures are followed. This amendment is prompted by several accidents in which Fokker Model F28 series airplanes lost aerodynamic lift when attempting takeoff with ice contamination on their wings. The actions specified in this AD are intended to prevent degradation of aerodynamic lift during takeoff when icing conditions exist.

DATES: Effective December 21, 1994.

Comments for inclusion in the Rules Docket must be received on or before February 6, 1995.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–174–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Information concerning this amendment may be examined at the FAA, Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Timothy J. Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: The FAA has received reports of at least three accidents involving Fokker Model F28 series airplanes in which the probable cause has been attributed to wing ice contamination prior to takeoff. The FAA has determined that airplanes with wings that do not have leading edge high lift devices, such as the Fokker Model F28 series airplanes, are particularly susceptible to loss of lift when attempting to take off with minimal amounts of ice accumulation (contamination) on the wings. Further, the FAA finds that airplanes with this configuration account for a disproportionate number of the total number of accidents attributable to wing ice contamination. In light of this, the FAA has determined that, for airplanes with this configuration, an extra degree of protection is necessary beyond reliance solely on operation in accordance with the current requirements specified in section 121.629 ("Operation in icing conditions"), amendment 121–231, of the Federal Aviation Regulations (14 CFR 121.629).

The FAA has determined that one acceptable (interim) method of addressing icing problems associated with airplanes having this configuration is a physical (tactile) and visual check of the leading edge and upper wing surfaces to verify that there is no accumulation of ice, frost, and snow prior to takeoff. The FAA previously issued AD 93–11–01 [amendment 39–8593 (58 FR 33898, June 22, 1993)], which requires such a tactile check of McDonnell Douglas Model DC–9–10 series airplanes; those airplanes, like the Model F28, do not have leading edge high lift devices. The intent of checks such as these is to prevent takeoff with wing ice contamination, which can result in the degradation of wing lift, and can result in the airplane stalling at lower than normal angles-of-attack during takeoff.

Additionally, the Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, issued Netherlands Airworthiness Directive (BLA) 93–167/2 (A), dated April 29, 1994, applicable to Fokker Model F28 series airplanes operating in the Netherlands. This BLA describes an "alternative" takeoff procedure that can be followed to improve stall margins whenever icing conditions exist. [This "alternative" takeoff procedure was developed in response to the U.S. National Transportation Safety Board's (NTSB) Safety Recommendation A–93–023.] The "alternative" takeoff procedure requires the availability of 120 percent of the minimum takeoff distance for the actual gross weight. Additionally, the 20 percent increase in takeoff distance must be accounted for in the obstacle clearance analysis. The BLA specifies that the "alternative" takeoff procedure is an *optional* procedure that is available for use when sufficient runway length and obstacle clearance margin are available.

The FAA has reviewed and approved this "alternative" takeoff procedure as an interim measure that will acceptably address the problems associated with takeoff and operation of Model F28 series airplanes in icing conditions. Although the RLD has classified the procedure as *optional*, the FAA has determined that it must be mandated as one method to ensure that these airplanes have adequate lift to effect a safe takeoff when icing conditions exist.

As indicated previously, the FAA has determined that the accomplishment of these types of additional actions is necessary in order to provide an extra degree of protection for Model F28 series airplanes, beyond that provided by the current operating requirements specified in part 121 of the FAR.

Fokker has advised the FAA that it is currently developing a modification to the thermal anti-ice system on all Fokker Model F28 series airplanes. This modification would allow the thermal anti-ice system to operate on the ground, which would prevent reformation of ice on the wing leading edges after ground equipment has been used to properly de-ice/anti-ice the airplane, and would minimize the effect of undetected ice/frost/snow contamination. Fokker has indicated that this proposed modification will be similar to the one required by AD 93–11–01 for McDonnell Douglas DC–9–10 series airplanes. (That AD requires a modification of the wing leading edge bleed air anti-ice system on so that it can operate on the ground to prevent the reformation of ice after de-icing procedures have been accomplished.) However, because this proposed modification for Model F28 series airplanes currently is under development, any associated modification instructions or required parts are not available at this time.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. The FAA has 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, this AD is being issued to prevent degradation of the aerodynamic lift during takeoff due to wing ice contamination, which could result in the airplane stalling at lower than normal angles-of-attack during takeoff. This AD requires a revision to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM), which requires that, whenever icing conditions exist, one of the following actions must be accomplished:

1. A physical (tactile) check to detect ice, frost, and snow accumulation on the leading edge and upper wing surfaces must be performed prior to takeoff. (This check is similar to that required by AD 93–11–01 for McDonnell Douglas Model DC–9–10 series airplanes). Or

2. The airplane must be operated in accordance with the "alternative" takeoff procedure developed by Fokker

that improves stall margins. Use of the "alternative" takeoff procedure would require weight to be off loaded, if necessary, to meet the revised takeoff distance and obstacle clearance requirements.

This AD also provides for the termination of these requirements if the airplane's thermal anti-ice system is modified and operated in accordance with a method approved by the FAA.

This is considered to be interim action. As stated previously, Fokker currently is developing a design modification that will positively address the unsafe condition that is the subject of this rulemaking action. Once this modification, as well as its associated operating procedures and an implementation schedule, are developed, approved, and available, the FAA may consider additional rulemaking action.

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

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–174–AD." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. 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:

94–25–03 Fokker: Amendment 39–9087. Docket 94–NM–174–AD.

Applicability: All Model F28 series airplanes (all Marks and all serial numbers), certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent degradation of aerodynamic lift during takeoff when icing conditions exist, accomplish the following:

(a) Within 10 days after the effective date of this AD, incorporate the following into the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD in the AFM.

"Wing De-Icing/Anti-Icing Prior To Takeoff

CAUTION

The Model F28 series airplane has a wing design with no leading edge high lift devices, such as slats. Wings without leading edge high lift devices are particularly susceptible to loss of lift due to wing icing. Minute amounts of ice or other contamination (equivalent to medium grit sandpaper) on the leading edges or upper wing surfaces can cause significant reduction in the stall angle-of-attack. This can increase stall speed up to 30 knots. The increased stall speed can be well above the stall warning (stick shaker) activation speed.

Takeoff shall not be attempted unless the pilot-in-command has ensured that the aircraft surfaces are free of ice, frost, and snow accumulation, as required by sections 91.527 and 121.629 of the Federal Aviation Regulations (FAR).

In addition, takeoff shall not be attempted when the Outside Air Temperature (OAT) is below 6 degrees C (Centigrade) [42 degrees F (Fahrenheit)]; and either the difference between the dew point temperature and OAT is less than 3 degrees C (5 degrees F), or visible moisture (rain, drizzle, sleet, snow, fog, etc.) is present, unless the operator complies with either OPTION 1 or OPTION 2, below:

OPTION 1

The leading edge and upper wing surfaces have been physically checked for ice/frost/snow and the flight crew verifies that a visual check and a physical (hands-on) check of the leading edge and upper wing surfaces has been accomplished and that the wing is clear of ice/frost/snow accumulation.

OR

OPTION 2

The following takeoff procedure is used:

WARNING:

The following technique cannot be used unless the pilot-in-command has ensured that the aircraft surfaces are free of ice, frost, and snow, as required by sections 91.527 and 121.629 of the FAR.

• (All Marks, except Mark 0100 and Mark 0070) When using flight director for takeoff, select HDG mode and 10 degrees pitch attitude.

• Select the largest flap setting that is permissible for the takeoff weight/altitude/temperature conditions.

• (All Marks, except Mark 0100 and Mark 0070) Use rated takeoff thrust.

• (Mark 0100 and Mark 0070) Use takeoff/go-around (TOGA) thrust.

• Do not use FLEXIBLE thrust.

• At V_R rotate slowly (less than 3 degrees per second) to 10 degrees pitch attitude.

• When positively climbing, select gear UP.

• DO NOT EXCEED 10 DEGREES PITCH UNTIL AIRSPEED IS ABOVE V_2+20 KTS.

• When above V_2+20 KTS, slowly increase the pitch attitude, keeping the speed above V_2+20 KTS.

• Retract the flaps at or above V_{FR} + 20 KTS.

Notes to Option 2

1. The available field length must be greater than or equal to 120 percent of the takeoff distance required by regulation for the actual gross weight. Also, the 20 percent increase in takeoff distance must be accounted for in the obstacle clearance analysis. WEIGHT MUST BE OFF-LOADED, IF NECESSARY, TO MEET THESE CONDITIONS.

2. (Mark 0100 and Mark 0070) Do not follow the Flight Director pitch command during rotation for takeoff and initial climb, as this will result in exceeding the recommended maximum pitch angle of 10 degrees before reaching the speed of V_2+20 KTS.

3. (Mark 0100 and Mark 0070) Do not engage the auto-pilot until leaving the Automated Flight Control and Augmentation System (AFCAS) takeoff (TO) mode.

4. For the case of an engine failure, refer to the applicable procedure in Section 4.17.01 SINGLE ENGINE OPERATION of the F28 Mark 0100 (Fokker 100) and F28 Mark 0070 (Fokker 70) AFM, or Section 1.7.4 OPERATION UNDER ABNORMAL CONDITIONS of the F28 FHB, as applicable.

5. During takeoff, the first indication of wing contamination will probably be airframe buffet when the pitch angle is increased above 10 degrees, followed by wing drop and insufficient climb rate. DO NOT EXCEED 10 DEGREES PITCH UNTIL AIRSPEED IS ABOVE V_2+20 KTS."

Note 1: If an operator elects to implement in its fleet only one of the two OPTIONS specified in this paragraph, the other OPTION does not have to be included in the Limitations Section of the AFM. However, the OPTION that is implemented must be incorporated in the AFM verbatim as it appears in this paragraph.

(b) Modification of the thermal anti-ice system so that it can be operated on the ground, in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, constitutes terminating action for the requirements of this AD.

Note 2: Incorporation of the leading edge thermal anti-ice modification and associated operating instructions does not relieve the requirement that aircraft surfaces are free of ice, frost, and snow accumulation as required by sections 91.527 and 121.629 of the Federal Aviation Regulations (14 CFR 91.527 and 121.629).

(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. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: 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 sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on December 21, 1994.

Issued in Renton, Washington, on November 30, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–29921 Filed 12–5–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 806

[Docket No. 940828–4318]

RIN 0691–AA22

Direct Investment Surveys: BE–10, Benchmark Survey of U.S. Direct Investment Abroad—1994

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: These final rules set forth reporting requirements for the BE–10, Benchmark Survey of U.S. Direct Investment Abroad—1994, to be conducted by the Bureau of Economic Analysis (BEA), U.S. Department of Commerce. The rules for the last benchmark survey, covering 1989, are deleted. The major change in reporting requirements since the last survey that is implemented in these final rules is the raising of the exemption level for determining whether a long form or a short form must be filed for nonbank foreign affiliates of nonbank U.S. parent companies.

EFFECTIVE DATE: These rules will be effective January 5, 1995.

FOR FURTHER INFORMATION CONTACT: Betty L. Barker, Chief, International Investment Division (BE–50), Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; phone (202) 606–9800.

SUPPLEMENTARY INFORMATION: In the August 26, 1994 **Federal Register**, Volume 59, No. 165, 59 FR 44090, BEA published a notice of proposed rulemaking to revise 15 CFR 806.16 to set forth reporting requirements for the BE–10, Benchmark Survey of U.S. Direct Investment Abroad—1994. No comments on the proposed rules were received. Thus, these final rules are the same as the proposed rules.

The benchmark survey will be conducted by BEA under the International Investment and Trade in Services Survey Act, hereinafter, "the Act." Section 4(b) of the Act, as amended, requires that "With respect to United States direct investment abroad, the President shall conduct a benchmark survey covering year 1982, a benchmark survey covering year 1989, and benchmark surveys covering every fifth year thereafter * * *" Reporting in the survey is mandatory. The responsibility for conducting benchmark surveys of U.S. direct investment abroad has been delegated by the President to the Secretary of

Commerce, who has redelegated it to BEA.

The benchmark surveys are BEA's censuses, intended to cover the universe of U.S. direct investment abroad in value terms. U.S. direct investment abroad is defined as the ownership or control, directly or indirectly, by one U.S. person of 10 percent or more of the voting securities of an incorporated foreign business enterprise or an equivalent interest in an unincorporated foreign business enterprise, including a branch.

The purpose of the benchmark survey is to obtain comprehensive data on the overall operations of U.S. parent companies and their foreign affiliates, and on positions and transactions between them. The survey is mandated by Congress to provide a factual framework for addressing the concerns of policymakers and the general public about the effects of direct investment abroad on the U.S. and foreign economies. The data from the survey are needed to record the size of U.S. direct investment abroad, measure changes in such investment, and assess its impact. The data will provide benchmarks for deriving current universe estimates of direct investment from sample data collected in other BEA surveys in nonbenchmark years. In particular, they will serve as benchmarks for the quarterly direct investment estimates included in the U.S. international transactions and the national income and product accounts, and for annual estimates of the U.S. direct investment position abroad and of the operations of U.S. parent companies and their foreign affiliates.

The benchmark surveys are the most comprehensive of BEA's surveys in terms of subject matter in order that they obtain the detailed information on U.S. direct investment abroad needed for policy purposes. As specified in the Act, policy areas of particular interest include, among other things, trade in both goods and services, employment and employee compensation, taxes, and technology.

The survey consists of an instruction booklet, a claim for not filing the BE-10, and the following report forms:

1. Form BE-10A for reporting by a U.S. Reporter that is not a bank;
2. Form BE-10A BANK for reporting by a U.S. Reporter that is a bank;
3. Form BE-10B(LF) (Long Form) for reporting nonbank foreign affiliates of nonbank U.S. parents with assets, sales, or net income greater than $50 million (positive or negative);
4. Form BE-10B(SF) (Short Form) for reporting nonbank foreign affiliates of nonbank U.S. parents with assets, sales, or net income greater than $3 million, but not greater than $50 million (positive or negative); and
5. Form BE-10B BANK for reporting foreign affiliates that are banks with assets, sales, or net income greater than $3 million (positive or negative).

Although the survey is intended to cover the universe of U.S. direct investment abroad, in order to minimize the reporting burden, foreign affiliates with assets, sales, and net income each equal to or less than $3 million (positive or negative) are exempt from being reported on Form BE-10B(SF) or BE-10B BANK (but must be listed on Form BE-10A SUPPLEMENT or BE-10A BANK SUPPLEMENT).

The major rule change from the last (1989) survey to the 1994 survey is the raising, from $15 million to $50 million, of the exemption level for reporting foreign affiliates on the more detailed long form. In the 1994 survey, nonbank foreign affiliates for which assets, sales, or net income is greater than $50 million (positive or negative) are required to be reported on Form BE-10B(LF) (Long Form); nonbank foreign affiliates for which assets, sales, or net income is greater than $3 million (positive or negative), but for which no one of these items is greater than $50 million (positive or negative), are required to be reported on Form BE-10B(SF) (Short Form). In the 1989 benchmark survey, the long-form exemption level was $15 million. This change means that approximately 6,000 foreign affiliates that previously would have been reported on the long form will now be reported instead on the short form, thus reducing both reporting and editing burden from what it would otherwise have been.

Forms for the 1994 benchmark survey are scheduled to be mailed out at the end of February 1995. A completed report is due to BEA not later than May 31, 1995 for a U.S. Reporter filing less than 50 Forms BE-10B(LF), BE-10B(SF), and/or BE-10B BANK and not later than June 30, 1995 for a U.S. Reporter required to file 50 or more Forms BE-10B(LF), BE-10B(SF), and/or BE-10 BANK. A response is required from persons subject to the reporting requirements of the BE-10 whether or not they are contacted by BEA. Also, a person, or their agent, who is contacted by BEA about reporting in this survey must respond in writing.

Executive Order 12612

These rules do not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

Executive Order 12866

These rules have been determined to be not significant for purposes of E.O. 12866.

Paperwork Reduction Act

The collection of information required in these final rules has been approved by OMB (OMB No. 0608-0049).

The public reporting burden for this collection of information is estimated to vary from 14 to 8,500 hours per response, with an average of 159.4 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. Comments from the public regarding the burden estimate or any other aspect of this collection of information should be addressed to: Director, Bureau of Economic Analysis (BE-1), U.S. Department of Commerce, Washington, DC 20230; and to the Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Department of Commerce.

Regulatory Flexibility Act

The General Counsel, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, under the provisions of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that these final rules will not have a significant economic impact on a substantial number of small entities. The exemption level is set in terms of the size of a U.S. company's foreign affiliates. If an affiliate is owned 10 percent or more by the U.S. company and has assets, sales, or net income greater than $3 million (positive or negative), it must be reported. Usually, the U.S. parent company (the one required to file the report) is many times larger. Also, to minimize the reporting burden on smaller U.S. businesses, nonbank foreign affiliates with assets, sales, and net income all below $50 million will be reported on the abbreviated BE-10B(SF), or short form, rather than the BE-10B(LF), or long form.

List of Subjects in 15 CFR Part 806

Balance of payments, Economic statistics, U.S. investment abroad, Penalties, Reporting and recordkeeping requirements.

Dated: November 10, 1994.

Carol S. Carson,

Director, Bureau of Economic Analysis.

For the reasons set forth in the preamble, BEA amends 15 CFR Part 806 as follows:

PART 806—DIRECT INVESTMENT SURVEYS

1. The authority citation for 15 CFR Part 806 continues to read as follows:

Authority: 5 U.S.C. 301; 22 U.S.C. 3101–3108; and E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12013 (3 CFR, 1977 Comp., p. 147), E.O. 12318 (3 CFR, 1981 Comp., p. 173), and E.O. 12518 (3 CFR, 1985 Comp., p. 348).

2. Section 806.16 is revised to read as follows:

§ 806.16 Rules and regulations for BE–10, Benchmark Survey of U.S. Direct Investment Abroad—1994.

A BE–10, Benchmark Survey of U.S. Direct Investment Abroad will be conducted covering 1994. All legal authorities, provisions, definitions, and requirements contained in §§ 806.1 through 806.13 and 806.14 (a) through (d) are applicable to this survey. Specific additional rules and regulations for the BE–10 survey are given in paragraphs (a) through (e) of this section.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE–10, Benchmark Survey of U.S. Direct Investment Abroad—1994, contained herein, whether or not they are contacted by BEA. Also, a person, or their agent, who is contacted by BEA about reporting in this survey, either by sending them a report form or by written inquiry, must respond in writing pursuant to § 806.4. They may respond by:

(1) Certifying in writing, within 30 days of being contacted by BEA, to the fact that the person had no direct investment within the purview of the reporting requirements of the BE–10 survey;

(2) Completing and returning the "BE–10 Claim for Not Filing" within 30 days of receipt of the BE–10 survey report forms; or

(3) Filing the properly completed BE–10 report (comprising Form BE–10A or BE–10A BANK and Forms BE–10B(LF), BE–10B(SF) and/or BE–10B BANK) by May 31, 1995, or June 30, 1995, as required.

(b) *Who must report.* (1) A BE–10 report is required of any U.S. person that had a foreign affiliate—that is, that had direct or indirect ownership or control of at least 10 percent of the voting stock of an incorporated foreign business enterprise, or an equivalent interest in an unincorporated foreign business enterprise—at any time during the U.S. person's 1994 fiscal year.

(2) If the U.S. person had no foreign affiliates during its 1994 fiscal year, a "BE–10 Claim for Not Filing" must be filed within 30 days of receipt of the BE–10 survey package; no other forms in the survey are required. If the U.S. person had any foreign affiliates during its 1994 fiscal year, a BE–10 report is required and the U.S. person is a U.S. Reporter in this survey.

(3) Reports are required even though the foreign business enterprise was established, acquired, seized, liquidated, sold, expropriated, or inactivated during the U.S. person's 1994 fiscal year.

(c) *Forms for nonbank U.S. Reporters and foreign affiliates.* (1) *Form BE–10A (Report for the U.S. Reporter).* A BE–10A report must be completed by a U.S. Reporter that is not a bank. If the U.S. Reporter is a corporation, Form BE–10A is required to cover the fully consolidated U.S. domestic business enterprise.

(i) If a nonbank U.S. Reporter had any foreign affiliates, whether held directly or indirectly, for which any one of the following three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than $3 million (positive or negative) at any time during the affiliate's 1994 fiscal year, the U.S. Reporter must file a complete Form BE–10A and, as applicable, a BE–10A SUPPLEMENT listing each, if any, exempt foreign affiliate. It must also file a Form BE–10B(LF), BE–10B(SF), or BE–10B BANK, as appropriate, for each nonexempt foreign affiliate.

(ii) If a nonbank U.S. Reporter had no foreign affiliates for which any one of the three items listed in paragraph (c)(1)(i) of this section was greater than $3 million (positive or negative) at any time during the affiliate's 1994 fiscal year, then only items 1–4 of Form BE–10A and the BE–10A SUPPLEMENT, listing all exempt foreign affiliates, must be completed.

(2) *Form BE–10B(LF) or (SF) (Report for foreign affiliate).*

(i) A BE–10B(LF) (Long Form) must be filed for each nonbank foreign affiliate of a nonbank U.S. Reporter, whether held directly or indirectly, for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than $50 million (positive or negative) at any time during the affiliate's 1994 fiscal year.

(ii) A BE–10B(SF) (Short Form) must be filed.

(A) For each nonbank foreign affiliate of a nonbank U.S. Reporter, whether held directly or indirectly, for which any one of the three items listed in paragraph (c)(2)(i) of this section was greater than $3 million, but for which no one of these items was greater than $50 million (positive or negative), at any time during the affiliate's 1994 fiscal year, and

(B) For each nonbank foreign affiliate of a U.S. bank Reporter, whether held directly or indirectly, for which any one of the three items listed in paragraph (c)(2)(i) of this section was greater than $3 million (positive or negative) at any time during the affiliate's 1994 fiscal year.

(iii) Notwithstanding paragraphs (c)(2)(i) and (c)(2)(ii) of this section, a Form BE–1B(LF) or (SF) must be filed for a foreign affiliate of the U.S. Reporter that owns another nonexempt foreign affiliate of that U.S. Reporter, even if the foreign affiliate parent is otherwise exempt, i.e., a Form BE–10B(LF), (SF), or BANK must be filed for all affiliates upward in a chain of ownership.

(d) *Forms for U.S. Reporters and foreign affiliates that are banks or bank holding companies.*

(1) For purposes of the BE–10 survey, "banking" covers a business entity engaged in deposit banking or closely related functions, including commercial banks, Edge Act corporations engaged in international or foreign banking, foreign branches and agencies of U.S. banks whether or not they accept deposits abroad, savings and loans, savings banks, and bank holding companies, i.e., holding companies for which over 50 percent of their total income is from banks that they hold. If the bank or bank holding company is part of a consolidated business enterprise and the gross operating revenues from nonbanking activities of this consolidated entity are more than 50 percent of its total revenues, then the consolidated entity is deemed not to be a bank even if banking revenues make up the largest single source of all revenues. (Activities of subsidiaries of a bank or bank holding company that may not be banks but that provide support to the bank parent company, such as real estate subsidiaries set up to hold the office buildings occupied by the bank parent company, are considered bank activities.)

(2) *Form BE–10A BANK (Report for a U.S. Reporter that is a bank).* A BE–10A BANK report must be completed by a U.S. Reporter that is a bank. For purposes of filing Form BE–10A BANK, the U.S. Reporter is deemed to be the fully consolidated U.S. domestic business enterprise and all required data on the form shall be for the fully consolidated domestic entity.

(i) If a U.S. bank had any foreign affiliates at any time during its 1994

fiscal year, whether a bank or nonbank and whether held directly or indirectly, for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than $3 million (positive or negative) at any time during the affiliate's 1994 fiscal year, the U.S. Reporter must file a complete Form BE–10A BANK and, as applicable, a BE–10A BANK SUPPLEMENT listing each, if any, exempt foreign affiliate, whether bank or nonbank. It must also file a Form BE–10B(SF) for each nonexempt nonbank foreign affiliate and a Form BE–10B BANK for each nonexempt foreign bank affiliate.

(ii) If the U.S. bank Reporter had no foreign affiliates for which any one of the three items listed in paragraph (d)(2)(i) of this section was greater than $3 million (positive or negative) at any time during the affiliate's 1994 fiscal year, then only items 1–4 of Form BE–10A BANK and the BE–10A BANK SUPPLEMENT, listing all exempt foreign affiliates, should be completed.

(3) *Form BE–10B BANK (Report for a foreign affiliate that is a bank).*

(i) A BE–10B BANK report must be filed for each foreign bank affiliate of a bank or nonbank U.S. Reporter, whether directly or indirectly held, for which any one of the three items—total assets, sales or gross operating revenues excluding sales taxes, or net income after provision for foreign income taxes—was greater than $3 million (positive or negative) at any time during the affiliate's 1994 fiscal year.

(i) Notwithstanding paragraph (d)(3)(i) of this section, a Form BE–10B BANK must be filed for a foreign bank affiliate of the U.S. Reporter that owns another nonexempt foreign affiliate of that U.S. Reporter, even if the foreign affiliate parent is otherwise exempt, i.e., a Form BE–10B(LF), (SF), or BANK must be filed for all affiliates upward in a chain of ownership. However, a Form BE–10B BANK is not required to be filed for a foreign bank affiliate in which the U.S. Reporter holds only an indirect ownership interest of 50 percent or less and that does not own a reportable nonbank foreign affiliate, but the indirectly owned bank affiliate must be listed on the BE–10A BANK SUPPLEMENT.

(e) *Due date.* A fully completed and certified BE–10 report comprising Form BE–10A or 10A BANK, BE–10A SUPPLEMENT (as required), and Form(s) BE–10B(LF), (SF), or BANK (as required) is due to be filed with BEA not later than May 31, 1995 for those U.S. Reporters filing less than 50, and June 30, 1995 for those U.S. Reporters filing 50 or more, Forms BE–10B(LF), (SF) or BANK.

[FR Doc. 94–29767 Filed 12–5–94; 8:45 am]
BILLING CODE 3510–EA–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 358

[Docket No. 81N–0201]

Marketing of Over-the-Counter Pediculicide Drug Products; Background Documents; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Availability of background documents.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of background documents dealing with its response to two citizen petitions seeking actions for marketing of over-the-counter (OTC) pediculicide drug products. This action is being taken to ensure that all interested persons are aware of the issues that were raised in the two citizen petitions.

ADDRESSES: Single copies of the background documents may be requested in writing from the Freedom of Information Staff (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, at a cost of 10 cents per page. Requests should be identified with the docket number found in brackets in the heading of this document. The background documents are available for public examination at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 14, 1993 (58 FR 65452), FDA issued a final monograph for OTC pediculicide drug products (21 CFR part 358, subpart G). The final monograph becomes effective on December 14, 1994. Prior to that date, jurisdiction over pediculicide products is vested concurrently with the Environmental Protection Agency (EPA) and with FDA. EPA and FDA labeling requirements for these products are different. After December 14, 1994, FDA will have sole jurisdiction over labeling and other requirements applicable to OTC pediculicide drug products.

On February 25, 1994, the Nonprescription Drug Manufacturers Association (NDMA) submitted a citizen petition (Ref. 1) requesting certain actions because of the dual jurisdiction over OTC pediculicide drug products that exists until December 14, 1994. On April 14, 1994, a meeting was held between FDA, EPA, and NDMA (Ref. 2). On April 22, 1994, NDMA submitted a second, more detailed citizen petition (Ref. 3). NDMA requested FDA to provide industry at least 1 1/2 years from December 14, 1993 (the date of publication of the final monograph for OTC pediculicide drug products), for a smooth transition from EPA to FDA regulations for OTC pediculicide drug products. NDMA also requested FDA agreement not to bring enforcement proceedings against OTC pediculicide drug products applied to the human body and bearing EPA-mandated labeling for 1 year after December 14, 1994. The enforcement deferral would apply to products distributed with labeling printed before December 14, 1994, or where the products shipped into interstate commerce had been in stock before December 14, 1994. NDMA also submitted a citizen petition to EPA, which responded by notice dated September 6, 1994 (Ref. 4).

FDA responded to NDMA (Refs. 5 and 6) stating that a 1½ year extension to meet FDA labeling requirements would not be granted on a blanket basis for all products. The agency stated that requests for extensions would be evaluated on a case-by-case basis. The agency also indicated that any extension granted will be limited to the quantity of stock that a company has on hand prior to December 14, 1994. FDA also stated that, in its discretion, it agrees not to bring enforcement proceedings against OTC pediculicide drug products conforming with the final monograph and containing EPA-required labeling for a period of 1 year after the effective date of the final monograph on December 14, 1994.

FDA has placed all of the correspondence on this subject in docket no. 81N–0201 for OTC pediculicide drug products, to enable interested persons to see the correspondence. The documents may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

References

(1) Citizen petition from the Nonprescription Drug Manufacturers Association to FDA, coded CP1, Docket No. 81N–0201, Dockets Management Branch.

(2) Memorandum of Meeting, coded MM1, Docket No. 81N–0201, Dockets Management Branch.

(3) Citizen petition from the Nonprescription Drug Manufacturers Association to FDA, coded CP2, Docket No. 81N–0201, Dockets Management Branch.

(4) Pesticide Regulation Notice 94–6, dated September 6, 1994, Notice to Manufacturers, Producers, Formulators, and Registrants of Pesticide Products, Office of Pesticides and Toxic Substances, Environmental Protection Agency, coded REF1, Docket No. 81N–0201, Dockets Management Branch.

(5) Letter from W. E. Gilbertson, FDA, to R. W. Soller, Nonprescription Drug Manufacturers Association, coded LET18, Docket No. 81N–0201, Dockets Management Branch.

(6) Letter from R. G. Chesemore, FDA, to R. W. Soller, Nonprescription Drug Manufacturers Association, coded PAV1, Docket No. 81N–0201, Dockets Management Branch.

Dated: November 30, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–29987 Filed 12–5–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8570]

RIN 1545–AS96

Nonbank Trustee Net Worth Requirements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that provide guidance to nonbank trustees with respect to the adequacy of net worth requirements of § 1.401–12(n) (6) and (7) of the Income Tax Regulations. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective December 6, 1994.

FOR FURTHER INFORMATION CONTACT: Judith E. Alden, (202) 622–6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 401(d)(1). Sections 1022(c), 1022(d), and 2002(a)(2) of the Employee Retirement Income Security Act of 1974 (ERISA), Pub. L. 93–406 (1974), amended sections 401(d), 401(f), and 408 of the Internal Revenue Code (Code) to permit an entity that is not a bank to be a trustee or a custodian for purposes of those Code sections if such entity demonstrates to the satisfaction of the Secretary of the Treasury that it will administer the trust and hold assets in a manner consistent with the law. Although section 401(d)(1) was repealed by section 237(a) of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248 (1982), the regulations under section 401(d)(1) remain in force and effect to the extent that they govern the determination of whether an entity can be a nonbank trustee or custodian for purposes of Treasury Regulation §§ 1.401(f)–1 and 1.408–2(d). Section 1.401–12(n)(6)(ii) of the regulations, proposed in 1975 and finalized in 1979 under section 401(d)(1) of the Code, sets forth net worth requirements for nonbank trustees based on the greater of a specified dollar amount or a percentage of the value of all assets held by the nonbank trustee in fiduciary accounts. A primary objective of this adequacy of net worth requirement has been to ensure that nonbank trustees maintain a level of solvency commensurate with their financial and fiduciary responsibilities.

Pursuant to the existing net worth requirements, nonbank trustees may not accept new accounts unless their net worth exceeds the greater of $100,000 or four percent of the value of all assets held in fiduciary accounts. Additionally, nonbank trustees must take whatever steps are necessary (including the relinquishment of fiduciary accounts) to ensure that their net worth exceeds the greater of $50,000 or two percent of the value of assets held in their fiduciary accounts. While similar requirements apply to passive nonbank trustees (qualified nonbank entities that have no discretion to direct the investment of assets), the percentage requirements for these trustees are lower. Specifically, passive nonbank trustees may not accept new accounts unless their net worth exceeds the greater of $100,000 or two percent of the value of all assets held in fiduciary accounts and they must take appropriate action (including the relinquishment of fiduciary accounts) to ensure that their net worth exceeds the greater of $50,000 or one percent of the value of assets held in their fiduciary accounts.

The IRS has received comments that this requirement is unduly restrictive in the case of passive trustees who are broker-dealers regulated by the Securities and Exchange Commission (SEC) and who are required to have their fiduciary accounts protected by the Securities Investor Protection Corporation (SIPC). SIPC, established by Congress in 1970, insures customer assets and funds held by a U.S. broker-dealer in the case of an insolvency in an amount of up to $500,000 per customer, of which $100,000 may be cash. Thus, with respect to SIPC protected assets, the on-going net worth requirement provides little if any increase in protection of assets held in fiduciary accounts. Accordingly, these temporary regulations provide that SIPC protected assets will be disregarded in determining the value of assets held in fiduciary accounts by passive trustees for purposes of the percentage prong of the net worth requirement.

These temporary regulations also increase the initial net worth requirement for all nonbank trustees to better assure that enterprises are sound and well-funded during their start-up period. Under the existing net worth requirements, every nonbank trustee must have an initial net worth that exceeds $100,000. Under these temporary regulations, all entities applying for nonbank trustee status must have a net worth of not less than $250,000 for the most recent taxable year preceding the applicant's initial application. The existing net worth requirements, as modified for SIPC protected assets, will continue to apply on an on-going basis after a nonbank trustee has obtained the approval of the IRS.

In the absence of evidence that the on-going net worth requirements fail to meet the underlying objectives, these requirements (except with respect to SIPC protected assets) remain unchanged. However, the IRS recognizes that the nonbank trustee requirements have been in effect since 1979. Accordingly, the IRS and Treasury would welcome comments concerning the net worth requirements generally, as well as other aspects of the 1979 regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5

U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Judith E. Alden, Office of the Associate Chief Counsel, (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

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

Par. 2. Section 1.401–12T is added to read as follows:

§ 1.401–12T Requirements for qualification of trusts and plans benefiting owner-employees (temporary).

(a) through (n)(6)(i) For guidance, see § 1.401–12(a) through (n)(6)(i).

(n)(6)(ii) *Adequacy of net worth*—(A) *Initial net worth requirement.* In the case of applications received after January 5, 1995, no initial application will be accepted by the Commissioner unless the applicant has a net worth of not less than $250,000 (determined as of the end of the most recent taxable year). Thereafter, the applicant must satisfy the adequacy of net worth requirements of paragraph (n)(6)(ii)(B), of this section.

(B) *On-going net worth requirement.* For guidance, see § 1.401–12(n)(6)(ii)(B).

(7) *Special rules*—(i) *Passive trustee.*

(A) through (B). For guidance, see § 1.401–12(n)(7)(i) (A) through (B).

(C) For purposes of determining whether a passive nonbank trustee who is a broker or dealer within the meaning of 15 U.S.C. § 78*lll* satisfies the net worth requirements of subparagraph (n)(6)(ii)(B), assets held by the passive trustee in fiduciary accounts and protected by the Securities Investor Protection Corporation (SIPC) created under the Securities Investor Protection Act of 1970 (15 U.S.C. § 78aaa et seq., as amended) will not be included in determining the value of assets held in fiduciary accounts by the passive nonbank trustee. Such assets are only disregarded, however, in determining the value of assets held in fiduciary accounts by the passive trustee to the extent the assets are protected by SIPC.

(ii) [Reserved]

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: November 3, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–29702 Filed 12–5–94; 8:45 am]

BILLING CODE 4830–01–U

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2606 and 2609

RIN 1212–AA72

Debt Collection Procedures—Tax Refund Offset

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Interim final rule.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") is issuing an interim final rule that will enable it to refer past-due, legally enforceable debts to the Internal Revenue Service to be offset against federal tax refunds. The PBGC believes that adoption of this rule will enhance its debt collection ability. The procedures in this rule assure that PBGC regulations meet the requirements for participation in the federal tax refund offset program.

DATES: This rule is effective January 5, 1995. Comments must be received on or before February 6, 1995.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or hand-delivered to Suite 340 at the above address between 9:00 a.m. and 5:00 p.m., Monday through Friday. Comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, Suite 240, at the above address between 9:00 a.m. and 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation ("PBGC") administers the pension plan termination insurance program under Title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") (29 U.S.C. 1301 *et seq.*). In conjunction with the pension plan termination insurance program, persons (including organizations and entities) incur various types of debts to the PBGC.

The PBGC uses various methods to collect its debts. As part of an effort to enhance its debt collection ability, on November 30, 1994, the PBGC published a final rule adding to its regulations a new "Debt Collection" part (29 CFR part 2609) that included administrative offset procedures in subpart B and reserved subpart C for tax refund offset procedures (59 FR 61272; effective December 30, 1994). The PBGC has not previously participated in the tax refund offset program of the Internal Revenue Service ("IRS"). Because the PBGC believes that such participation will enhance its debt collection ability, the PBGC now is amending part 2609 to include the anticipated subpart C procedures and adding, in subpart A, a general section (§ 2609.1) and several definitions (§ 2609.2). The PBGC also is amending two provisions of part 2606 of its regulations (29 CFR part 2606, Rules of Administrative Review of Agency Decisions), and it is reserving subpart D of part 2609 for salary offset procedures.

The Federal Tax Refund Offset Program

The federal tax refund offset program is authorized by section 3720A of subchapter II (Claims of the United States), chapter 37 of title 31 of the United States Code (31 U.S.C. 3720A). Section 3720A directs any federal agency that is owed a past-due, legally enforceable debt to notify the Secretary of the Treasury at least once a year of the amount of any such debt. Before doing so, an agency must meet requirements specified in subsection (b) of section 3720A or prescribed by the Secretary of the Treasury to ensure that the debt is past-due and legally enforceable and that the agency has made reasonable efforts (pursuant to regulations) to obtain payment. It also must comply with the notice, minimum debt, and fee requirements in Treasury regulations issued pursuant to subsection (d) of section 3720A. Upon receiving notice that a named person owes an agency a past-due, legally enforceable debt, the Secretary of the Treasury is to determine whether any amounts are payable to that person as a refund and, if so, to reduce the refund by the amount of the debt and pay the

amount of the reduction to the agency (subsection (c) of section 3720A).

Section 301.6402–6 of the IRS's Procedure and Administration Regulations (26 CFR 301.6402–6) provides that to be eligible to participate in the tax refund offset program an agency must have promulgated temporary or final administrative offset and federal tax refund offset regulations (under 31 U.S.C. 3716 and 3720A, respectively). In addition, unless the agency has certified (relying on the most current information reasonably available) that it will not refer the names of present or former federal employees or other persons whose debts are subject to offset under section 5514(a)(1) of title 5 of the United States Code (5 U.S.C. 5514(a)(1)), it must have promulgated temporary or final salary offset regulations (§ 301.6402–6(b)).

To be referred to the IRS for offset, IRS's regulations require, among other things, that a debt be at least $25 and, except in the case of a judgment debt or any debts specifically exempt from this requirement, be referred within 10 years after the agency's right of action accrues (§ 301.6402–6(c) (1) and (7)). In addition, an agency may not refer a debt unless (1) the debt is ineligible for administrative offset (by reason of the exclusion in 31 U.S.C. 3716(c)(2) for claims explicitly provided for in other statutes) or the agency cannot currently collect it by administrative offset against amounts payable to the taxpayer by that agency, and (2) the agency cannot currently collect the debt by salary offset (§ 301.6402–6(c) (2) and (3)).

Before referring a debt, an agency must notify, or make a reasonable attempt to notify, the taxpayer that the debt is past-due and, unless repaid within 60 days, will be referred to the IRS for offset against a tax overpayment; give the taxpayer at least 60 days to present evidence that all or part of the debt is not past-due or not legally enforceable; consider evidence presented; and determine that the debt is past-due and legally enforceable (§ 301.6402–6(c) (4) and (5)). Under IRS regulations, an agency has made a reasonable attempt to notify the taxpayer if it uses the most recent address obtained from the IRS pursuant to section 6103(m) (2), (4), or (5) of the Internal Revenue Code (26 U.S.C. 6103(m) (2), (4), or (5)), except where agency notices are sent to a different address received in a clear and concise notification from a taxpayer (§ 301.6402–6(d)(1)).

Finally, if a consumer debt exceeds $100, an agency also must disclose it to a consumer reporting agency, as authorized by section 3(d) of the Federal Claims Collection Act (31 U.S.C. 3711(f)), unless the consumer reporting agency would be prohibited from reporting information concerning the debt because it is obsolete (see 15 U.S.C. 1681(c)) (§ 301.6402–6(c)(6)).

Agency referrals of debts must contain the name and identifying number of the taxpayer who is responsible for the debt, the amount of the debt, the date on which the debt became past-due, and the agency's designation (§ 301.6402–6(e)). The agency must promptly notify the IRS if, after a referral, the agency determines that an error has been made with respect to the information transmitted to the IRS, or if the agency receives a payment from the debtor (§ 301.6402–6(f)).

Interim Final Rule

As indicated in § 2609.31 (Purpose and scope), the procedures in subpart C of part 2609 apply to determinations that a debt of at least $25 is past-due and legally enforceable, and to PBGC debt referrals to the IRS. Section 2609.32 reiterates when, under IRS regulations, a debt is eligible for tax refund offset. Among other things, a debt is not to be referred unless the PBGC cannot currently collect it by salary offset (§ 2609.32(b)). The PBGC intends to promulgate salary offset regulations under section 5514(a) of Title 5 of the United States Code (5 U.S.C. 5514(a)). Until it does so, it will not refer to the IRS the names of any persons whose debts are subject to salary offset.

Section 2609.33 specifies the procedures that the PBGC must complete before referring a debt to the IRS. The PBGC may satisfy these requirements in conjunction with any other procedures that apply to the same debt, such as administrative offset procedures or procedures prescribed in part 2606 (§ 2609.33(a)).

The PBGC anticipates, however, that particularly in the first year of its participation in the tax refund offset program, the debts it refers to the IRS will include debts as to which procedures previously provided do not satisfy the requirements of new § 2609.33. For example, the PBGC anticipates referring debts relating to premium payments due under section 4007 of ERISA (29 U.S.C. 1307) and part 2610 of the PBGC's regulations. Determinations with respect to premiums, interest, and late payment penalties are covered by part 2606 of the PBGC's regulations (29 CFR part 2606), Rules for Administrative Review of Agency Decisions. Part 2606 currently provides that (subject to limited exceptions) an aggrieved person must request reconsideration of an initial PBGC determination as to premiums, interest, and/or late payment penalties within 30 days of the date of the determination and that the request must reference all pertinent information in the PBGC's possession and include any additional information believed to be relevant (§§ 2606.33 and 2606.35). Thus, the PBGC has not been providing such debtors with at least 60 days to present evidence that all or part of a debt is not past-due or not legally enforceable, as is required for tax refund offset (§ 2609.33(b)(2)). Nor has the PBGC notified such debtors of its intention to refer a debt for tax refund offset (§ 2609.33(b)(1)). Before referring these debts to IRS, the PBGC will provide debtors any additional procedures required by new § 2609.33.

In order that the PBGC in the future may provide, in a single review, procedures that comply both with this subpart and with part 2606 (where applicable), the PBGC is amending §§ 2606.33 and 2606.53. The amendment adds language that will require the PBGC, in a case where administrative review includes a procedure in § 2609.33, to provide for a 60-day (or longer) period for requesting review (and, hence for presenting evidence that all or part of a debt is not past-due or not legally enforceable).

The PBGC currently has no plans to use agents, or persons other than PBGC employees acting on its behalf, to consider evidence under § 2609.33. Should it decide to do so in the future, a debtor would be accorded 30 days, or more, from the date of that person's determination within which to request review by the Director of the Financial Operations Department or his or her designee (§ 2609.33(b)(3)), as required by IRS regulations (§ 301.6402–6(d)(2)).

Section 2609.33(c) provides for consumer reporting agency disclosure. Agency reporting of delinquent debts to a consumer reporting agency will comply with the Federal Claims Collections Standards (see 4 CFR 102.5) and with the Privacy Act of 1974, as amended (5 U.S.C. 552a). However, the vast majority of debts to the PBGC are not consumer debts subject to this requirement.

The PBGC's Financial Operations Department will have primary responsibility for PBGC participation in the IRS's tax refund offset program (see § 2609.1(b)(1)). As indicated in §§ 2609.33(c) and 2609.34, this includes responsibility for consumer reporting agency disclosure and for referral of debt for tax refund offset (including assuring that referrals contain information, and are corrected, as

required by IRS regulations (§ 301.6402–6 (e) and (f)).

Ascertaining indebtedness and other aspects of agency collection activities will continue to be handled by the PBGC organizational unit with functional responsibility for the type of claim involved (see § 2609.1(b)(2)). (Applicable assignments of responsibilities are set forth in the mission and functions statements issued by the Executive Director and included (along with organization charts) in the PBGC Directives Manual as section 30–1 of Part GA (General Administration.)

This rule prescribes rules of agency organization and procedure, in accordance with congressional standards implemented by the IRS after notice and comment rulemaking. Because the Administrative Procedure Act does not require publication of a general notice of proposed rulemaking before the issuance of rules of agency organization and procedure, and because, in view of prior IRS rulemaking, the PBGC has for good cause found further notice and public procedure unnecessary (5 U.S.C. 553(b)(A) and (B)), the PBGC is issuing this rule as an interim final rule. However, the PBGC is soliciting public comment on its provisions. If the comments received during this period warrant modifying provisions of the rule, the PBGC will do so.

E.O. 12866

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866 because the rule would not 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; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866. The purpose of this rule is to enhance the PBGC's debt collection ability. The procedures will be triggered only by a failure to pay a past-due, legally enforceable debt.

List of Subjects

29 CFR Part 2606

Administrative practice and procedure, Organization and functions (Government agencies), Pension insurance, Pensions.

29 CFR Part 2609

Administrative practice and procedure, Claims.

For the reasons set forth above, the PBGC is amending 29 CFR parts 2606 and 2609 as follows:

PART 2606—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

1. The authority citation for part 2606 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

§§ 2606.33 and 2606.53 [AMENDED]

2. Sections 2606.33 and 2606.53 are amended by adding "or, when administrative review includes a procedure in § 2609.33 of this subchapter, by a date 60 days (or more) thereafter that is specified in the PBGC's notice of the right to request review" at the end before the period.

PART 2609—DEBT COLLECTION

3. The authority citation for part 2609 is revised to read as follows:

Authority: 29 U.S.C. 1302(b); 31 U.S.C. 3701, 3711(f), 3720A; 4 CFR part 102; 26 CFR 301.6402–6.

4. Subpart A of part 2609 is amended by adding a new § 2609.1 to read as follows:

§ 2609.1 General.

(a) Certain PBGC efforts to obtain payment of debts arising out of activities under the Employee Retirement Income Security Act of 1974, as amended, are authorized by and subject to requirements prescribed under other federal statutes. When, and to the extent, such requirements apply to collection of a debt by the PBGC, PBGC activities will be consistent with such requirements, as well as with any other applicable requirements (see, *e.g.*, parts 2606, 2610, and 2622 of this chapter).

(b)(1) The Executive Director of the PBGC has delegated to the Director of the Financial Operations Department primary responsibility for PBGC debt collection activities. This delegation includes responsibility for procedures implementing requirements prescribed under federal statutes other than the Employee Retirement Income Security Act of 1974, as amended, and for coordinating the activities of other PBGC departments with functional responsibilities for different types of claims.

(2) PBGC departments are responsible for ascertaining indebtedness and other aspects of agency collection activities within their areas of functional responsibility.

5. Section 2609.2 is amended by adding, in alphabetical order, definitions of *consumer reporting agency*, *IRS*, and *tax refund offset* to read as follows:

§ 2609.1 Definitions.

* * * * *

Consumer reporting agency has the meaning set forth in 31 U.S.C. 3701(a)(3).

* * * * *

IRS means the Internal Revenue Service.

* * * * *

Tax refund offset means the reduction by the IRS of a tax overpayment payable to a taxpayer by the amount of past-due, legally enforceable debt owed by that taxpayer to a federal agency that has entered into an agreement with the IRS with regard to its participation in the tax refund offset program, pursuant to IRS regulations (26 CFR 301.6402–6).

6. Part 2609 is further amended by adding a new subpart C and adding and reserving a new subpart D heading to read as follows:

Subpart C—Tax Refund Offset

Sec.
2609.31 Purpose and scope.
2609.32 Eligibility of debt for tax refund offset.
2609.33 Tax refund offset procedures.
2609.34 Referral of debt for tax refund offset.

Subpart C—Tax Refund Offset

§ 2609.31 Purpose and scope.

(a) *Purpose.* This subpart prescribes procedures for debt collection by tax refund offset, as authorized by section 3720A of subchapter II, chapter 37 of title 31 of the United States Code (31 U.S.C. 3720A) and in accordance with applicable IRS regulations (26 CFR 301–6402.6), including a related procedure for disclosure to a consumer reporting agency.

(b) *Scope.* The procedures in this subpart apply to determinations that a debt of at least $25 is past-due and legally enforceable, to referrals by the PBGC of past-due, legally enforceable debts to the IRS for offset, and to any subsequent corrections of information contained in such referrals.

§ 2609.32 Eligibility of debt for tax refund offset.

The PBGC will determine whether a debt is eligible for tax refund offset in accordance with IRS regulations (26 CFR 301.6402–6 (c) and (d)). The PBGC may refer a past-due, legally enforceable debt to the IRS for offset if:

(a) The debt is a judgment debt, or the PBGC's right of action accrued not more than 10 years earlier (unless the debt is specifically exempt from this requirement);

(b) The PBGC cannot currently collect the debt by salary offset (pursuant to 5 U.S.C. 5514(a)(1));

(c) The debt is ineligible for administrative offset (by reason of 31 U.S.C. 3716(c)(2)), or the PBGC cannot currently collect the debt by administrative offset (under 31 U.S.C. 3716 and subpart B of this part) against amounts payable by the debtor to the PBGC;

(d) The PBGC has notified, or attempted to notify, the debtor of its intent to refer the debt, given the debtor an opportunity to present evidence that all or part of the debt is not past-due or not legally enforceable, considered any evidence presented by the debtor in accordance with § 2609.33 of this part, and determined that the debt is past-due and legally enforceable;

(e) If the debt is a consumer debt and exceeds $100, the PBGC has disclosed the debt to a consumer reporting agency (as authorized by 31 U.S.C. 3711(f) and provided in § 2609.33 of this part), unless a consumer reporting agency would be prohibited from reporting information concerning the debt (by reason of 15 U.S.C. 1681c); and

(f) The debt is at least $25.

§ 2609.33 Tax refund offset procedures.

(a) *General.* Before referring a debt for tax refund offset, the PBGC will complete the procedures specified in paragraph (b) of this section and, if applicable, paragraph (c) of this section. The PBGC may satisfy these requirements in conjunction with any other procedures that apply to the same debt, such as those prescribed in § 2609.23 of this part or part 2606 of this subchapter.

(b) *Notice, opportunity to present evidence, and determination of indebtedness.* (1) The PBGC will notify, or make a reasonable attempt to notify, a person owing a debt (a "debtor") that a debt is past-due and if not repaid within 60 days, the PBGC will refer the debt to the IRS for offset against any overpayment of tax. For this purpose, compliance with IRS procedures (26 CFR 301.6402–6(d)(1)) constitutes a reasonable attempt to notify a debtor.

(2) A debtor will have at least 60 days to present evidence, for consideration by the PBGC, that all or part of a debt is not past-due or not legally enforceable.

(3) If evidence that all or part of a debt is not past-due or not legally enforceable is considered by an agent or person other than a PBGC employee acting on behalf of the PBGC, a debtor will have at least 30 days from the date of the determination on the debt to request review by the Director of the Financial Operations Department (or a department official designated by the Director).

(4) The PBGC will notify a debtor of its determination as to whether all or part of a debt is past-due and legally enforceable.

(c) *Consumer reporting agency disclosure.* (1)(i) If a consumer debt exceeds $100, the Director of the Financial Operations Department (or a department official designated by the Director), after verifying the validity and overdue status of the debt and that section 605 of the Consumer Credit Protection Act (15 U.S.C. 1681c) does not prohibit a consumer reporting agency from reporting information concerning the debt because it is obsolete, will send the individual who owes the debt a written notice—

(A) That the debt is past-due;

(B) That the PBGC intends to disclose to a consumer reporting agency that the individual is responsible for the debt and the specific information to be disclosed; and

(C) How the individual may obtain an explanation of the debt, dispute the information in PBGC's records, and obtain administrative review of the debt.

(ii) If the PBGC does not have a current address for an individual, the Director of the Financial Operations Department (or a department official designated by the Director) will take reasonable action to locate the individual.

(2) The Director of the Financial Operations Department (or a department official designated by the Director) will disclose the debt if, within 60 days (or, at his or her discretion, more than 60 days) after sending the notice described in paragraph (c)(1) of this section, the individual has not repaid the debt, or agreed to repay the debt under a written agreement, or requested administrative review of the debt.

§ 2609.34 Referral of debt for tax refund offset.

The Director of the Financial Operations Department (or a department official designated by the Director) will refer debts to the IRS for refund offset, and will correct referrals, in accordance with IRS regulations (26 CFR 301.6402–6 (e) and (f)).

Subpart D—Salary Offset [Reserved]

Issued in Washington, DC, this 30 day of November, 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–29879 Filed 12–5–94; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Colorado Regulatory Program

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

ACTION: Final rule, approval of amendment.

SUMMARY: OSM is approving, with one exception and additional requirement, a proposed amendment to the Colorado regulatory program (hereinafter referred to as the "Colorado program"), as administered by the Colorado Division of Minerals and Geology (hereinafter referred to as the "Division") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to bonding and revegetation success standards. The amendment revises the Colorado program (1) to be consistent with SMCRA and the Federal regulations and (2) to improve operational efficiency.

EFFECTIVE DATE: December 6, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas E. Ehmett, Telephone (505) 766–1486.

SUPPLEMENTARY INFORMATION:

I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. General background information on the Colorado program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in the December 15, 1980, **Federal Register** (45 FR 82173). Subsequent actions concerning Colorado's program and program amendments can be found at 30 CFR 906.15, 906.16, and 906.30.

II. Proposed Amendment

By letter dated April 18, 1994, Colorado submitted to OSM a proposed

amendment to its program pursuant to SMCRA (administrative record No. CO–611). Colorado submitted the proposed amendment in partial response to a March 22, 1990, letter (administrative record No. CO–496) that OSM sent to Colorado in accordance with 30 CFR 732.17(c), and at its own initiative. The provisions of the rules of the Colorado Mined Land Reclamation Board at 2 Code of Colorado Regulations 407–2 that Colorado proposed to revise were: Rule 1.04, definitions; Rule 3.02, performance bond requirements for surface coal mining and reclamation operations; Rule 3.03, release of performance bonds; Rule 3.06, special bonding requirements for construction of mine drainage control facilities; and Rule 4.15.10, revegetation success criteria for areas to be developed for industrial, commercial, or residential use.

OSM announced receipt of the proposed amendment in the May 13, 1994, **Federal Register** (59 FR 24998), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (administrative record No. CO–617). Because no one requested a public hearing or meeting, none was held. The public comment period ended June 13, 1994.

During its review of the amendment, OSM identified concerns or requested clarification regarding Colorado's (1) Rule 3.03.1(2)(b), concerning requirements for the demonstration of productivity on prime farmlands prior to phase II bond release, and (2) Rule 4.15.10(3), concerning a variance from the requirement for living ground cover the control erosion for mine support facilities located within areas where the premining and postmining land uses are industrial or commercial. OSM notified Colorado of the concerns by letter dated July 12, 1994 (administrative record No. CO–631).

Colorado responded in a letter dated July 28, 1994, by submitting a revised amendment and additional explanatory information (administrative record No. CO–635). Colorado proposed revisions to and additional explanatory information for Rules 3.02.1(3)(b) and 4.25.5(3)(a), concerning the criteria for bonds released on prime farmlands, and Rule 4.15.10(3), concerning a variance from compliance with the requirement for living ground cover to control erosion specifically for mine support facilities located within areas where the premining and postmining land uses are industrial or commercial.

Based upon the revisions to and additional explanatory information for the proposed program amendment submitted by Colorado, OSM reopened the public comment period in the September 1, 1994 **Federal Register** (59 FR 45250; administrative record No. CO–643). The public comment period ended on September 16, 1994.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds, with one exception and additional requirement, that the proposed program amendment submitted by Colorado on April 18, 1994, and as revised by it and supplemented with additional explanatory information on July 28, 1994, is no less effective than the corresponding Federal regulations. Accordingly, the Director approves the proposed amendment.

1. Substantive Revisions to Colorado's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

Colorado proposed revisions to the following rules that are substantive in nature and contain requirements that are substantively identical to the requirements of the corresponding Federal regulations (listed in parentheses).

Rule 3.02.1(4) (30 CFR 800.13(a)(1)), general requirements for the period of liability under a performance bond concerning (1) a reference to Rule 3.03.3 for the term of bond liability and (2) deletion of language requiring extension of liability to all lands outside the permit area that are disturbed by surface coal mining operations;

Rule 3.02.4(2)(b)(i)(A) (30 CFR 800.20(b)), concerning (1) consent of the Division prior to cancellation by the surety of bond coverage for permitted lands that have not been disturbed and (2) the requirement that the Division advise the surety whether the bond may be canceled within 30 days after receipt of the notice of intent to cancel;

Rule 3.02.4(2)(b)(v)(A) (30 CFR 800.16(e)(1)), concerning the surety's requirement to report any notice received or action filed alleging the insolvency or bankruptcy of the permittee;

Rule 3.02.4(2)(c) (30 CFR 800.21(f)), concerning deletion of the exemption for irrevocable letters of credit from certain conditions applicable to collateral bonds;

Rule 3.02.4(2)(c)(ii) (30 CFR 800.21(e)(1)), concerning the method by which the Division will assess the market value of collateral for collateral bonds;

Rule 3.02.4(2)(d)(vi)(A) (30 CFR 800.16(e)(1)), concerning the requirement for surety bonds that a bank report any notice received or action filed alleging the insolvency or bankruptcy of the permittee;

Rule 3.03.2(1)(b) (30 CFR 800.40(a)(2)), concerning the content of the public notice which the permittee must advertise when requesting bond release;

Rule 3.03.2(2) (30 CFR 800.40(b) (1) and (2)), concerning (1) the determination regarding the probability of future pollution of surface or subsurface water during the Division's evaluation of a bond release request and (2) arrangements with the permittee to allow access to the permit area upon request by any person with an interest in bond release, for the purpose of gathering information relevant to the proceeding.

Because these proposed Colorado rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective than the Federal regulations. The Director approves these proposed rules.

2. Rules 1.04(25), 3.02.4(1)(b), and 3.02.4(2)(c)(ix), Collateral Bonds

a. Rule 1.04(25), Requirements for Cash and Government Bonds Used as Forms of Collateral Bond

Colorado proposed to revise the definition of "collateral bond" at Rule 1.04(25) to require that (1) cash be deposited in a Federally insured or equivalently protected account and (2) negotiable government bonds be endorsed to the order of the State.

The Federal definition of "collateral bond" requires (1) at 30 CFR 800.5(b)(1) that cash be deposited in a Federally insured or equivalently protected account and (2) at 30 CFR 800.5(b)(2) that government bonds be endorsed to the order of the regulatory authority.

Because the revisions pertaining to cash and government bonds in Colorado's definition of "collateral bond" at Rule 1.04(25) are substantively identical to the requirements of the Federal regulations at 30 CFR 800.5(b)(1) and (2), the Director finds that Colorado's proposed Rule 1.04(25) is no less effective than the Federal regulations at 30 CFR 800.5(b). Therefore, the Director approves the revisions pertaining to cash and government bonds as forms of collateral bond at Rule 1.04(25).

b. Rules 1.04(25), 3.02.4(1)(b), and 3.02.4(2)(c)(ix), Disallowance of the Use of Real Property as a Form of Collateral Bond

Colorado proposed to revise the definition of "collateral bond" at Rule 1.04(25) and the conditions applicable to collateral bonds at Rules 3.02.4(1)(b) and 3.02.4(2)(c)(ix) by deleting language referring to a perfected first-lien security interest in real property located in Colorado. The effect of these deletions is to disallow real property as an allowable form of collateral bond in the Colorado program.

The Federal definition of "collateral bond" at 30 CFR 800.5(b)(5) provides that a perfected, first-lien security interest in real property, in favor of the

regulatory authority, may be used to support a collateral bond. The Federal regulations at 30 CFR 800.21(c) set forth the conditions applicable to the use of real property as collateral bond. The Federal regulations at 30 CFR 730.11(b) also provide, however, that State laws and regulations may be more stringent and environmentally protective than the corresponding Federal regulations.

In this case, Colorado's proposed deletion, at Rules 1.04(25), 3.02.4(1)(b), and 3.02.4(2)(c)(ix), of the use of real property to support a collateral bond would make these proposed rules more stringent than the corresponding Federal regulations at 30 CFR 800.5(b)(5) and 800.21(c) because Colorado would allow only cash and other financial instruments that have a fairly constant and readily ascertainable value to be used to support a collateral bond.

As discussed above, because Colorado's proposed rules are more stringent and environmentally protective than the corresponding Federal regulations, which is provided for in the Federal regulations at 30 CFR 730.11(b), the Director finds that Colorado's disallowance of the use of real property as a form of collateral bond at Rules 1.04(25), 3.02.4(1)(b), and 3.02.4(2)(c)(ix), is no less effective than the counterpart Federal regulations at 30 CFR 800.5(b)(5) and 800.21(c) concerning the use of real property as a form of collateral bond. Therefore, the Director approves Colorado's disallowance of real property to support a collateral bond by deleting all references to "real property" from Rules 1.04(25), 3.02.4(1)(b), and 3.02.4(2)(c)(ix).

3. Rules 1.04(116), 3.02.4(1)(c), and 3.02.4(2)(e), Self-Bonds

Colorado proposed to disallow the use of a self-bond as a bond form by deleting in their entirety (1) Rule 1.04(116), the definition of "self-bond," and (2) Rules 3.02.4(1)(c) and 3.02.4(2)(e), which allow for the use of self-bonds. Colorado defines "self-bond" to mean the bond of an applicant itself accompanied by one or more perfected first-lien security interests in real property located in Colorado. Colorado's disallowance of the use of self-bonds is consistent with its proposed disallowance of the use of real property to support a collateral bond, as discussed in finding No. 2.b above.

The Federal regulations at 30 CFR 800.12 require that a regulatory authority prescribe the form of the performance bond, but allow the regulatory authority to choose to prescribe a surety bond, a collateral bond, a self-bond, or a combination of any of these bonding methods.

Because the regulatory authority is not obligated to allow all bond forms, the Director finds that Colorado's proposed deletion of use of self-bonds at Rules 1.04(116), 3.02.4(1)(c), and 3.02.4(2)(e) is consistent with and no less effective than the Federal regulations at 30 CFR 800.12. Therefore, the Director approves the deletion of Rules 1.04(116), 3.02.4(1)(c), and 3.02.4(2)(e).

4. Rules 3.02.1(7) and 3.03.1(3)(e), Bond Liability on Areas With Approved Alternative Postmining Land Uses

a. Rule 3.02.1(7), Exemption From Bond Liability for Implementation of Features of an Alternative Postmining Land Use That Are Beyond the Control of the Permittee

Colorado proposed to revise Rule 3.02.1(7) to clarify that the permittee is excused from bond liability for implementation of features of an alternative postmining land use, approved under Rule 4.16.3, that are beyond the control of the permittee. Colorado explained in its "Statement of Basis, Specific Statutory Authority, and Purpose," submitted with the proposed amendment, that "the exemption provision is intended to apply only to actual implementation of those features of an approved alternative post-mining land use outside the scope of the reclamation plan, such as construction of an industrial or commercial or residential development."

The Federal regulations at 30 CFR 800.13(d)(2) indicate that a bond need not cover the implementation of an alternative postmining land use that is approved under the alternative postmining land use criteria at 30 CFR 816.133(c) and 817.133(c) and that is beyond the control of the permittee. In response to comments regarding a petition to amend the Federal regulations at 30 CFR Subchapter J, OSM justified the language at 30 CFR 800.13(d)(2), previously proposed as 805.13(e) and codified as 805.13(f), by explaining that

> [I]t is unreasonable to require the surety to assume liability for completion of an alternative post mining land use plan as a condition of release of a performance bond. There is no way that a surety can guarantee that * * * houses [are] built or an industrial complex [is] developed. In many cases a third party land owner who may be different than the operator would be required to develop the post mining land use and would not be held liable under performance bond by the surety. Therefore, the surety would not have any guarantee that the land owner would develop the property as part of the operators postmining land use.

(44 FR 28005, 28007, May 14, 1979). Therefore, the Federal regulations at 30 CFR 800.13(d) exclude from bond liability features of an approved alternative postmining land use outside the scope of the reclamation plan, such as construction of a residential or an industrial development.

As stated in its "Statement of Basis, Specific Statutory Authority, and Purpose," Colorado's intent to apply proposed Rule 3.02.1(7) to industrial, commercial, or residential developments is consistent with the rationale set forth in the Federal regulation preamble. On this basis, and because the proposed rule otherwise includes the same requirement as the Federal regulations to excuse the permittee from bond liability for implementation of features of an alternative postmining land use that are beyond the control of the permittee, the Director finds that proposed Rule 3.02.1(7) is no less effective than the Federal regulations at 30 CFR 800.13(d)(2). The Director approves the proposed rule.

b. Rules 3.02.1(7) and 3.03.1(3)(e), Requirements That Performance Bonds for Approved Alternative Postmining Land Uses of Industrial, Commercial or Residential Must Be Sufficient To Reclaim the Site to a Condition Capable of Supporting the Premining Land Use and Be Held Throughout the Applicable Liability Period

Colorado proposed to revise Rule 3.02.1(7) to require that a performance bond, for an approved alternative postmining land use of industrial, commercial, or residential, must be sufficient to reclaim the site to a condition capable of supporting the premining land use, should the alternative postmining land use prove to be infeasible in the event of bond forfeiture. Colorado also proposed to revise Rule 3.03.1(3)(e) to require, for areas with an alternative postmining land use designation of industrial, commercial, or residential, bond coverage throughout the applicable liability period that is sufficient for the regulatory authority to return the land to its premining land use in the event of bond forfeiture.

There is no specific counterpart in the Federal program to Colorado's proposal that a performance bond, for lands with an approved alternative postmining land use of industrial, commercial, or residential, be sufficient to reclaim the land to the premining land use. However, the Federal regulations at 30 CFR 816.133(a) and 817.133(a) require

that land be reclaimed to the premining land use or to a higher or better land use. If, due to bond forfeiture, the alternative postmining land use cannot be implemented, then the requirement to return the land to the premining land use, as proposed at Rules 3.02.1(7) and 3.03.1(3)(e), is consistent with the Federal regulations at 30 CFR 816.133(a) and 817.133(a). Furthermore, the Federal regulations at 30 CFR 800.13(a)(1) and 800.14(b), require, respectively, that (1) bond liability shall be for a period which is coincident with the operator's period of extended responsibility for successful revegetation or until reclamation requirements of SMCRA, the regulatory program, and the permit are achieved, whichever is later, and (2) the amount of bond shall be sufficient to assure the completion of the reclamation plan if the work has to be performed by the regulatory authority. Colorado's proposal at Rule 3.03.1(3)(e) is consistent with the requirements of the Federal regulations at 30 CFR 800.13(a)(1) and 800.14(b).

Based on the discussion above, the Director finds that Colorado's proposed Rules 3.02.1(7) and 3.03.1(3)(e), concerning bond coverage sufficient to return lands with an approved alternative postmining land use of industrial, commercial, or residential, to the premining land use in the event of bond forfeiture, are no less effective than the Federal regulations at 30 CFR 800.13(a)(1), 800.14(b), 816.133(a), and 817.133(a). The Director approves the proposed rules.

5. Rules 3.02.2(4) (b) and (d), Adjustments of Bond Amount

Colorado proposed to revise Rule 3.02.2(4)(b) to specify that the requirements for the Division to provide a written decision and public notice apply to any adjustment, not just an increase, in the bond amount. Colorado proposed to revise Rule 3.02.2(4)(d) to specify that a request for bond reduction (1) must be submitted with evidence demonstrating that the reduction is warranted due to a reduction of proposed affected acreage, change in mining or reclamation methods, or other documented factors which reduce the cost of future reclamation, (2) must be submitted in the form of a permit or a technical revision, and (3) cannot be based on reclamation performed, which must be requested as a bond release under Rule 3.03.

There is no Federal counterpart to Colorado's proposal at Rule 3.02.2(4)(b) that the Division issue a written decision and provide public notice regarding adjustments in bond amounts. The counterpart Federal regulation to Colorado's proposed Rule 3.02.2(4)(d), at 30 CFR 800.15(c), provides that a permittee may request bond reduction based upon submission of evidence to the regulatory authority proving that the permittee's method of operation or other circumstances reduces the estimated cost for the regulatory authority to reclaim the bonded area. The Federal regulation further provides that a reduction in bond amount involving cost estimates and undisturbed land shall not be considered a request for bond release.

Colorado's proposed Rules 3.02.2(4)(b) and (d) are more specific than the counterpart Federal regulations at 30 CFR 800.15(c) in that the proposed rules provide (1) procedures governing decisions on bond adjustments and (2) more precise examples of what constitutes a basis for a reduction in bond amount. This specificity of the proposed rules is consistent with the counterpart Federal regulations. In all other respects, the requirements of Colorado's proposed rules are substantively identical to the Federal regulations. Therefore, the Director finds that proposed Rules 3.02.2(4)(b) and (d) are no less effective than the Federal regulations at 30 CFR 800.15(c) and approves them.

6. Rules 3.02.3(2)(a), (b), and (c), and 4.15.10(2) and (3), Bond Liability Period and Revegetation Success Standards for Land With an Approved Industrial, Commercial, or Residential Postmining Land Use

a. Rules 3.02.3(2)(a), (b), and (c), Bond Liability Period

Colorado proposed new Rule 3.02.3(2)(c) to require, for areas where the approved postmining land use is industrial, commercial, or residential, that the minimum period of liability shall continue until compliance with the revegetation requirement of proposed Rule 4.15.10(2) or the alternative requirement of proposed Rule 4.15.10(3) is demonstrated. Colorado proposed to revise existing Rules 3.02.3(2)(a) and (b), which require that the basis of a minimum 5 or 10-year bond liability period, to reference the proposed exception at Rule 3.02.3(2)(c). Colorado's referenced proposed rules 4.15.10(2) and 4.15.10(3), respectively, (1) require that erosion be controlled by living ground cover within 2 years of regrading or within 2 years of the designation of the land use, whichever is later, and (2) provide for a limited exception for certain mine support facilities, where living ground cover is not necessary to control erosion. (See finding No. 6.b below for a discussion of proposed Rules 4.15.10(2) and (3)).

Therefore, Colorado's proposed rules 3.02.3(2)(a), (b), and (c), as explained by Colorado in its "Statement of Basis, Specific Statutory Authority, and Purpose," effectively exempt areas to be developed for industrial, commercial, or residential land uses from the requirement that the success of revegetation be judged on the basis of a minimum 5 or 10-year responsibility period.

The Federal regulations at 30 CFR 816.116(c)(2) and (3) and 817.116(c)(2) and (3) provide for the same 5 or 10-year liability periods as do Colorado's Rules 3.02.3(2)(a) and (b). And, for areas to be developed for industrial, commercial, or residential use within 2 years after regrading is completed, the Federal regulations at 30 CFR 816.116(b)(4) and 817.116(b)(4) require, as the revegetation success standard, vegetative ground cover sufficient to control erosion within 2 years after regrading is completed. This same requirement is included in Colorado's proposed Rule 4.15.10(2).

OSM's 1979 and 1983 preambles to the Federal regulations address issues pertinent to Colorado's proposed Rules 3.02.3(2)(a), (b), and (c), which concern release of liability on areas with an approved industrial, commercial, or residential postmining land use upon demonstration of the revegetation success standard for the land use.

OSM explained in the preamble to the 1979 Federal regulations at 30 CFR 807.12(d), concerning criteria for bond release, that, unlike other performance standards, the performance standards at 30 CFR 816.116 and 817.116 for revegetation contain a special exception for industrial, commercial, or residential postmining land use plans approved by the regulatory authority. OSM explained that the exception allows permittees to meet a less stringent revegetation test for reclaimed areas that will be developed for industrial, commercial, or residential use within 2 years following completion of regrading. OSM also stated that, if an approved industrial, commercial, or residential land use is not implemented within 2 years, it becomes necessary to comply with the full-scale general revegetation success standards at 30 CFR 816.116 and 817.116 (44 FR 14902, 15122, March 13, 1979). In other words, the Federal regulations at 30 CFR 816.116(b)(4) and 817.116(b)(4), on lands developed within 2 years after regrading for industrial, commercial, or residential use, function as a limited exception to the full revegetation requirements of 30 CFR 816.116 and 817.116, which include the requirement

at 30 CFR 816.116(c)(2) and (3) and 817.116(c)(2) and (3) for a minimum 5 or 10-year liability period.

OSM, in the preamble to the 1983 Federal regulations at 30 CFR 800.13, concerning the period of bond liability, provides clarification that under 30 CFR 800.13(d)(2), which states that implementation of an alternative postmining land use that is beyond the control of the permittee need not be covered by the bond, the permittee is excused from bonding for third-party actions only insofar as they relate to implementation of approved postmining land uses by the third party (48 FR 32932, 32943, July 19, 1983). In other words, because the Federal regulation at 30 CFR 800.13(d)(2) is operative only upon implementation of an industrial, commercial, or residential land use, it is improper to release a bond where there is no actual implementation of the approved land use. Therefore, a final bond release decision must be based in part on submission of adequate proof that the industrial, commercial, or residential land use has substantially commenced and is likely to be achieved. If the industrial, commercial, or residential land use was approved as an alternative land use, and the use has not been substantially commenced within 2 years following completion of regrading, bond release decisions must be based upon the permittee's demonstration of compliance with the revegetation success standards for the premining land use according to the full revegetation requirements of 30 CFR 816.116 and 817.116, which include the requirement at 30 CFR 816.116(c) (2) and (3) and 817.116(c) (2) and (3) for a minimum 5- or 10-year liability period.

OSM's decisions in appeals of ten-day letter and notice enforcement actions (under 30 CFR 842.11(b)(1)(iii)) have been consistent with the above interpretations of the 1979 and 1983 preamble discussions concerning the Federal regulations at 30 CFR 800.13(d)(2), 816.116(b)(4), and 817.116(b)(4) as they relate to release of bond liability on areas with approved industrial, commercial, or residential land uses.

Colorado's proposed Rules 3.02.3(2) (a), (b) and (c), which provide for bond release when the permittee successfully demonstrates that it has met the revegetation requirement for lands with an approved postmining land use of industrial, commercial, or residential, is consistent with the requirements of the Federal regulations at 30 CFR 816.116(b)(4) and 817.116(b)(4) as explained in the 1979 preamble to the Federal regulations concerning bond liability. However, Colorado's proposed Rule 3.02.3(2)(c) does not require a demonstration that the land use has substantially commenced and is likely to be achieved prior to release of bond liability, as discussed in the preamble to the 1983 Federal regulations concerning bond liability.

Colorado's proposed Rule 3.02.1(7), discussed in finding No. 4.b above, is relevant to the need for the permittee to comply with the full revegetation requirements of 30 CFR 816.116 and 817.116 in the event that approved alternative industrial, commercial, or residential land use has not been substantially commenced within the 2 years following completion of regrading. Colorado's proposed Rule 3.02.1(7) requires that the permittee's performance bond must be sufficient to reclaim the site to a condition capable of supporting the premining land use in the event of bond forfeiture. This proposed rule is consistent with the requirements of the 1983 Federal regulations at 30 CFR 800.13(d) as discussed above, that, if the permittee cannot demonstrate that an approved alternative industrial, commercial, or residential land use has substantially commenced and is likely to be achieved, the permittee must demonstrate compliance with the revegetation success standards for the premining land use according to the Federal regulations at 30 CFR 816.116 and 816.117.

Based on the above discussion, the Director finds that Colorado's proposed Rules 3.02.3(2)(a), (b), and (c) are less effective than the Federal regulations at 30 CFR 800.13(d)(2), 816.116(c), and 817.116(c). The Director does not approve Colorado's proposed Rules 3.02.3(2)(a), (b), and (c) to the extent that they would provide for release of bond liability on lands with an approved industrial, commercial, or residential land use *prior* to a demonstration that the land use has substantially commenced and is likely to be achieved. The Director requires that Colorado revise proposed Rule 3.02.3(2)(c) to require that, prior to release of bond liability, the permittee must demonstrate that development of the land use has substantially commenced and is likely to be achieved, in addition to compliance with the revegetation requirement of proposed Rule 4.15.10(2) or 4.15.10(3).

b. Rules 4.15.10(2) and (3), Revegetation Success Standards for Land With an Approved Industrial, Commercial, or Residential Postmining Land Use

Colorado proposed to revise Rule 4.15.10(2) to clarify, for areas reclaimed for industrial, commercial, or residential use, that (1) the living ground cover standard must be achieved for bond release and (2) the standard must be met within 2 years after completion of regrading or within 2 years after approval of such land use, whichever is later (i.e., Colorado acknowledges that there may be an approved change in land use after regrading).

Colorado's revisions of proposed Rule 4.15.10(2) have no identical Federal counterpart. The Federal regulations at 30 CFR 816.116(b)(4) and 817.116(b)(4) require, for industrial, commercial, or residential postmining land uses, that vegetative ground cover be sufficient to control erosion. The Federal regulations at 30 CFR 780.23(a)(3) require that changes in land use must be approved according to 30 CFR 816.133 and 817.133, which provide for designation of postmining and alternative postmining land uses. Thus, the only substantive differences between the requirements of Colorado's proposed Rule 4.15.10(2) and the requirements of the Federal regulations are (1) Colorado specifies that operator must use "living plants" to control erosion on areas to be developed for an industrial, commercial, or residential land use, and (2) Colorado allows for a change in the designation of postmining land use after final grading has taken place.

With respect to the first difference, the Federal regulations at 30 CFR 816.116(b)(4) and 817.116(b)(4) use the term "vegetative" ground cover, implying that the ground cover used to control erosion must be living plants. Colorado's explicit use of the term "living plants" simply adds specificity to the Colorado regulation. The use of the term "living plants" supplements the more general Federal term "vegetative ground over" and does not conflict with it.

With respect to the second difference, the Federal regulations at 30 CFR 780.23(a)(3), 816.133, and 817.133 do not restrict when changes in the postmining land use may occur. Colorado has discretion to approve a change in the designated postmining land use for a reclaimed area after final grading has occurred if such a change will satisfy the environmental protection requirements of the Colorado program.

Therefore, with respect to these differences, Colorado's proposed Rule 4.15.10(2) is not inconsistent with the Federal regulations at 30 CFR 780.23(a)(3), 816.116(b)(4), 816.133, 817.116(b)(4), and 817.133.

Colorado also proposed at Rule 4.15.10(2) allowance for a limited exception from the requirement for living ground cover by reference to

proposed Rule 4.15.10(3). Proposed Rule 4.15.10(3) provides an exception from compliance with the revegetation requirement of Rule 4.15.10(2) specifically for mine support facilities located within areas where both the premining and postmining land use is industrial or commercial, if it is (1) demonstrated that the mine support facilities will support the approved postmining land use, and (2) requested in writing by the landowner, and if the Division determines, that revegetation is not necessary to control erosion. Colorado stated in its "Statement of Basis, Specific Statutory Authority, and Purpose" that, in limited cases, living ground cover could be in conflict with the proposed land use, and that alternative erosion control measures such as gravel surfacing and appropriate site grading would effectively control erosion. Colorado cited as the most common example of this situation a pre-existing railroad siding utilized by a coal company to store and load coal for railroad shipment. Colorado stated that, in such cases, revegetation would often be impractical due to the historic industrial nature of the site and could conflict with railroad right-of-way fire hazard provisions and adjacent industrial uses.

There is no allowance in the Federal program for exceptions to the requirement for ground cover as a revegetation success standard on areas designated for use as industrial or commercial; however, the stated goal of the requirement for ground cover is to control erosion, not to demonstrate the capability of the soils to support a land use such as grazing or crop production. Although Colorado's proposed Rule 4 15.10(3) allows, under limited circumstances, that ground cover need not be "living," Colorado does not propose to waive the requirement for erosion control. As explained in Colorado's "Statement of Basis, Specific Statutory Authority, and Purpose," alternative erosion control measures such as gravel surfacing and appropriate site grading would effectively control erosion. Therefore, the allowance proposed at Rule 4.15.10(3), for erosion control measures other than live vegetation on lands with premining and postmining land uses of industrial or commercial, is not inconsistent with the ultimate goal of the revegetation requirement for erosion control in the Federal regulations.

Based on the above discussion, the Director finds that Colorado's proposed Rules 4.15.10(2) and (3) are no less effective than the Federal regulations at 30 CFR 780.23(a)(3), 816.116(b)(4), 816.133, 817.116(b)(4), and 817.133, and approves them.

7. Rule 3.02.4(2)(d)(i), Terms and Conditions of Irrevocable Letters of Credit

Colorado proposed to revise Rule 3.02.4(2)(d)(i) to require that irrevocable letters of credit be issued by a bank, not only authorized to do business in the United States, but also located in the State of Colorado. In its "Statement of Basis, Specific Statutory Authority, and Purpose," Colorado stated that it proposed this revision because it has experienced problems with bankruptcy notification from out-of-State banks, which caused delays in timely legal responses necessary to secure claims.

The corresponding Federal regulations at 30 CFR 800.21(b)(1) only require that the bank be authorized to do business in the United States. Colorado's proposed Rule 3.02.4(2)(d)(i) provides a requirement for letters of credit as forms of collateral bond that is in addition to those provided in the Federal program. This requirement affords a measure of protection beyond that afforded by the Federal regulations and is not inconsistent with the Federal regulations.

Therefore, the Director finds that proposed Rule 3.02.4(2)(d)(i) is not less effective than the Federal regulation at 30 CFR 800.21(1)(e), and approves it.

8. Rules 3.03.1(2), 3.03.1(2)(b), 3.03.1(3)(b) and (d), and 4.15.5(3)(a), Criteria for Bond Release

a. Rules 3.03.1(2) and 3.03.1(3)(d), The Amount of Bond That Can Be Released and the Amount of Bond Which Must Be Retained

Colorado proposed to revise Rules 3.03.1(2) and (3)(d) to use the term "amount" in place of "liability" when referring to the portion of a bond that may or may not be released. These proposed rules, respectively, (1) set forth the amount of a bond that may be released after certain conditions are met and (2) require that the amount of a performance bond may never be less than that necessary for the Division to complete the approved reclamation plan.

The counterpart Federal regulations at 30 CFR 800.40(c) and 30 CFR 800.14(b), respectively, (1) set forth the amount of a bond which can be released in phases I, II, or III, and (2) require that the amount of bond shall be sufficient to assure the completion of the reclamation plan if the work has to be performed by the regulatory authority. These Federal regulations also use the term "amount." Thus, Colorado's proposed changes simply revise the State regulations so that they are consistent with the corresponding Federal regulations, which use the term "amount."

Based on the above discussion, the Director finds that the revisions to proposed Rules 3.03.1(2) and (3)(d) are consistent with and no less effective than the Federal regulations at 30 CFR 800.40(c) and 800.14(b), and approves them.

b. Rules 3.03.1(2)(b), The Criteria for Successful Establishment of Revegetation Which Must Be Met Prior to Phase II Bond Release

Colorado proposed to revise Rule 3.03.1(2)(b) to specify certain requirements and revegetation success standards that must be met prior to phase II bond release. Specifically, Colorado proposed to require, prior to the phase II release of up to 85 percent of the applicable bond amount, (1) seasonality and species composition consistent with the ultimate achievement of the success standards and (2) establishment of vegetation which meets the approved success standards according to Rule 4.15.8 for cover, Rule 3.03.1(3)(b) for productivity on prime farmlands or alluvial valley floors, and Rule 4.15.9 for productivity on croplands.

Colorado clarified that the demonstrations of successful establishment of vegetation required by Rule 3.03.1(2)(b) shall be based on statistically valid data for the each parameter collected during a single year of the liability period, with the exception of productivity on prime farmlands for which establishment of vegetation shall be based on statistically valid data collected during 3 years (administrative record No. CO–648). These requirements replace the following requirements in Rule 3.03.1(2)(b) that Colorado proposed to delete: (1) a more general requirement that phase II bond release can occur after successful establishment of vegetation in accordance with the approved reclamation plan and (2) the requirement that such release shall be based on the costs of reclamation activities, including but not limited to replacement of topsoil, seeding, irrigation and fertilizing.

The counterpart Federal regulation at 30 CFR 800.40(c)(2) includes the more general requirement that, at the completion of phase II, after revegetation has been established on the regraded mined lands in accordance with the approved reclamation plan, an additional amount of bond may be released. Colorado's proposed Rule

3.03.1(2)(b) is more specific than the Federal regulation at 30 CFR 800.40(c)(2) in that Colorado has defined, as discussed below, what is meant by "revegetation establishment" for phase II bond release. The Federal regulation does not specify the percentage of the bond amount that may be released at phase II, but it does require that the regulatory authority shall retain that amount of bond for the revegetated area which would be sufficient to cover the cost of re-establishing revegetation if completed by a third party. Although Colorado's proposed Rule 3.03.1(2)(b) provides for release of up to 85 percent of a bond at phase II, Colorado's Rules 3.03.1(3) (a) and (d) also require, that when determining the amount of bond to be released, Colorado must retain the amount of bond necessary for Colorado to complete the approved reclamation plan (see discussion of Colorado's proposed revisions at Rule 3.03.1(3)(d) in finding No. 8.a above).

With respect to Colorado's proposed requirement that prior to phase II bond release an operator establish vegetation which exhibits seasonality and species composition consistent with the ultimate achievement of the success standards, the Federal regulations at 30 CFR 816.111 and 817.111 require, among other things, that a permittee establish where appropriate a vegetative cover that is diverse, effective, and permanent, and to re-establish plant species that have the same seasonal characteristics of growth as the original vegetation and are capable of self-regeneration and plant succession. Colorado's requirement for seasonality and species composition that are consistent with ultimate achievement of the success standards is consistent with the Federal regulations at 30 CFR 816.111 and 817.111.

With respect to the requirement that, prior to phase II bond release, an operator must establish vegetation which meets the approved success standards according to Rule 4.15.8 for cover, referenced Rule 4.15.8 is consistent with, and has been previously approved by OSM as no less effective than, the requirements for vegetative cover in the Federal regulations at 30 CFR 816.111, 816.116 (a) and (b), 817.111, and 817.116(a) (1) and (2).

With respect to the requirement that, prior to phase II bond release, an operator must establish vegetation which meets the approved success standards according to Rule 3.03.1(3)(b) for productivity on prime farmlands or alluvial valley floors, as discussed in finding No. 8.c below, Colorado's referenced Rule 3.03.1(3)(b) is no less effective than the Federal regulations at 30 CFR 800.40(c)(2) and 823.15.

With respect to the requirement that, prior to phase II bond release, an operator must establish vegetation which meets the approved success standards according to Rule 4.15.9 on croplands, Colorado's referenced Rule 4.15.9 sets forth the requirements for demonstration of success of revegetation on cropland. The requirements of Colorado's Rule 4.15.9 are substantively identical to the requirements of the Federal regulations at 30 CFR 816.116(c)(3) and 817.116(b)(3) for cropland that receives less than 26 inches of annual average precipitation. Colorado's proposed Rule 3.03.1(2)(b) requires that, prior to phase II bond release on cropland, an operator must demonstrate that vegetation, which meets the approved success standard for productivity on cropland during a single year of the liability period, has been established. Colorado's proposed Rule 3.03.1(2)(b), in conjunction with referenced Rule 4.15.9, is consistent with the phase II bond release and revegetation success requirements of the Federal regulations at 30 CFR 800.40(c)(2), 816.116(c)(3), and 817.116(c)(3) for areas that receive less than 26 inches of annual average precipitation.

Based on the discussion above, the Director finds that Colorado's proposed Rule 3.03.1(2)(b) is no less effective than the Federal regulations at 30 CFR 800.40(c)(2), 816.111, 816.116 (a), (b), and (c), 817.111, and 817.116 (a), (b), and (c). The Director approves the proposed rule.

c. Rules 3.03.1(2)(b), 3.03.1(3)(b), and 4.25.5(3)(a), The Criteria for Successful Establishment of Revegetation on Prime Farmlands

At proposed Rule 3.03.1(2)(b), Colorado requires, prior to phase II bond release, that an operator establish vegetation which meets, among other things, the approved revegetation success standards according to Rule 3.03.1(3)(b) for productivity on prime farmlands and alluvial valley floors.

With respect to prime farmlands, Colorado's proposed Rule 3.03.1(3)(b) requires that no more than 60 percent of a performance bond shall be released until soil productivity for prime farmlands has returned to equivalent levels of yield as unmined land of the same soil type on the surrounding area under equivalent management practices as determined, among other things, from the success determination methodology of Rule 4.25.5(3)(a). Colorado proposed to revise referenced Rule 4.25.5(3)(a) to require that crop production on prime farmland shall be measured for the 3 cropping years immediately prior to full release of bond in accordance with Rule 3.03.1(2)(c), or partial release of bond in accordance with Rules 3.03.1(2)(b) and 3.03.1(3)(b).

The Federal regulations at 30 CFR 800.40(c)(2) require for phase II bond release, among other things, that no part of the bond shall be released until soil productivity for prime farmland has returned to the equivalent levels of yield as unmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to Section 507(b)(16) of SMCRA and 30 CFR Part 823. The Federal regulations at 30 CFR 823.15(b)(3) specify requirements for demonstration of success of productivity on prime farmlands and require that the measurement period for determining average annual crop production shall be a minimum of 3 crop years prior to release of the operator's performance bond. Therefore, the Federal regulations require that, prior to phase II bond release, an operator must demonstrate productivity success on prime farmlands with a minimum of 3 years of productivity data.

Colorado's revised Rules 3.03.1(2)(b), 3.03.1(3)(b), and 4.25.5(3)(a) clarify that phase II or phase III bond release requires demonstration of productivity on prime farmland and that the demonstration of productivity must include the data from the 3 crop years prior to the requested bond release. Because an operator may wait the full term of responsibility before requesting any bond release and may request full bond release without going through individual phase releases, Colorado has ensured that the same demonstration of productivity on prime farmlands must occur at either phase II or III bond release.

With respect to alluvial valley floors, Colorado's referenced Rule 3.03.1(3)(b) requires that no more than 60 percent of the bond shall be released until the essential hydrologic functions and agricultural productivity have been re-established. This requirement is consistent with the requirement in the Federal regulations at 30 CFR Part 822 that an operator preserve the essential hydrologic functions of an alluvial valley floor.

Based on the above discussion, the Director finds that Colorado's proposed Rules 3.03.1(3)(b) and 4.25.5(3)(a) are no less effective than the Federal regulations at 30 CFR 800.40(c)(2), 822, and 823.15(b)(3), and approve them.

9. Rules 3.03.2(4)(c) and 3.03.2(5) (a) and (b), Schedules for Informal Conferences Concerning Objections to Bond Release, and Requests for Public Hearings Concerning Proposed Decisions on the Bond Release Request

Colorado proposed to revise Rule 3.03.2(4)(c), concerning informal conferences held to resolve written comments or objections to a bond release, to specify that the conference must be held within 30 days from the date of the permittee's published notice of requested bond release and must conclude by the 60th day following the inspection and evaluation that is required in Colorado's Rule 3.03.2(2). (Colorado's Rule 3.03.2(2) is substantively identical to the Federal regulations at 30 CFR 800.40(b)(1) in requiring an inspection and evaluation of the bond release site within 30 days after receipt of the application for bond release or as soon thereafter as weather conditions permit. See finding No. 1 above for a discussion of Colorado's proposed revisions to Rule 3.03.2(2).)

Colorado proposed to revise Rule 3.03.2(5)(a), concerning the Division's responsibility to publish written notification of its proposed decision on a bond release request, to require that the notification include the right to request a public hearing within 60 days after the completion of the inspection and evaluation required in Rule 3.03.2(2), rather than 30 days after the completion of the inspection and evaluation or 30 days from the close of the public comment period if comments are received. Colorado proposed to delete in its entirety Rule 3.03.2(5)(b) concerning the Division's responsibility to provide written notification of its proposed decision on a bond release request within 30 days after the conclusion of an informal conference.

The Federal regulations at 30 CFR 800.40(a)(2) require a permittee to publish notice of its bond release request. The Federal regulations at 30 CFR 800.40(f) provide that any person with a valid legal interest has the right to file written objections to the proposed bond release and request a public hearing within 30 days after the public notice required by 30 CFR 800.40(a)(2). This Federal regulation also requires the regulatory authority to hold a public hearing within 30 days after receipt of the request for the hearing. The Federal regulations at 30 CFR 800.40(b)(2) require the regulatory authority to provide written notice of its final decision to release or not to release all or part of the performance bond within 60 days from the filing of the bond release application, if no public hearing provided for by 30 CFR 800.40(f) is held, or, within 30 days after such a public hearing has been held.

Unlike the Federal regulations at 30 CFR 800.40(b)(2), which provide that written notification of the regulatory's authority's decision must occur within 60 days of the filing of the bond release application, Colorado's proposed Rules 3.03.2(4)(c) and 3.03.2(5)(a) provide that the notification must occur within 60 days after the completion of the Division's inspection and evaluation of the reclaimed site for which bond release is sought. Since this inspection and evaluation does not occur until 30 days after the permittee's publishing of the bond release application, Colorado's proposed Rules 3.03.2(4)(c) and 3.03.2(5)(a) provide the Division with 30 more days for review than would be afforded under the Federal regulations.

The Federal regulations at 30 CFR 800.40(b)(2) are authorized by section of 519(b) SMCRA, which requires that the regulatory authority notify the permittee in writing of its decision regarding the bond release request within 60 days from the filing of the request, or within 30 days after a public hearing on the request when one is held.

Because the SMCRA deadline is procedural, OSM can evaluate Colorado's counterpart provisions under a "same as or similar to" standard in determining whether a proposed State procedure is consistent with and in accordance with SMCRA and no less effective than the Federal regulations. The only difference in the procedure is an extra 30 days, which increases the amount of time for the regulatory authority to carry out its review responsibilities and does not prejudice a permittee's right to due process. For these reasons, OSM considers the extra 30 days to be reasonable and finds that Colorado's procedure itself is similar to the procedural requirements of section 519(b) of SMCRA and the Federal regulations at 30 CFR 800.40(b)(2).

Therefore, based on the above discussion, the Director finds that the revisions proposed by Colorado at Rules 3.03.2(4)(c) and 3.03.2(5) are in accordance with and consistent with SMCRA and no less effective than the Federal regulations at 30 CFR 800.40(a)(2), (b)(2), and (f), and approves them.

10. Rules 3.06, Bonding Requirements for Construction of Mine Drainage Control Facilities

Colorado proposed to delete in its entirety Rule 3.06 (including Rules 3.06.1 through 3.06.3), concerning special bonding requirements for construction of mine drainage control facilities. Colorado's Rule 3.06 contains exemptions, from several of Colorado's bonding requirements, for special reclamation techniques.

Rule 3.06 has no counterpart in the Federal program. The exemptions it provides, however, are less effective than the bonding requirements concerning the determination of bond amount, long-term periods of liability, and bond release in the respective Federal regulations at 30 CFR 800.14, 800.17, and 800.40. In addition, Colorado's program at Rule 3 includes the counterpart provisions to these Federal regulations, which conflict with the existing exemptions at Rule 3.06. The proposed deletion of the exemptions at Rule 3.06, therefore, removes less effective provisions from the Colorado program and, at the same time, remedies an internal conflict in the Colorado program.

Therefore, the Director finds that Colorado's proposed deletion of Rule 3.06 is consistent with and no less effective than the Federal regulations at 30 CFR 800.14, 800.17, and 800.40, and approves it.

IV. Summary and Disposition of Comments

Following are summaries of all substantive oral and written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Colorado program (administrative record Nos. CO–615 and CO–641).

The U.S. Bureau of Mines responded on May 12, 1994, that it had no comments (administrative record No. CO–614).

The U.S. Army Corps of Engineers responded on May 25 and September 8, 1994, that the proposed amendment was satisfactory (administrative record Nos. CO–618 and CO–647).

The U.S. Department of Agriculture, Soil Conservation Service (SCS), responded on May 26, 1994, by stating that (1) it supported the proposed deletion of the use of first-lien security interests from the definition for "collateral bond" at Rule 1.04(25); and (2) regarding the proposed deletion of the requirement for bond liability on

disturbed lands that are outside of the permit area from Rule 3.02.1(4), it believed mining companies should be liable for all lands that are disturbed by their activities regardless of the relative location of these lands. SCS also questioned (1) who would be responsible for site-specific standards of success for revegetation proposed at Rule 3.03.1(2)(b); and (2) whether there would be language proposed to replace the proposed deletion of Rule 3.02.4(2)(c)(ix), regarding real and personal property as a form of collateral bond, and Rule 3.06, regarding special bonding requirements for construction of mine drainage control facilities (administrative record No. CO–619).

With respect to SCS's support of the proposed deletion of the use of first-lien security interests from the definition for "collateral bond" at Rule 1.04(25), the Director is approving, as discussed in finding No. 2.b, the proposed deletion of all forms of real and personal property as forms of collateral bond.

With respect to the SCS comment that mining companies should be liable for all lands that are disturbed by their activities regardless of the relative location of these lands, Colorado, by definition of "surface coal mining and reclamation operations" at Rule 1.04(133) and the requirement to obtain a permit at Rule 2.01.3(1), requires that any land disturbed by mining and reclamation activities must be included within the permitted area. Therefore, if land outside of the permit area has been disturbed by mining activities, the operator is mining in violation of the approved permit. As discussed in finding No. 1, the Director is approving the proposed deletion of the requirement for bond liability on disturbed lands that are outside of the permit area from Rule 3.02.1(4).

With respect to the SCS question concerning who would be responsible for site-specific standards of success for revegetation proposed at Rule 3.03.1(2)(b), the applicant for a permit is responsible for proposing site-specific revegetation success standards that are in accordance with the Colorado rules. The proposed success standards, as well as the permittee's demonstration that the standards have been achieved, must be approved by the Division. As discussed in finding No. 8.b, the Director is approving, at proposed Rule 3.03.1(2)(b), the requirements for revegetation success that must be met prior to phase II bond release.

With respect to the SCS question concerning whether there would be language proposed to replace the proposed deletion of Rule 3.02.4(2)(c)(ix), regarding the disallowance of real and personal property as a form of collateral bond, and Rule 3.06, regarding the deletion of special bonding requirements for construction of mine drainage control facilities, Colorado has not proposed replacement language. As discussed in finding Nos. 2.b and 10, the Director is approving the proposed deletions at Rules 3.02.4(2)(c)(ix) and 3.06.

The Mine Safety and Health Administration responded on August 15 and September 8, 1994, that there was no conflict with the Federal regulations (administrative record Nos. CO–640 and CO–645).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Colorado proposed to make in its amendment pertain to air or water quality standards.

Therefore, OSM did not request EPA's concurrence.

Pursuant to 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (administrative record Nos. CO–615 and CO–641). By letter dated September 7, 1994, EPA responded that it had no comments (administrative record No. CO–644).

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and ACHP (administrative record No. CO–615 and CO–641). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves, with one exception and additional requirement, Colorado's proposed amendment as submitted on April 18, 1994, and as revised and supplemented with additional explanatory information on July 28, 1994.

The Director approves, as discussed in: finding No. 1, Rules 3.02.1(4), 3.02.4(2)(b)(i)(A), 3.02.4(2)(b)(v)(A), 3.02.4(2)(c), 3.02.4(2)(c)(ii), 3.02.4(2)(d)(vi)(A), 3.03.2(1)(b), and 3.03.2(2), concerning requirements for bond liability, cancellation, reporting, forms, evaluation, and release; finding No. 2, Rules 1.04(25), 3.02.4(1)(b), and 3.02.4(2)(c)(ix), concerning the definition of "collateral bond" and the disallowance of real property in support of a collateral bond; finding No. 3, Rules 1.04(116), 3.02.4(1)(c), and 3.02.4(2)(e), concerning the disallowance of self-bond forms; finding No. 4, Rules 3.02.1(7) and 3.03.1(3)(e), concerning bond liability on areas with approved alternative postmining land use; finding No. 5, Rules 3.02.2(4) (b) and (d), concerning adjustments of bond amount; finding No. 6.b, Rules 4.15.10 (2) and (3), concerning the revegetation success standards for land with an approved industrial, commercial, or residential postmining land use; finding No. 7, Rule 3.02.4(2)(d)(i), concerning terms and conditions of irrevocable letters of credit; finding No. 8, Rules 3.03.1 (2), (2)(b), (3)(b), and (3)(d), and 4.25.5(3)(a), concerning criteria for bond release; finding No. 9, concerning schedules for informal conferences and public hearings pertaining to bond release; and finding No. 10, Rules 3.06 and 3.06.1 through 3.06.3; concerning the deletion of bonding requirements for construction of mine drainage control facilities.

With the requirement that Colorado further revise Rule 3.02.3(2)(c), the Director does not approve, as discussed in finding No. 6.a, Rules 3.02.3(2) (a), (b), and (c) to the extent that they could provide for release of bond liability on lands with an approved land use of industrial, commercial, or residential prior to a demonstration that the land use has substantially commenced and is likely to be achieved.

In accordance with 30 CFR 732.17(f)(1), the Director is also taking this opportunity to clarify in the required amendment section at 30 CFR 906.16 that, within 60 days of the publication of this final rule, Colorado must either submit a proposed written amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Colorado's established administrative or legislative procedures.

The Federal regulations at 30 CFR Part 906, codifying decisions concerning the Colorado program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778.

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 12550) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

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

List of Subjects in 30 CFR 906

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 29, 1994.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T, the Code of Federal Regulations is amended as set forth below.

PART 906—COLORADO

1. The authority citation for Part 906 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 906.15 is amended by adding paragraph (q) to read as follows:

§ 906.15 Approval of regulatory program amendments.

* * * * *

(q) With the exception of Rules 3.02.3(2) (a), (b), and (c), to the extent that they could provide for release of bond liability on approved industrial, commercial, or residential land uses prior to a demonstration that the land use has substantially commenced and is likely to be achieved, the revisions to the following provisions of 2 CCR 407–2, the rules of the Colorado Mined Land Reclamation Board, as submitted on April 18, 1994, and as revised on July 28, 1994, are approved on December 6, 1994. The amendment becomes effective upon State promulgation of the amendment in the same form as submitted to OSM.

Definition of "collateral bond"—Rule 1.04(25) and deletion of the allowance for the use of real property as a form of collateral—Rules 1.04(25), 3.02.4(1)(b), and 3.02.4(2)(c)(ix).

Deletion of the definition of "self-bond"—Rule 1.04(116) and deletion of the allowance for use of self-bonds—Rules 3.02.4(1)(c) and 3.02.4(2)(e).

General requirements concerning the terms and conditions of bond liability—Rules 3.02.1 (4) and (7).

Requirements concerning adjustments in bond amounts—Rules 3.02.2(4) (b) and (d).

Requirements concerning bond liability for lands with approved industrial, commercial, or residential postmining land uses—Rule 3.03.1(3)(e).

Requirements concerning the conditions for cancellation of surety bonds—Rule 3.02.4(2)(b)(i)(A).

Requirements concerning a surety's reporting responsibilities—Rules 3.02.4(2)(b)(v)(A) and 3.02.4(2)(d)(vi)(A).

Requirements concerning conditions applicable to irrevocable letters of credit, a form of collateral bond—Rules 3.02.4(2)(c) and 3.02.4(2)(d)(i).

Requirements concerning the assessment of the market value of collateral—Rule 3.02.4(2)(c)(ii).

General requirements concerning the maximum liability of a performance bond that can be released—Rules 3.03.1(2) and 3.03.1(3)(d).

Requirements concerning criteria for release of up to 85 percent of a performance bond—Rule 3.03.1(2)(b).

Requirements concerning criteria for release of more than 60 percent of a performance bond on, among other things, prime farmlands—Rules 3.03.1(3)(b) and 4.25.5(3)(a).

Requirements concerning the content of the permittee's public notice advertised upon request for bond release—Rule 3.03.2(1)(b).

Requirements concerning the evaluation of a permittee's bond release request—Rule 3.03.2(2).

Requirements concerning the schedule for holding an informal conference regarding a proposed bond release request—Rule 3.03.2(4)(c).

Requirements concerning (1) Colorado's responsibility to provide written notification of its decision regarding a bond release request, and (2) the time allowed for the right to request a public hearing regarding a bond release request—Rule 3.03.2(5)(a) and deletion of Rule 3.03.2(5)(b).

Deletion of requirements concerning special bonding requirements for construction of mine drainage control facilities—Rule 3.06 in its entirety.

Requirements concerning the establishment of vegetative cover to control erosion on areas with approved industrial, commercial, or residential postmining land uses—Rule 4.15.10(2).

Requirements concerning an exemption from the use of living ground cover to control erosion for areas with both premining and postmining land use designations of industrial or commercial—Rule 4.15.10(3).

3. Section 906.16 is amended by revising the introductory paragraph and adding paragraph (g) to read as follows:

§ 906.16 Required program amendments.

Pursuant to 30 CFR 732.17(f)(1), Colorado is required to submit to OSM by the specified date the following written, proposed program amendment, or a description of an amendment to be proposed that meets the requirements of SMCRA and 30 CFR Chapter VII and a timetable for enactment that is consistent with Colorado's established administrative or legislative procedures.

* * * * *

(g) By February 6, 1995, Colorado shall revise Rule 3.02.3(2)(c) to require

that, prior to release of bond liability, the permittee must demonstrate that development of the industrial, commercial, or residential land use has substantially commenced and is likely to be achieved.

[FR Doc. 94–29984 Filed 12–5–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AH02

Omnibus Budget Reconciliation Act of 1993

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations to extend the date concerning limitation of pension benefits for veterans and surviving spouses receiving Medicaid-covered nursing home care. This amendment is necessary to conform the regulations to statutory provisions.

EFFECTIVE DATE: This amendment is effective August 10, 1993, the date Pub. L. 103–66 was signed into law.

FOR FURTHER INFORMATION CONTACT: Lorna Weston, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7210.

SUPPLEMENTARY INFORMATION: Section 8003 of Pub. L. 101–508 required VA to reduce the pension benefits of any veteran having neither spouse nor child who receives Medicaid-covered nursing home care to $90 per month. These statutory provisions expired September 30, 1992. Section 601 of Pub. L. 102–568 reestablished this requirement, effective until September 30, 1997, and required an identical reduction in death pension payments to surviving spouses having no children who receive Medicaid-covered nursing home care. Section 12005 of the Omnibus Budget Reconciliation Act of 1993, Pub. L. 103–66, further extends these statutory provisions with respect to both veterans and their surviving spouses until September 30, 1998. VA accordingly hereby amends 38 CFR 3.551(i) to reflect this statutory change.

VA is issuing a final rule to amend 38 CFR 3.551(i) to be consistent with the provisions of Pub. L. 103–66. Because this amendment merely corresponds to the provisions of section 12005 of Pub. L. 103–66, publication as a proposal for public notice and comment is unnecessary.

This regulatory amendment will not have a significant economic impact on a substantial number of small entities since it merely reflects a statutory amendment.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.105.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: November 23, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§ 3.551 [Amended]

2. In § 3.551(i), the date "September 30, 1997" is revised to read "September 30, 1998".

[FR Doc. 94–29870 Filed 12–5–94; 8:45 am]

BILLING CODE 8320–01–P

38 CFR Part 3

RIN 2900–AG74

Dependents' Educational Assistance; Certification

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning eligibility for Dependents' Educational Assistance (DEA) in cases where it has been established that a veteran has a permanent and total service-connected disability. This action conforms the regulations to a decision of the Court of Veterans Appeals which held that entitlement to DEA may be established in such cases where the disabilities are of paired organs or extremities that are treated as service-connected under 38 U.S.C. 1160. Section 1160 provides that the combination of service-connected disability of one organ or extremity and nonservice-connected disability of the respective paired organ or extremity is treated as if the combination of disabilities is the result of service-connected disability.

EFFECTIVE DATE: This amendment is effective December 6, 1994.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: The Survivors' and Dependents' Educational Assistance (DEA) Program, established under 38 U.S.C. Chapter 35, authorizes monetary educational benefits to a qualifying spouse or child, or surviving spouse or child, of a veteran whose death or permanent and total disability was due to military service.

38 CFR 3.807 provides that a spouse or child of a veteran has basic eligibility for Chapter 35 benefits if the veteran has a permanent total service-connected disability. The surviving spouse or child of a deceased veteran has basic eligibility for Chapter 35 benefits if a permanent total service-connected disability was in existence at the date of the veteran's death or the veteran died of a service-connected disability.

38 U.S.C. 1160 provides that where a veteran has suffered service-connected loss of use of an eye, kidney, ear, hand, foot, or lung and nonservice-connected loss of use of the paired eye, kidney, ear, hand, foot, or lung, the veteran shall be paid compensation as if the combination of disabilities were the result of service-connected disability. 38 CFR 3.383 is the corresponding regulation.

In Precedent Opinion 75–90 dated July 18, 1990, the VA General Counsel held that Chapter 35 eligibility is not established where a disability of paired organs treated as if service-connected under 38 U.S.C. 1160 for purposes of disability compensation is evaluated as permanently and totally disabling. The General Counsel reasoned that the threshold criterion for DEA eligibility is total service-connected disability and stated that this criterion is not satisfied where permanent and total disability is based on the "as if service-connected" status established under 38 U.S.C. 1160.

In a recent decision (*Kimberlin v. Brown*, No. 91–1972), however, the United States Court of Veterans Appeals held that Chapter 35 entitlement was established where the veteran was entitled to compensation for a total disability, permanent in nature, regardless of whether entitlement was

based on loss of use of paired organs treated as if service-connected under 38 U.S.C. 1160. The Court's opinion overrules General Counsel Precedent Opinion 75–90 insofar as it relates to Chapter 35 eligibility.

Currently the regulation does not specifically address whether Chapter 35 eligibility may be established based on a combination of disabilities treated as if service-connected under 38 CFR 3.383(a). We are amending 38 CFR 3.807 to reflect the Court's determination that such an evaluation may be the basis for Chapter 35 eligibility.

Administrative Procedure Act

This final rule constitutes an interpretative rule. Accordingly, pursuant to 5 U.S.C. 553, there is a basis for dispensing with prior notice and comment on this final rule and dispensing with a 30-day delay of its effective date.

Regulatory Flexibility Act

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

There are no affected Catalog of Federal Domestic Assistance program numbers.

List of Subjects in 38 CFR Part 3

Administrative practices and procedure, Claims, Individuals with disabilities, Health care, Pensions, Veterans.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR Part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 3.807 is amended, by adding a sentence after the heading of paragraph (c), and by adding an authority citation at the end of the section, as follows:

§ 3.807 Dependents' educational assistance; certification.

* * * * *

(c) *Service connection.* For purpose of this section, the term "service-connected disability" encompasses combinations of disabilities of paired organs or extremities treated as if service-connected under the provisions of § 3.383(a) of this part. * * *

* * * * *

(Authority: 38 U.S.C. 1160, 3501)

[FR Doc. 94–29893 Filed 12–5–94; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[AD–FRL–5115–8]

RIN 2060–AC28

National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: National emission standards for hazardous air pollutants (NESHAP) for ethylene oxide commercial sterilization and fumigation operations were proposed in the **Federal Register** on March 7, 1994. This **Federal Register** action announces the EPA's final decisions on the rule. This action promulgates NESHAP for ethylene oxide commercial sterilization and fumigation operations. These standards implement section 112 of the Clean Air Act (Act) and are based on the Administrator's determination that commercial sterilization and fumigation operations emit ethylene oxide, a pollutant identified in the Act list of 189 hazardous air pollutants (HAP). The intent of the standards is to protect public health by requiring existing and new major sources to control emissions to the level achievable by the maximum achievable control technology (MACT) and by requiring existing and new area sources to control emissions using generally available control technology (GACT). These standards are consistent with section 112(d) of the Act.

EFFECTIVE DATE: This regulation is effective December 6, 1994.The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 6, 1994. See **SUPPLEMENTARY INFORMATION** section concerning judicial review.

ADDRESSES: *Background Information Document.* The background information document (BID) for the promulgated standards may be obtained from the U.S. Department of Commerce, National Technical Information Service (NTIS), Springfield, Virginia 22161, telephone number (703) 487–4650. Please refer to "Ethylene Oxide Emissions from Commercial Sterilization/Fumigation Operations—Background Information for Final Standards," NTIS number EPA–453/R–94–084b. The BID contains: (1) A summary of all the public comments made on the proposed standards and the Administrator's response to the comments, and (2) a summary of the changes made to the standards since proposal.

Electronic versions of the promulgation BID as well as this final rule are available for download from the EPA's Technology Transfer Network (TTN), a network of electronic bulletin boards developed and operated by the Office of Air Quality Planning and Standards. 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 data transfer of up to a 14,400 bits per second (bps). If more information on TTN is needed, contact the systems operator at (919) 541–5384.

Docket. Docket No. A–88–03, containing supporting information used in developing the promulgated standards, is available for public inspection and copying from 8 a.m. to 4 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center (formerly known as the Air Docket), Waterside Mall, room M–1500, Ground Floor, 401 M Street SW., Washington DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the standards or technical aspects, contact Mr. David Markwordt at (919) 541–0837, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711. For information concerning the health effects of EO, contact Dr. Nancy Pate at (919) 541–5347, Information Transfer and Program Integration Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: Under section 307(b)(1) of the Act, judicial review of NESHAP is available only by 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 Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings

brought by the EPA to enforce these requirements.

The information presented in this preamble is organized as follows:

I. The Standards
II. Summary of Impacts
III. Significant Changes to the Proposed Standards.
A. Public Participation
B. Comments on the Proposed Standards
C. Significant Changes
IV. Administrative Requirements
A. Docket
B. Paperwork Reduction Act
C. Executive Order 12866
D. Regulatory Flexibility Act

I. The Standards

National emission standards for hazardous air pollutants established under section 112(d) of the Act reflect:

> * * * the maximum degree of reduction in emissions of the hazardous air pollutants subject to this section (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies * * * (the Act section 112(d)(2))

The promulgated standards include multiple alternatives to allow owners or operators maximum compliance flexibility. A summary of today's final standards is listed in Table 1. Included in this table are applicability cutoffs based on annual EO use, general descriptions of the standards, and the estimated impacts associated with these standards for each vent type.

Section 114(a)(3) of the Act requires enhanced monitoring and compliance certifications of all major stationary sources. The annual compliance certifications certify whether compliance has been continuous or intermittent. Enhanced monitoring shall be capable of detecting deviations from each applicable emission limitation or standard with sufficient representativeness, accuracy, precision, reliability, frequency, and timeliness to determine if compliance is continuous during a reporting period. The monitoring in this regulation satisfies the requirements of enhanced monitoring.

Owners or operators of all commercial EO sterilization and fumigation operations with an initial startup date before December 8, 1997 that are subject to the emissions standards are required to install the control technology needed to comply with the standards within 3 years from December 6, 1994. Owners or operators of new commercial EO sterilization and fumigation operations with initial startup after December 8, 1997 would be required to comply with all requirements upon startup.

TABLE 1.—PROPOSED STANDARDS, NATIONAL COSTS, AND EMISSION REDUCTIONS FOR MAJOR AND AREA SOURCES

Vent type	Ethylene oxide use, kg/yr (ton/yr)	Standard	Emission reduction, Mg/yr (ton/yr)	Annual cost, $MM
Sterilizer vent	≥907 (≥1)	99 percent reduction	950 (1,050)	3.8
Chamber exhaust	≥9,070 (≥10)	Manifold to a control device controlling emissions from another vent type or 99 percent emission reduction.	34 (37)	0.2
	907–9,070 (1–10)	Maximum chamber concentration limit of 5,300 ppmv prior to activation of the chamber exhaust.	0	0.05
Aeration room	≥9,070 (≥10)	1 ppmv maximum concentration or 99 percent reduction.	48 (53)	2.6

II. Summary of Impacts

These standards will reduce nationwide emissions of hazardous air pollutants (HAP) from ethylene oxide commercial sterilization and fumigation operations by 1,030 Mg (1,140 tons), or 96 percent, in 1997 compared to the emissions that would result in the absence of the standards. No significant adverse secondary air impacts, water, solid waste or energy impacts are anticipated from the promulgation of these standards.

The implementation of this regulation is expected to result in nationwide annualized costs for existing commercial EO sterilization facilities of about $6.6 million beyond baseline based on an analysis of the application of controls to all existing facilities not currently controlled to the level of the standards. Capital costs incurred by a typical uncontrolled existing source such as a large commercial EO sterilization and fumigation operation using 68,000 kg/yr (75 ton/yr) of EO would be about $310,000 for controlling the sterilization chamber vent emissions, and about $290,000 for controlling the aeration room vent and chamber exhaust vent emissions. The annualized cost incurred by this typical source to operate the control devices would be about $100,000 to control the sterilization chamber vent emissions and about $80,000 to control the aeration room vent and chamber exhaust vent emissions.

The economic impact analysis done prior to proposal showed that the economic impacts from the proposed standard would not be significant. No changes have been made to the proposed rule that would increase the economic impacts to a significant level.

III. Significant Changes to the Proposed Standards

A. Public Participation

Prior to proposal of the standards, interested parties were advised by public notice in the **Federal Register** (56 FR 1186), of a meeting of the National Air Pollution Control Techniques Advisory Committee to discuss the ethylene oxide commercial sterilization and fumigation source category recommended for proposal. This meeting was held on January 29–31, 1991. The meeting was open to the public and each attendee was given an opportunity to comment on the standards recommended for proposal.

The standards were proposed and the preamble was published in the **Federal Register** on March 7, 1994 (59 FR 10591). The preamble to the proposed standards discussed the availability of the regulatory text and proposal BID, which described the regulatory alternatives considered and the impacts of those alternatives. Public comments were solicited at the time of proposal, and copies of the regulatory text and BID were distributed to interested parties. Electronic versions of the preamble, regulation, and BID were made available to interested parties via the TTN (see **ADDRESSES** section of this preamble).

To provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was offered at proposal; however, one was not requested. The public comment period was from March 7 to May 6, 1994. Twenty comment letters were received (two letters were received from one commenter; nineteen commenters submitted comments). The comments have been carefully considered, and changes have been made to the proposed standards when determined by the Administrator to be appropriate.

B. Comments on the Proposed Standards

Comments on the proposed standards were received from nineteen commenters composed mainly of States, environmental groups, control device vendors, industry, and trade associations. A detailed discussion of these comments and responses can be found in the promulgation BID, which is referred to in the **ADDRESSES** section of this preamble. The summary of comments and responses in the BID serve as the basis for the revisions that have been made to the standards between proposal and promulgation. Most of the comment letters contained multiple comments. The comments have been divided into the following areas:

(1) Determination of MACT floor for major source chamber exhaust vents.

(2) Selection of MACT/GACT regulatory approach for area sources.

(3) Request for flexibility in meeting the aeration room vent standard.

(4) Stringency of MACT for sterilization chamber vents.

(5) Compliance schedule.

(6) Alternative monitoring and compliance demonstration requirements.

(7) Revisions to monitoring requirements for acid-water scrubbers, catalytic oxidizers, and aeration room vents.

(8) Addition of compliance provisions and monitoring requirements for thermal oxidizers.

(9) Revision of requirements to calibrate the temperature monitors used for catalytic oxidizers and thermal oxidizers.

(10) Applicability of the rule to research and laboratory facilities, hospital facilities, and sources emitting less than 907 kg/yr (1 ton/yr) of ethylene oxide.

(11) Incorporation of the final General Provisions to part 63 into these standards.

(12) Revisions to reporting requirements.

(13) Importance of residual risk to the selection of a regulatory approach.

(14) Revisions to definitions and wording of the regulation.

C. Significant Changes

Several changes have been made since the proposal of these standards. The majority of the changes have been made to clarify portions of the rule that were unclear to the commenters. Other changes include adding additional flexibility to sources by allowing alternative monitoring approaches to meet the standards. A summary of the major changes is presented below.

(1) A controlled MACT floor for chamber exhaust vents at operations using 9,070 kg/yr (10 tons/yr) or more of EO was determined based on data submitted by commenters (see Docket Entry IV–B–02). Existing and new sources using 9,070 kg/yr (10 tons/yr) or more of EO are now required to control the emissions from the chamber exhaust vent. Owners or operators of new and existing chamber exhaust vents at sources using 9,070 kg/yr (10 tons/yr) or more of EO must parametrically monitor the control device used in achieving the emissions reduction requirements of the standards.

As noted above, the Agency has required control of emissions from the chamber exhaust vent at major sources because data were received from commenters indicating that the emissions from this vent are routed to a control device used to control emissions from other vent types (i.e., manifolded to either the aeration room vent or sterilization chamber vent). The Agency also received data showing minimal nationwide annualized cost impacts of approximately $240,000 associated with manifolding these emissions (see Docket Entry IV–B–03). The Agency therefore believes that the requirements to control this vent at the MACT floor are not burdensome for major sources and do not represent a significant change in the Agency's regulatory approach.

(2) The format of the standard for aeration room vents at sources using 9,070 kg/yr (10 tons/yr) or more of EO was revised to provide owners or operators flexibility to either meet a maximum emission limit of 1 ppmv ethylene oxide or achieve a 99 percent reduction in ethylene oxide emissions, whichever is less stringent.

(3) The compliance date for all sources has been changed from 2 to 3 years. This extension has been provided to allow sources additional time to achieve compliance with these standards. New sources with startup after the 3 year compliance date will be required to comply upon startup of the source.

(4) Owners or operators of all chamber exhaust vents at sources using 907 kg/yr (1 ton/yr) or more but less than 9,070 kg/yr (10 tons/yr) of EO were provided additional flexibility to show compliance by either measuring the ethylene oxide concentration in the chamber prior to activation of the chamber exhaust vent (as proposed) or parametrically monitoring the performance of a control device used to reduce emissions from this vent.

(5) The monitoring requirements for aeration room vents at sources using 9,070 kg/yr (10 tons/yr) or more of EO were revised to provide sources additional flexibility to monitor either the ethylene oxide outlet concentration or parameters of control device performance. For sources choosing to measure the EO outlet concentration, measurements of ethylene oxide concentration that are below the detection limit of 0.5 ppmv for ethylene oxide are accepted as a demonstration of compliance with the aeration room vent standards.

(6) The Agency reduced the frequency of monitoring of the ethylene glycol concentration in the scrubber liquor for sources complying with emission reduction standards using an acid-water scrubber. Owners or operators are now only required to monitor the ethylene glycol concentration weekly. The Agency also provided sources using this control technology flexibility to alternatively monitor the level of the scrubber liquor in the liquor tank on a weekly basis.

(7) Several commenters suggested that maintenance of catalytic oxidizers within a temperature range was not appropriate. In the final rule, a baseline temperature is established as a minimum oxidation temperature.

(8) Based on information from commenters, compliance provisions and monitoring requirements have been included in the final rule for thermal oxidizers. These requirements include the establishment of a baseline temperature and continuous monitoring of this temperature.

(9) The frequency for calibrating the temperature monitor used for catalytic oxidizers and thermal oxidizers has been reduced from once per month to twice per year.

(10) Several commenters requested clarification of the general provisions to part 63 as they relate to this rule. A table identifying the relationship of the final General Provisions requirements has been added to the final regulation.

Language similar to that in the General Provisions has been added to subpart O in cases where a direct reference to the General Provisions was not appropriate.

(11) Based on comments received, an excess emissions report is required semi-annually, whether the source has experienced excess emissions or not; the Administrator may determine on a case basis that more frequent reporting is necessary.

(12) Revisions to definitions and phrasing have been made to clarify the regulation.

One topic for which comments were received that did not result in a change in the regulation concerned hospital sterilization. Several comments were received that recommended the inclusion of hospital ethylene oxide sterilization operations under the standards promulgated in today's action. While the EPA listed "commercial sterilization facilities" and "hospital sterilization facilities" as two separate categories on the proposed source category list, hospital sterilizers were removed from the final source category list and only commercial sterilization facilities were included on the list. Section 112(c) specifies that the source category list will periodically be revised, and hospitals (with EO emissions greater than 1 ton/yr) may be added to the source category list at a future date. Hospital sterilization sources (under 1 ton/yr ethylene oxide emissions) will likely be assessed as part of section 112(k) of the Act.

IV. Administrative Requirements

A. Docket

The Docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The Docket is a dynamic file, since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and the EPA responses to significant comments, the contents of the Docket will serve as the record in case of judicial review (section 307(d)(7)(A)).

B. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number (2060-0283). An Information Collection Request (ICR) document has been prepared by the EPA (ICR No. 1666.02) to reflect the changed information requirements of the final rule.

This collection of information has an estimated burden per affected facility of about 510 hours for the first year. In subsequent years, the burden is approximately 60 hours per affected facility. These burden 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; U.S. Environmental Protection Agency (Mail Code 2136); 401 M Street SW., 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. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the EPA is required to judge whether a regulation is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order to prepare a regulatory impact analysis (RIA). The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is not "significant" because none of the listed criteria apply to this action. Consequently, this action was not submitted to OMB for review under Executive Order 12866.

D. 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 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. The EPA's analysis of these impacts was provided in the preamble to the proposed rule (59 FR 10591).

Pursuant to the provisions of 5 U.S.C. 605(b), the EPA certifies that this rule will not have a significant economic impact on a substantial number of small business entities because: (1) In all industry categories except the contract sterilization industry, there is not a substantial number of small entities, and (2) contract sterilizers should experience an increase in demand for their services as other facilities switch from in-house to contract sterilization (see Docket Entry II-A-22). As a result, contract sterilizers will not be adversely impacted by this rule.

List of Subjects in 40 CFR Parts 9 and 63

Environmental protection, Air pollution control, Ethylene oxide sterilization, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: November 22, 1994.

Carol M. Browner,

Administrator.

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

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135 *et seq.*, 135–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345(d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new entry to the table under the indicated heading in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB Control No.
* * * * * * *	
National Emissions Standards for Hazardous Air Pollutants for Source Categories:	
* * * * * * *	
63.363–63.367	2060–0283
* * * * * * *	

PART 63—[AMENDED]

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

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

2. Section 63.14 is amended by adding paragraph (b)(4) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(b) * * *

(4) ASTM D 3695–88, Standard Test Method for Volatile Alcohols in Water by Direct Aqueous-Injection Gas Chromatography, IBR approved for § 63.365(e)(1) of subpart O of this part.

* * * * *

3. By adding a new subpart O to read as follows:

Subpart O—Ethylene Oxide Emissions Standards for Sterilization Facilities

Sec.
63.360 Applicability.
63.361 Definitions.
63.362 Standards.
63.363 Compliance and performance testing.
63.364 Monitoring requirements.
63.365 Test methods and procedures.
63.366 Reporting requirements.
63.367 Recordkeeping requirements.

Subpart O—Ethylene Oxide Emissions Standards for Sterilization Facilities

§ 63.360 Applicability.

(a) All sterilization sources using 1 ton (see definition) in sterilization or fumigation operations are subject to the emissions standards in § 63.362, except as specified in paragraphs (b) through (e) of this section. Owners or operators of sources using 1 ton (see definition) subject to the provisions of this subpart must comply with the requirements of subpart A, of this part according to the applicability of subpart A of this part to such sources in Table 1 of this section.

TABLE 1 OF SECTION 63.360. GENERAL PROVISIONS APPLICABILITY TO SUBPART Q

Reference	Applies to sources using 10 tons in subpart O[a]	Applies to sources using 1 to 10 tons in subpart O[a]	Comment
63.1(a)(1)	Yes		Additional terms defined in § 63.361; when overlap between subparts A and O occurs, subpart O takes precedence.
63.1(a)(2)	Yes		
63.1(a)(3)	Yes		
63.1(a)(4)	Yes		Subpart O clarifies the applicability of each paragraph in subpart A to sources subject to subpart O.
63.1(a)(5)	No		Reserved.
63.1(a)(6)	Yes		
63.1(a)(7)	Yes		
63.1.1(a)(8)	Yes		
63.1(a)(9)	No		Reserved.
63.1(a)(10)	Yes		
63.1(a)(11)	Yes		§ 63.366(a) of subpart O also allows report submissions via fax and on electronic media.
63.1(a)(12)–(14)	Yes		
63.1(b)(1)–(2)	Yes		
63.1(b)(3)	No		§ 63.367 clarifies the applicability of recordkeeping requirements for sources that determine they are not subject to the emissions standards.
63.1(c)(1)	Yes		Supart O clarifies the applicability of each paragraph in subpart A to sources subject to subpart O in this table.
63.1(c)(2)	Yes		Subpart O also specifies which sources are required to obtain a Title V permit in § 63.360.
63.1(c)(3)	No		Reserved.
63.1(c)(4)	Yes		
63.1(c)(5)	No		§ 63.360 specifies applicability.
63.1(d)	No		Reserved.
63.1(e)	Yes		
63.2	Yes		Additional terms defined in § 63.361; when overlap between subparts A and O occurs, subpart O takes precedence.
63.3	Yes		Other units used in supart O are defined in the text of subpart O.
63.4(a)(1)-(3)	Yes		
63.4(a)(4)	No		Reserved.
63.4(a)(5)	Yes		
63.4(b)	Yes		

TABLE 1 OF SECTION 63.360. GENERAL PROVISIONS APPLICABILITY TO SUBPART Q—Continued

Reference	Applies to sources using 10 tons in subpart O[a]	Applies to sources using 1 to 10 tons in subpart O[a]	Comment
63.4(a)(5)	Yes		
63.4(b)	Yes		
63.4(c)	Yes		
63.5(a)	No		§63.366(b)(1) contains applicability requirements for constructed or reconstructed sources.
63.5(b)(1)	Yes	No	
63.5(b)(2)	No		Reserved.
63.5(b)(3)	No		See §63.366(b)(2).
63.5(b)(4)	Yes	No	
63.5(b)(5)	Yes	No	
63.5(b)(6)	Yes	No	
63.5(c)	No		Reserved.
63.5(d)(1)-(2)	No		See §63.366(b)(3).
63.5(d)(3)-(4)	Yes	No	
63.5(e)	Yes	No	
63.5(f)(1) and (2)	No		See §63.366(b)(4).
63.6(a)(1)	Yes		
63.6(a)(2)	No		§63.360 specifies applicability.
63.6(b) and (c)	No		§63.360(g) specifies compliance dates for sources.
63.6(d)	No		Reserved.
63.6(e)	No		Subpart O does not contain any operation and maintenance plan requirements.
63.6(f)(1)	No		§63.362(b) specifies when the standards apply.
63.6(f)(2)(i)	Yes		
63.6(f)(2)(ii)	No		§63.363 specifies parameters for determining compliance.
63.6(f)(2)(iii)-(iv)	Yes		
63.6(f)(2)(v)	No		
63.6(f)(3)	Yes		
63.6(g)	Yes		
63.6(h)	No		Subpart O does not contain any opacity or visible emission standards.
63.6(i)(1)-(14)	Yes		
63.6(i)(15)	No		Reserved
63.6(i)(16)	Yes		
63.6(j)	Yes		
63.7(a)(1)	Yes		
63.7(a)(2)	No		§63.365(a)(2) specifies performance test dates.
63.7(a)(3)	Yes		
63.7(b)	Yes		
63.7(c)	Yes	No.	
63.7(d)	Yes	No.	
63.7(e)	Yes		§63.365 also contains test methods specific to sources subject to the emissions standards.
63.7(f)	Yes		
63.7(g)(1)	Yes		
63.7(g)(2)	No		Reserved
63.7(g)(3)	Yes		
63.7(h)	Yes		
63.8(a)(1)	Yes		
63.8(a)(2)	Yes		
63.8(a)(3)	No		Reserved
63.8(a)(4)	Yes		
63.8(b)(1)	Yes		
63.8(b)(2)	Yes		
63.8(b)(3)	No		
63.8(c)(1) (i) and (ii)	No		A startup, shutdown, and malfunction plan is not required for these standards.
63.8(c)(1)(iii)	Yes		
63.8(c)(2)-(3)	Yes		
63.8(c)(4)–(5)	No		Frequency of monitoring measurements is provided in §63.364; opacity monitors are not required for these standards.
63.8(c)(6)	No		Performance specifications for gas chromatographs and temperature monitors are contained in §63.365.
63.8(c)(7)(i)(A)–(B)	No		Performance specifications for gas chromatographs and temperature monitors are contained in §63.365.
63.8(c)(7)(i)(C)	No		Opacity monitors are not required for these standards.
63.8(c)(7)(ii)	No		Performance specifications for gas chromatographs and temperature monitors are contained in §63.365.
63.8(c)(8)	No		

TABLE 1 OF SECTION 63.360. GENERAL PROVISIONS APPLICABILITY TO SUBPART Q—Continued

Reference	Applies to sources using 10 tons in subpart O[a]	Applies to sources using 1 to 10 tons in subpart O[a]	Comment
63.8(d)	Yes	No.	
63.8(e)(1)	Yes		
63.8(e)(2)	Yes		
63.8(e)(3)	Yes	No.	
63.8(e)(4)	Yes		
63.8(e)(5)(i)	Yes		
63.8(e)(5)(ii)	No		Opacity monitors are not required for these standards.
63.8(f)(1)–(5)	Yes		
63.8(f)(6)	No		
63.8(g)(1)	Yes		
63.8(g)(2)	No		
63.8(g)(3)–(5)	Yes		
63.9(a)	Yes		
63.9(b)(1)–(i)	Yes		
63.9(b)(1)(ii)–(iii)	No		§63.366(c)(1)(i) contains language for sources that increase usage such that the source becomes subject to the emissions standards.
63.9(b)(2)–(3)	Yes		§63.366(c)(3) contains additional information to be included in the initial report for existing and new sources.
63.9(b)(4)–(5)	No		§63.366(c)(1)(ii) and (iii) contains requirements for new or reconstructed sources subject to the emissions standards.
63.9(c)	Yes		
63.9(d)	No		
63.9(e)	Yes		
63.9(f)	No		Opacity monitors are not required for these standards.
63.9(g)(1)	Yes		
63.9(g)(2)–(3)	No		Opacity monitors and relative accuracy testing are not required for these standards.
63.9(h)(1)–(3)	Yes		
63.9(h)(4)	No		Reserved.
63.9(h)(5)	No		§63.366(c)(2) instructs sources to submit actual data.
63.9(h)(6)	Yes		
63.9(i)	Yes		
63.9(j)	Yes		
63.10(a)	Yes		
63.10(b)(1)	Yes		
63.10(b)(2)(i)	No		Not applicable due to batch nature of the industry.
63.10(b)(2)(ii)	Yes		
63.10(b)(2)(iii)	No		
63.10(b)(2)(iv)–(v)	No		A startup, shutdown, and malfunction plan is not required for these standards.
63.10(b)(2)(vi)–(xii)	Yes		
63.10(b)(2)(xiii)	No		
63.10(b)(2)(xiv)	Yes		
63.10(b)(3)	No		§63.367 (b) and (c) contains applicability determination requirements.
63.10(c)(1)	Yes		
63.10(c)(2)–(4)	No		Reserved.
63.10(c)(5)	Yes		
63.10(c)(6)	No		
63.10(c)(7)	No		Not applicable due to batch nature of the industry.
63.10(c)(8)	Yes		
63.10(c)(9)	No		Reserved.
63.10(c)(10)–(13)	Yes		
63.10(c)(14)	Yes	No	
63.10(c)(15)	No		A startup, shutdown, and malfunction plan is not required for these standards.
63.10(d)(1)	Yes		
63.10(d)(2)	Yes		
63.10(d)(3)	No		Subpart O does not contain opacity or visible emissions standards.
63.10(d)(4)	Yes		
63.10(d)(5)	No		A startup, shutdown, and malfunction plan is not required for these standards.
63.10(e)(1)	Yes		
63.10(e)(2)(i)	Yes		
63.10(e)(2)(ii)	No		Opacity monitors are not required for these standards.
63.10(e)(3)(i)–(iv)	Yes		

TABLE 1 OF SECTION 63.360. GENERAL PROVISIONS APPLICABILITY TO SUBPART Q

Reference	Applies to sources using 10 tons in subpart O[a]	Applies to sources using 1 to 10 tons in subpart O[a]	Comment
63.10(e)(3)(v)	No		§63.366(a)(3) specifies contents and submittal dates for excess emissions and monitoring system performance reports.
63.10(e)(3)(vi)–(viii)	Yes		
63.10(e)(4)	No		Opacity monitors are not required for these standards.
63.10(f)	Yes		
63.11	Yes		
63.12–63.15	Yes		

[a] See definition.

(b) Sterilization sources using less than 1 ton (see definition) are not subject to the emissions standards in § 63.362. The recordkeeping requirements of § 63.367(c) apply.

(c) This subpart does not apply to beehive fumigators.

(d) This subpart does not apply to research or laboratory facilities as defined in section 112(c)(7) of title III of the Clean Air Act Amendment of 1990.

(e) This subpart does not apply to ethylene oxide sterilization operations at stationary sources such as hospitals, doctors offices, clinics, or other facilities whose primary purpose is to provide medical services to humans or animals.

(f) The owner or operator of a source using 1 ton (see definition) is required to obtain a title V permit from the permitting authority in which the source is located.

(g) The owner or operator shall comply with the provisions of this subpart as follows:

(1) All sources subject to the emissions standards in § 63.362 with an initial startup date before December 8, 1997, no later than 3 years after the effective date.

(2) All sources subject to the emissions standards in § 63.362 with an initial startup date after December 8, 1997, immediately upon initial startup of the source.

(3) All sources using less than 10 tons that increase their ethylene oxide usage after December 8, 1997 such that any vent becomes subject to the emissions standards in § 63.362, immediately upon becoming subject to the emissions standards.

§ 63.361 Definitions.

Terms and nomenclature used in this subpart are defined in the Clean Air Act (the Act) as amended in 1990, §§ 63.2 and 63.3 of subpart A of this part, or in this section. For the purposes of subpart O, if the same term is defined in subpart A and in this section, it shall have the meaning given in this section.

Aeration room means any vessel or room that is used to facilitate off-gassing of ethylene oxide at a sterilization facility.

Aeration room vent means the point(s) through which the evacuation of ethylene oxide-laden air from an aeration room occurs.

Baseline temperature means any temperature at the outlet point of a catalytic oxidation unit control device or at the exhaust point from the combustion chamber for a thermal oxidation unit control device established during the performance test when the respective unit achieves at least 99-percent control of ethylene oxide emissions.

Chamber exhaust vent means the point(s) through which ethylene oxide-laden air is removed from the sterilization chamber during chamber unloading following the completion of sterilization and associated air washes.

Compliance date means the date by which a source subject to the emissions standards in § 63.362 is required to be in compliance with the standard.

Effective date means the date of promulgation in the **Federal Register** notice.

Initial startup date means the date when a source subject to the emissions standards in § 63.362 first begins operation of a sterilization process.

Manifolding emissions means combining ethylene oxide emissions from two or more different vent types for the purpose of controlling these emissions with a single control device.

Maximum ethylene glycol concentration means any concentration of ethylene glycol in the scrubber liquor of an acid-water scrubber control device established during a performance test when the scrubber achieves at least 99-percent control of ethylene oxide emissions.

Maximum liquor tank level means any level of scrubber liquor in the acid-water scrubber liquor recirculation tank established during a performance test when the scrubber achieves at least 99-percent control of ethylene oxide emissions.

Oxidation temperature means the temperature at the outlet point of a catalytic oxidation unit control device or at the exhaust point from the combustion chamber for a thermal oxidation unit control device.

Parametric monitoring means monitoring of a specific operating parameter of the control device that demonstrates that the control device is operating under conditions that meet the standard.

Source(s) using less than 1 ton means source(s) using less than 907 kg (1 ton) of ethylene oxide within all consecutive 12-month periods after December 6, 1996.

Source(s) using 1 ton means source(s) using 907 kg (1 ton) or more of ethylene oxide within any consecutive 12-month period after December 6, 1996.

Source(s) using 1 to 10 tons means source(s) using 907 kg (1 ton) or more of ethylene oxide in any consecutive 12-month period but less than 9,070 kg (10 tons) of ethylene oxide in all consecutive 12-month periods after December 6, 1996.

Source(s) using less than 10 tons means source(s) using less than 9,070 kg (10 tons) of ethylene oxide in all consecutive 12-month periods after December 6, 1996.

Source(s) using 10 tons means source(s) using 9,070 kg (10 tons) or more of ethylene oxide in any consecutive 12-month period after December 6, 1996.

Sterilization chamber means any enclosed vessel or room that is filled with ethylene oxide gas, or an ethylene oxide/inert gas mixture, for the purpose of sterilizing and/or fumigating at a sterilization facility.

Sterilization chamber vent means the point (prior to the vacuum pump) through which the evacuation of ethylene oxide from the sterilization chamber occurs following sterilization or fumigation, including any subsequent air washes.

Sterilization facility means any stationary source where ethylene oxide

is used in the sterilization or fumigation of materials.

Sterilization operation means any time when ethylene oxide is removed from the sterilization chamber through the sterilization chamber vent or the chamber exhaust vent or when ethylene oxide is removed from the aeration room through the aeration room vent.

§ 63.362 Standards.

(a) Each owner or operator of a source subject to the provisions of this subpart shall comply with these requirements on and after the compliance date specified in § 63.360(g). The standards of this section are summarized in Table 1 of this section.

TABLE 1 OF SECTION 63.362.—STANDARDS FOR ETHYLENE OXIDE COMMERCIAL STERILIZERS AND FUMIGATORS

Existing and new sources	Source type	Sterilization chamber vent	Aeration room vent	Chamber exhaust vent
Source size	<907 kg (<1 ton)	No controls required; minimal recordkeeping requirements apply (see § 63.367(c)).		
	≥907 kg and <9,070 kg (≥1 ton and <10 tons.	99% emission reduction (see § 63.362(c)).	No control	Maximum chamber concentration limit of 5,300 ppm prior to activation of the chamber exhaust [1] (see § 63.362(e)(2)).
	≥9,070 kg (≥10 tons)	99% emission reduction (see § 63.362(c)).	1 ppm maximum outlet concentration or 99% emission reduction (see § 63.362(d)).	Manifold to a control device used to comply with § 63.362 (c) or (d) or 99 percent emission reduction (see § 63.362(e)(1)).

[1] Affected sources may show compliance by manifolding emissions to a control device used to comply with § 63.362 (c) or (d) by reducing emissions by at least 99 percent.

(b) *Applicability of emission limits.* The emission limitations of paragraphs (c), (d), and (e) of this section apply during sterilization operation. The emission limitations do not apply during periods of malfunction.

(c) *Sterilization chamber vent at sources using 1 ton.* Each owner or operator of a sterilization source using 1 ton shall reduce ethylene oxide emissions to the atmosphere by at least 99 percent from each sterilization chamber vent.

(d) *Aeration room vent at sources using 10 tons.* Each owner or operator of a sterilization source using 10 tons shall reduce ethylene oxide emissions to the atmosphere from each aeration room vent to a maximum concentration of 1 ppmv or by at least 99 percent, whichever is less stringent, from each aeration room vent.

(e) (1) *Chamber exhaust vent at sources using 10 tons.* Each owner or operator of a sterilization source using 10 tons shall either reduce ethylene oxide emissions to the atmosphere by manifolding emissions from each chamber exhaust vent to a control device used to comply with paragraphs (c) or (d) of this section or shall reduce ethylene oxide emissions by at least 99 percent from each chamber exhaust vent (without manifolding).

(2) *Chamber exhaust vent at sources using 1 to 10 tons.* Each owner or operator of a sterilization source using 1 to 10 tons shall limit ethylene oxide emissions from the chamber exhaust vent to the atmosphere to a maximum concentration of 5,300 ppmv from each chamber exhaust vent. If the owner or operator chooses to limit emissions to 5,300 ppmv concentration through the use of a control device, the owner or operator may choose either to manifold ethylene oxide emissions from each chamber exhaust vent to a control device used to comply with paragraph (c) of this section or to reduce ethylene oxide emissions by at least 99 percent (without manifolding).

§ 63.363 Compliance and performance testing.

(a) (1) The owner or operator of a source subject to emissions standards in § 63.362 shall conduct an initial performance test using the procedures listed in § 63.7 of subpart A of this part according to the applicability in Table 1 of § 63.360, the procedures listed in this section, and the test methods listed in § 63.365.

(2) The owner or operator of all sources subject to these emissions standards shall complete the performance test within 180 days after the compliance date for the specific source as determined in § 63.360(g).

(b) The following procedures shall be used to determine compliance with the emission limits under § 63.362(c), the sterilization chamber vent standard:

(1) During the performance test required in paragraph (a) of this section, the owner or operator shall determine the efficiency of control devices used to comply with § 63.362(c) using the test methods and procedures in § 63.365(b)(1). The owner or operator shall also determine the following:

(i) For facilities with acid-water scrubbers, the owner or operator shall establish as a site-specific operating parameter during the test methods and procedures in § 63.365(b)(1) either:

(A) The maximum ethylene glycol concentration using the procedures described in § 63.365(e)(1); or

(B) The maximum liquor tank level using the procedures described in § 63.365(e)(2).

(ii) For facilities with catalytic oxidizers or thermal oxidizers, the owner or operator shall establish as a site-specific operating parameter the baseline temperature during the performance test in § 63.365(b)(2) using the procedures described in § 63.365(f)(1).

(2) Following the date on which the initial performance test is completed, the owner or operator shall comply with one of the following provisions:

(i) For facilities with acid-water scrubbers, operation of the facility with an ethylene glycol concentration in the scrubber liquor in excess of the maximum ethylene glycol concentration or the liquor tank level in excess of the maximum liquor tank level shall constitute a violation of the sterilization chamber vent standard.

(ii) For facilities with catalytic oxidizers or thermal oxidizers, operation of the facility with the oxidation temperature, averaged over three cycles, more than 5.6°C (10°F) below the baseline temperature shall constitute a violation of the sterilization chamber vent standard.

(c) The following procedures shall be used to determine compliance with the emission limits under § 63.362(d), the aeration room vent standard:

(1) During the performance test required in paragraph (a) of this section, the owner or operator shall determine either:

(i) The concentration of ethylene oxide emitted from the aeration room into the atmosphere (after any control device used to comply with § 63.362(d)) using the methods in § 63.365(c)(1); or

(ii) The efficiency of the control device used to comply with § 63.362(d) using the test methods and procedures in § 63.365(d)(1).

(2) For facilities seeking to comply with paragraph (c)(1)(ii) of this section with catalytic oxidizers or thermal oxidizers, the owner or operator must also establish as a site-specific operating parameter the baseline temperature using the procedures described in § 63.365(f)(2).

(3) Following the date on which the initial performance test is completed, the owner or operator of a facility shall comply with one of the following provisions:

(i) For facilities continuously measuring the ethylene oxide concentration emitted from the aeration room (after any control device), operation of the facility with a 3-hour average ethylene oxide concentration in excess of the 1 ppmv ethylene oxide concentration limit shall constitute a violation of the aeration room vent standard.

(ii) For facilities with catalytic oxidizers or thermal oxidizers, operation of the facility with the oxidation temperature, averaged over three hours, more than 5.6°C (10°F) below the baseline temperature shall constitute a violation of the aeration room vent standard.

(d) The following procedures shall be used to determine compliance with the emission limits under § 63.362(e)(1), the chamber exhaust vent standard for sources using 10 tons:

(1) For facilities manifolding emissions from the chamber exhaust vent to a control device controlling emissions from the sterilization chamber vent and/or the aeration room vent, the owner or operator shall comply with the appropriate compliance provisions for that vent type and control device (see paragraphs (b) and (c) of this section).

(2) For facilities not manifolding emissions from the chamber exhaust vent (to a control device used to comply with § 63.362(c) or (d)), the owner or operator shall comply with the following:

(i) During the performance test required in paragraph (a) of this section, the owner or operator shall determine the efficiency of control devices used to comply with § 63.362(e)(1) using the test methods and procedures in § 63.365(d)(2) as well as the following:

(A) For facilities with acid-water scrubbers, the owner or operator shall establish as a site-specific operating parameter either:

(*1*) The maximum ethylene glycol concentration using the procedures described in § 63.365(e)(1); or

(*2*) The maximum liquor tank level using the procedures described in § 63.365(e)(2).

(B) For facilities with catalytic oxidizers or thermal oxidizers, the owner or operator shall establish as a site-specific operating parameter the baseline temperature using the procedures described in § 63.365(f)(3).

(ii) Following the date on which the initial performance test is completed, the owner or operator of a facility shall comply with one of the following provisions:

(A) For facilities with acid-water scrubbers, operation of the facility with an ethylene glycol concentration in the scrubber liquor in excess of the maximum ethylene glycol concentration or the liquor tank level in excess of the maximum liquor tank level shall constitute a violation of the chamber exhaust vent standard for sources using 10 tons.

(B) For facilities with catalytic oxidizers or thermal oxidizers, operation of the facility with the oxidation temperature, averaged over the cycle, more than 5.6°C (10°F) below the baseline temperature shall constitute a violation of the chamber exhaust vent standard for sources using 10 tons.

(e) The following procedures shall be used to determine compliance with the emission limits under § 63.362(e)(2), the chamber exhaust vent standard for sources using 1 to 10 tons:

(1) For facilities manifolding emissions from the chamber exhaust vent to a control device controlling emissions from the sterilization chamber vent, the owner or operator shall comply with the appropriate compliance provisions for the appropriate control technology (see paragraph (b) of this section).

(2) For facilities not manifolding emissions from the chamber exhaust vent (to a control device used to comply with § 63.362(c)), during the performance test required in paragraph (a) of this section, the owner or operator shall either:

(i) Determine the concentration of ethylene oxide in the sterilization chamber immediately prior to the operation of the chamber exhaust using the test methods and procedures in § 63.365(c)(2); or

(ii) Determine the efficiency of control devices used to comply with § 63.362(e)(2) using the test methods and procedures in § 63.365(d)(2) as well as the following:

(A) For facilities with acid-water scrubbers, the owner or operator shall establish as a site-specific operating parameter either:

(*1*) The maximum ethylene glycol concentration using the procedures described in § 63.365(e)(1); or

(*2*) The maximum liquor tank level using the procedures described in § 63.365(e)(2).

(B) For facilities with catalytic oxidizers or thermal oxidizers, the owner or operator shall establish as a site-specific operating parameter the baseline temperature using the procedures described in § 63.365(f)(3).

(3) Following the date on which the initial performance test is completed, the owner or operator of a facility shall comply with one of the following provisions:

(i) For facilities determining the ethylene oxide concentration, operation of the facility with the ethylene oxide concentration in the sterilization chamber (immediately prior to activation of the chamber exhaust) in excess of the 5,300 ppmv ethylene oxide concentration standard shall constitute a violation of the chamber exhaust vent standard for sources using 1 to 10 tons.

(ii) Following the date on which the initial performance test is completed, the owner or operator of a facility shall comply with one of the following provisions:

(A) For facilities with acid-water scrubbers, operation of the facility with an ethylene glycol concentration in the scrubber liquor in excess of the maximum ethylene glycol concentration or the liquor tank level in excess of the maximum liquor tank level shall constitute a violation of the chamber exhaust vent standard for sources using 1 to 10 tons.

(B) For facilities with catalytic oxidizers or thermal oxidizers, operation of the facility with the oxidation temperature, averaged over the cycle, more than 5.6°C (10°F) below the baseline temperature shall constitute a violation of the chamber exhaust vent standard for sources using 1 to 10 tons.

(f) For facilities complying with the emissions limits under § 63.362 with a control technology other than acid-water scrubbers or catalytic or thermal oxidizers:

(1) The owner or operator of the facility shall provide to the Administrator information describing the design and operation of the air pollution control system including

recommendations for the operating parameters to be monitored to indicated proper operation and maintenance of the air pollution control system. Based on this information, the Administrator will determine the site-specific operating parameter(s) to be established during the performance test. During the performance test required in paragraph (a) of this section using the methods approved in § 63.365(g), the owner or operator shall determine the site-specific operating parameter(s) approved by the Administrator.

(2) Operation of the facility in a manner that exceeds a site-specific parameter established as a maximum requirement or falls below a site-specific parameter established as a minimum requirement (depending on the parameters monitored) shall constitute a violation of the applicable emissions standard under § 63.362.

§ 63.364 Monitoring requirements.

(a)(1) The owner or operator of a source subject to emissions standards in § 63.362 shall comply with the monitoring requirements in § 63.8 of subpart A of this part, according to the applicability in Table 1 of § 63.360, and in this section.

(2) Each owner or operator of an ethylene oxide sterilization facility subject to these emissions standards shall monitor the parameters specified in this section. All monitoring equipment shall be installed such that representative measurements of emissions or process parameters from the source are obtained. For monitoring equipment purchased from a vendor, verification of the operational status of the monitoring equipment shall include completion of the manufacturer's written specifications or recommendations for installation, operation, and calibration of the system.

(b) For sterilization facilities complying with § 63.363 (b), (d), or (e) through the use of an acid-water scrubber, the owner or operator shall either:

(1) Sample the scrubber liquor and analyze and record once per week the ethylene glycol concentration of the scrubber liquor using the test methods and procedures in § 63.365(e)(1). Monitoring is required during a week only if the scrubber unit has been operated; or

(2) Measure and record once per week the level of the scrubber liquor in the recirculation tank. The owner or operator shall install, maintain, and use a liquid level indicator to measure the scrubber liquor tank level (i.e., a marker on the tank wall, a dipstick, a magnetic indicator, etc.).

(c) For sterilization facilities complying with § 63.363(b), (c), (d), or (e) through the use of catalytic oxidation or thermal oxidation, the owner or operator shall continuously monitor and record the oxidation temperature at the outlet to the catalyst bed or at the exhaust point from the thermal combustion chamber using the temperature monitor described in paragraph (c)(4) of this section.

(1) For the sterilization chamber vent, a data acquisition system for the temperature monitor shall compute and record an average oxidation temperature over the length of the cycle (based on the length of the cycle used during the performance test in § 63.365(b)(2)) and a three-cycle block average every third cycle.

(2) For the aeration room vent, a data acquisition system for the temperature monitor shall compute and record an average oxidation temperature each hour and a 3-hour block average every third hour.

(3) For the chamber exhaust vent, a data acquisition system for the temperature monitor shall compute and record an average oxidation temperature over the length of the cycle (based on the length of the cycle used during the performance test in § 63.365(d)(2)).

(4) The owner or operator shall install, calibrate, operate, and maintain a temperature monitor accurate to within ±5.6°C (±10°F) to measure the oxidation temperature. The owner or operator shall verify the accuracy of the temperature monitor twice each calendar year with a reference temperature monitor (traceable to National Institute of Standards and Technology (NIST) standards or an independent temperature measurement device dedicated for this purpose). During accuracy checking, the probe of the reference device shall be at the same location as that of the temperature monitor being tested.

(d) For sterilization facilities complying with § 63.363(b), (c), (d), or (e) through the use of a control device other than acid-water scrubbers or catalytic or thermal oxidizers, the owner or operator shall monitor the parameters as approved by the Administrator using the methods and procedures in § 63.365(g).

(e) For sterilization facilities complying with § 63.363(c)(3)(i) or (e)(2)(i) through the use of direct measurement of ethylene oxide concentration, the owner or operator shall follow either paragraph (e)(1) or (2) of this section:

(1) Measure and record once per hour the ethylene oxide concentration at the outlet to the atmosphere from the aeration room vent after any control device according to the procedures specified in § 63.365(c)(1). The owner or operator shall compute and record a 3-hour average every third hour. The owner or operator will install, calibrate, operate, and maintain a gas chromatograph consistent with the requirements of performance specification (PS) 9 in 40 CFR part 60, Appendix B, to measure ethylene oxide. The daily calibration requirements of section 7.2 of PS 9 are required only on days when ethylene oxide emissions are vented to the control device from the aeration room vent.

(2) Measure and record the ethylene oxide concentration in the sterilization chamber immediately before the chamber exhaust is activated according to the procedures specified in § 63.365(c)(2). The owner or operator shall install, calibrate, operate, and maintain a gas chromatograph consistent with the requirements of PS 9 to measure ethylene oxide concentration. The daily calibration requirements of section 7.2 of PS 9 are required only on days when the chamber exhaust is activated.

(f) For sterilization facilities complying with § 63.363(d)(1) or (e)(1) by manifolding emissions from the chamber exhaust vent to a control device controlling emissions from another vent type, the owner or operator shall monitor the control device to which emissions from the chamber exhaust vent are manifolded using the appropriate monitoring requirements in paragraphs (a) through (e) of this section and record the monitoring data.

§ 63.365 Test methods and procedures.

(a) *Performance testing.* The owner or operator of a source subject to the emissions standards in § 63.362 shall comply with the performance testing requirements in § 63.7 of subpart A of this part, according to the applicability in Table 1 of § 63.360, and in this section.

(b) *Efficiency at the sterilization chamber vent.* The following procedures shall be used to determine the efficiency of all types of control devices used to comply with § 63.362(c), sterilization chamber vent standard.

(1) *First evacuation of the sterilization chamber.* This procedure shall be performed on an empty sterilizer for the duration of the first evacuation under normal operating conditions (i.e., sterilization cycle pressure and temperature) and charging a typical amount of ethylene oxide to the sterilization chamber.

(i) The amount of ethylene oxide loaded into the sterilizer (W_c) shall be determined by either:

(A) Weighing the ethylene oxide gas cylinder(s) used to charge the sterilizer before and after charging. Record these weights to the nearest 45 g (0.1 lb). Multiply the total mass of gas charged by the weight percent ethylene oxide present in the gas.

(B) Installing calibrated rotameters at the sterilizer inlet and measuring flow rate and duration of sterilizer charge. Use the following equation to convert flow rate to weight of ethylene oxide:

$$W_c = F_v \times t \times \%EO_v \times \left(\frac{MW}{SV}\right)$$

where:

W_c=weight of ethylene oxide charged, g (lb)

F_v=volumetric flow rate, liters per minute (L/min) corrected to 20 °C and 101.325 kilopascals (kPa) (scf per minute (scfm) corrected to 68 °F and 1 atmosphere of pressure (atm)); the flowrate must be constant during time (t)

t=time, min

$\%EO_V$=volume fraction ethylene oxide

SV=standard volume, 24.05 liters per mole (L/mole)=22.414 L/mole ideal gas law constant corrected to 20 °C and 101.325 kPa (385.32 scf per mole (scf/mole)=359 scf/mole ideal gas law constant corrected to 68 °F and 1 atm).

MW=molecular weight of ethylene oxide, 44.05 grams per gram-mole (g/g-mole) (44.05 pounds per pound-mole (lb/lb-mole)), or

(C) Calculating the mass based on the conditions of the chamber immediately after it has been charged using the following equation:

$$W_c = \frac{MW \times \%EO_v \times P \times V}{R \times T}$$

where:

P=chamber pressure, kPa (psia)

V=chamber volume, liters (L) (ft^3)

R=gas constant, 8.313 L•kPa/g-mole• (10.73 psia•ft^3/mole°R)

T=temperature, K (°R)

Note: If the ethylene oxide concentration is in weight percent, use the following equation to calculate mole fraction:

$$\%EO_v = \frac{W_{EO}}{W_{EO} + \left(W_x \times \frac{MW}{MW_x}\right)}$$

where:

W_{EO}=weight percent of ethylene oxide

W_x=weight percent of compound in the balance of the mixture

MW_x=molecular weight of compound in the balance gas mixture

(ii) The residual mass of ethylene oxide in the sterilizer shall be determined by recording the chamber temperature, pressure, and volume after the completion of the first evacuation and using the following equation:

$$W_r = \frac{MW \times \%EO_v \times P \times V}{R \times T}$$

where:

W_r=weight of ethylene oxide remaining in chamber (after the first evacuation), in g (lb)

(iii) Calculate the total mass of ethylene oxide at the inlet to the control device (W_i) by subtracting the residual mass (W_r) calculated in paragraph (b)(1)(ii) of this section from the charged weight (W_c) calculated in paragraph (b)(1)(i) of this section.

(iv) The mass of ethylene oxide emitted from the control device outlet (W_o) shall be calculated by continuously monitoring the flow rate and concentration using the following procedure.

(A) Measure the flow rate through the control device exhaust continuously during the first evacuation using the procedure found in 40 CFR part 60, appendix A, Test Methods 2, 2A, 2C, or 2D, as appropriate. (Method 2D (using orifice plates or Rootstype meters) is recommended for measuring flow rates from sterilizer control devices.) Record the flow rate at 1-minute intervals throughout the test cycle, taking the first reading within 15 seconds after time zero. Time zero is defined as the moment when the pressure in the sterilizer is released. Correct the flow to standard conditions (20°C and 101.325 kPa (68°F and 1 atm)) and determine the flow rate for the run as outlined in the test methods listed in paragraph (b) of this section.

(B) The Tedlar bag sampling procedure in section 7.1 of Test Method 18, 40 CFR part 60, appendix A (hereafter referred to as Method 18) shall be used to collect samples of exhaust gas throughout the test cycle. Follow the procedures in paragraph (b)(1)(iv)(B)(*1*) or (*2*) of this section.

(*1*) Continuously sample a slipstream of the control device outlet into a Tedlar bag by having a Tedlar bag attached to the slipstream for the entire duration of the run for an integrated bag sample. Whenever a Tedlar bag is full, a new bag must be reattached immediately. Note the time the bag is changed so the sample time and corresponding flow rates can be determined for each bag.

(*i*) Follow the procedures in section 6 of Method 18 and choose the appropriate column, analytical apparatus, and calibration gases for the analysis of the bag samples collected. The bag samples shall be analyzed within 8 hours of collection.

(*ii*) Prepare a graph of volumetric flow rate versus time corresponding to the period each bag was sampled. Integrate the area under the curve to determine the volume.

(*iii*) Calculate the mass of ethylene oxide for each bag by using the following equation:

$$W_b = C \times V \times \frac{MW}{SV} \times \frac{1}{10^6}$$

where:

W_b=Mass of ethylene oxide for each bag, g (lb)

C=concentration of ethylene oxide in ppmv

V=volume of gas exiting the control device corresponding to each bag sample corrected to standard conditions, L (ft^3)

$1/10^6$=correction factor $L_{EO}/10^6\ L_{TOTAL\ GAS}$ ($ft^3{}_{EO}/10^6\ ft^3{}_{TOTAL\ GAS}$)

Sum the mass corresponding to each bag (W_b) used during the evacuation to calculate the total mass (W_o).

(*iv*) Calculate the efficiency by the equation in paragraph (b)(1)(v) of this section.

(*2*) Collect a Tedlar bag (or equivalent collection device) sample at 1-minute intervals throughout the test cycle. (The first bag must be in place and sampling at t=15 seconds. A fresh bag shall be in place and sampling exhaust gas at each 1-minute mark after time zero.) Collect enough sample gas in each bag to complete the analysis. Each bag sample shall be labeled with the sampling time and run number.

(*i*) Follow the procedures in section 6 of Method 18 and choose the appropriate column, analytical apparatus, and calibration gases for the analysis of the bag samples collected. The bag samples shall be analyzed within 8 hours of collection. (Syringe samples should be analyzed within 4 hours.)

(*ii*) Plot a concentration versus time curve using the average concentration, in ppmv, determined in each bag sample. Prepare another graph of volumetric flow rate versus time. Calculate the mass flow at each 1-minute interval point by selecting the concentration (C) and volumetric flow rate corrected to standard conditions (F_v) at each 1-min point.

(*iii*) Use the following equation to determine the mass flow rate of ethylene oxide exiting the control device:

$$W_t = C \times F_v \times \frac{MW}{SV} \times \frac{1}{10^6}$$

where:

W_t = mass flow rate of ethylene oxide

(*iv*) Plot a curve of mass flow rate versus time and integrate for total mass of ethylene oxide for the control device outlet (W_o).

(*v*) Calculate efficiency by the equations in paragraphs (b)(1) (v) and (vi) of this section.

(C) As an alternative to paragraph (b)(1)(ii) of this section, the direct interface sampling and analysis procedure described in Method 18, section 7.2, may be used to continuously monitor ethylene oxide concentration at the inlet and outlet of the control device using a gas chromatograph with flame ionization detector (GC/FID) or photoionization detector (GC/PID). This procedure may be used only if a vent sample may be sampled and analyzed by the GC/FID or GC/PID at least once per minute.

(*1*) Follow the procedures in section 6 of Method 18 and choose the appropriate column, analytical apparatus, and calibration gases for the analysis of the sample.

(*2*) Follow the procedures in paragraphs (b)(1)(iv)(B)(*2*) (*ii*) through (*v*) of this section.

(v) Determine control device efficiency (% Eff) using the following equation:

$$\%Eff = \frac{W_i - W_o}{W_i} \times 100$$

where:

% Eff = percent efficiency

W_i = mass flow rate into the control device

W_o = mass flow rate out of the control device

(vi) Repeat the procedures in paragraphs (b)(1) (i) through (v) of this section three times. The arithmetic average percent efficiency of the three runs shall determine the overall efficiency of the control device.

(2) *Last evacuation of the sterilization chamber.* One of the following procedures (paragraph (b)(2) (i) or (ii) of this section) shall be performed during the last evacuation of the sterilization chamber:

(i) The direct interface sampling and analysis procedure described in Method 18, section 7.2, may be used to continuously monitor ethylene oxide concentration at the inlet and outlet of the control device using a GC/FID or GC/PID; this procedure may be used only if a vent may be sampled and analyzed by the GC/FID or GC/PID once per minute for the duration of the last cycle.

(A) Follow the procedures in section 6 of Method 18 and choose the appropriate column, analytical apparatus, and calibration gases for the analysis of the sample.

(B) Follow the procedures in paragraphs (b)(1)(iv)(B)(*2*)(*ii*) through (*iv*) of this section.

(C) Determine control device efficiency (% Eff) using the following equation:

$$\%Eff = \frac{W_i - W_o}{W_i} \times 100$$

where:

% Eff = percent efficiency

W_i = mass flow rate into the control device

W_o = mass flow rate out of the control device

(D) Repeat the procedures in paragraphs (b)(2)(i) (A) through (C) of this section three times. The arithmetic average percent efficiency of the three runs shall determine the overall efficiency of the control device.

(ii) The Tedlar bag sampling procedure in section 7.1 of Method 18, may be used to collect samples of inlet and exhaust gas for the duration of the last cycle.

(A) Continuously sample a slipstream of the control device inlet and outlet into a Tedlar bag by having a Tedlar bag attached to the slipstream for the entire duration of the run for an integrated bag sample. Whenever a Tedlar bag is full, a new bag must be reattached immediately. Note the time the bag is changed so the sample time and corresponding flow rates can be determined for each bag.

(B) Follow the procedures in section 6 of Method 18 and choose the appropriate column, analytical apparatus, and calibration gases for the analysis of the bag samples collected. The bag samples shall be analyzed within 8 hours of collection.

(C) Follow the procedures in paragraphs (b)(1)(iv)(B)(*2*)(*ii*) through (*iv*) of this section.

(D) Determine control device efficiency (% Eff) using the equation in paragraph (b)(2)(i)(C) of this section.

(E) Repeat the procedures in paragraphs (b)(2)(ii)(A) through (D) of this section three times. The arithmetic average percent efficiency of the three runs shall determine the overall efficiency of the control device.

(iii) In the event that the outlet concentration from the control device is below the detection limit for ethylene oxide for determining the efficiency in paragraph (b)(2)(i)(C) or (ii)(D) of this section, the owner or operator shall assume the control device is meeting the standard in § 63.362(e)(1) or (2) if the inlet ethylene oxide concentration is at or below approximately 50 ppmv.

(c) *Concentration determination.* The following procedures shall be used to determine the ethylene oxide concentration as the monitored parameter established in § 63.363(c) and (e) for aeration room emissions and chamber exhaust vents, respectively, and to continuously monitor the ethylene oxide concentration for aeration room vents as established in § 63.364(e)(1) and to monitor the ethylene oxide concentration before activation of the chamber exhaust for chamber exhaust vents as established in § 63.364(e)(2).

(1) *Aeration room vent.* For determining the ethylene oxide concentration for aeration room emissions, the procedures outlined in section 7.2 of Method 18 shall be used. Repeat these procedures three times. The arithmetic average of the ethylene oxide concentration of the three test runs shall determine the overall outlet ethylene oxide concentration from the control device. Compliance testing of gas chromatographs shall be performed using PS 9 in 40 CFR part 60.

(2) *Sterilization chamber prior to activation of the chamber exhaust.* For determining the ethylene oxide concentration in the sterilization chamber before activation of the chamber exhaust, the procedures outlined in sections 7.2 or 7.3 of Method 18 shall be used. The ethylene oxide concentration from one test run shall determine the outlet ethylene oxide concentration from the chamber exhaust vent. Compliance testing of gas chromatographs shall be performed using PS 9 in 40 CFR part 60.

(d) *Efficiency determination at the aeration room vent and at the chamber exhaust vent (not manifolded).* The following procedures shall be used to determine the efficiency of a control device used to comply with § 63.362(d) or (e), the aeration room vent standard or the chamber exhaust vent standards (without manifolding the chamber exhaust vent emissions to another vent type):

(1) *Aeration room vent.* For determining the efficiency of aeration room vent control devices, either of the following test methods (paragraph (d)(1)(i) or (ii) of this section) may be used:

(i) the direct interface sampling and analysis procedure described in Method 18, section 7.2, may be used to continuously monitor ethylene oxide

concentration at the inlet and outlet of the control device using a GC/FID or GC/PID; this procedure may be used only if a vent may be sampled and analyzed by the GC/FID or GC/PID once every 5 minutes throughout a 1-hour test run.

(A) Follow the procedures in section 6 of Method 18 and choose the appropriate column, analytical apparatus, and calibration gases for the analysis of the sample.

(B) Follow the procedures in paragraphs (b)(1)(iv)(B)(*2*)(*ii*) through (*iv*) of this section.

C) Determine control device efficiency (% Eff) using the following equation:

$$\%Eff = \frac{W_i - W_o}{W_i} \times 100$$

where:

% Eff=percent efficiency

W_i=mass flow rate into the control device

W_o=mass flow rate out of the control device

(D) Repeat the procedures in paragraphs (d)(1)(i)(A) through (C) of this section three times. The arithmetic average percent efficiency of the three runs shall determine the overall efficiency of the control device.

(ii) The Tedlar bag sampling procedure in section 7.1 of Method 18 may be used to collect samples of inlet and exhaust gas throughout a 1-hour test run.

(A) Continuously sample a slipstream of the control device inlet and outlet into a Tedlar bag by having a Tedlar bag attached to the slipstream for the entire duration of the run for an integrated bag sample. Whenever a Tedlar bag is full, a new bag must be reattached immediately. Note the time the bag is changed so the sample time and corresponding flow rates can be determined for each bag.

(B) Follow the procedures in section 6 of Method 18 and choose the appropriate column, analytical apparatus, and calibration gases for the analysis of the bag samples collected. The bag samples shall be analyzed within 8 hours of collection.

(C) Follow the procedures in paragraphs (b)(1)(iv)(B)(*2*)(*ii*) through (*iv*) of this section.

(D) Determine control device efficiency (% Eff) using the equation in paragraph (d)(1)(i)(C) of this section.

(E) Repeat the procedures in paragraphs (d)(1)(ii)(A) through (D) of this section three times. The arithmetic average percent efficiency of the three runs shall determine the overall efficiency of the control device.

(2) *Chamber exhaust vent (not manifolded).* For determining the efficiency of non-manifolded chamber exhaust vent control devices, either of the following test methods (paragraph (d)(2)(i) or (ii) of this section) may be used:

(i) The direct interface sampling and analysis procedures described in Method 18, section 7.2 or 7.3, may be used to continuously monitor ethylene oxide concentration at the inlet and outlet of the control device using a GC/FID or GC/PID; these procedures may be used only if a vent may be sampled and analyzed by the GC/FID or GC/PID once per minute for the duration of each cycle when the chamber exhaust vent is operated.

(A) Follow the procedures in section 6 of Method 18 and choose the appropriate column, analytical apparatus, and calibration gases for the analysis of the sample.

(B) Follow the procedures in paragraphs (b)(1)(iv)(B)(*2*)(*ii*) through (*iv*) of this section.

(C) Determine control device efficiency (% Eff) using the following equation: where:

$$\%Eff = \frac{W_i - W_o}{W_i} \times 100$$

where:

% Eff = percent efficiency

W_i = mass flow rate into the control device

W_o = mass flow rate out of the control device

(D) Repeat the procedures in paragraphs (d)(2)(i)(A) through (C) of this section three times. The arithmetic average percent efficiency of the three runs shall determine the overall efficiency of the control device.

(ii) The Tedlar bag sampling procedure in section 7.1 of Method 18 may be used to collect samples of inlet and exhaust gas for the duration of each cycle when the chamber exhaust vent is operated.

(A) Continuously sample a slipstream of the control device inlet and outlet into a Tedlar bag by having a Tedlar bag attached to the slipstream for the entire duration of the run for an integrated bag sample. Whenever a Tedlar bag is full, a new bag must be reattached immediately. Note the time the bag is changed so the sample time and corresponding flow rates can be determined for each bag.

(B) Follow the procedures in section 6 of Method 18 and choose the appropriate column, analytical apparatus, and calibration gases for the analysis of the bag samples collected. The bag samples shall be analyzed within 8 hours of collection.

(C) Follow the procedures in paragraphs (b)(1)(iv)(B)(*2*)(*ii*) through (*iv*) of this section.

(D) Determine control device efficiency (% Eff) using the equation in paragraph (d)(2)(i)(C) of this section.

(E) Repeat the procedures in paragraphs (d)(2)(ii)(A) through (D) of this section three times. The arithmetic average percent efficiency of the three runs shall determine the overall efficiency of the control device.

(iii) In the event that the outlet concentration from the control device is below the detection limit for ethylene oxide for determining the efficiency in paragraph (d)(2)(i)(C) or (ii)(D) of this section, the owner or operator shall assume the control device is meeting the standard in § 63.362(e)(1) or (2) if the inlet ethylene oxide concentration is at or below approximately 50 ppmv.

(e) *Determination of baseline parameters for acid-water scrubbers.* The procedures in this paragraph shall be used to determine the monitored parameters established in § 63.363(b), (d), or (e) for acid-water scrubbers and to monitor the parameters as established in § 63.364(b).

(1) *Ethylene glycol concentration.* For determining the ethylene glycol concentration, the facility owner or operator shall establish the maximum ethylene glycol concentration as the ethylene glycol concentration averaged over three test runs; the sampling and analysis procedures in ASTM D 3695–88, Standard Test Method for Volatile Alcohols in Water By Direct Aqueous-Injection Gas Chromatography, (incorporated by reference—see § 63.14) shall be used to determine the ethylene glycol concentration.

(2) *Scrubber liquor tank level.* For determining the scrubber liquor tank level, the sterilization facility owner or operator shall establish the maximum liquor tank level based on a single measurement of the liquor tank level during one test run.

(f) *Determination of baseline temperature for oxidation units.* The procedures in this paragraph shall be used to demonstrate the baseline temperature required in § 63.363(b), (c), (d), or (e) for catalytic oxidation units or thermal oxidation units and to continuously monitor the oxidation temperature as established in § 63.364(c).

(1) *Sterilization chamber vent.* The sterilization facility owner or operator shall establish the baseline temperature for the sterilization chamber vent as the temperature for the catalytic oxidation unit or the oxidation temperature at the

exhaust point from the thermal oxidation unit averaged over three test runs using the procedures in paragraph (b)(2) of this section.

(2) *Aeration room vent.* The sterilization facility owner or operator shall establish the baseline temperature for the aeration room vent as the temperature for the catalytic oxidation unit or the oxidation temperature at the exhaust point from the thermal oxidation unit averaged over three test runs using the procedures in paragraph (d)(1) of this section.

(3) *Chamber exhaust vent.* The sterilization facility owner or operator shall establish the baseline temperature for the chamber exhaust vent as the temperature for the catalytic oxidation unit or the oxidation temperature at the exhaust point from the thermal oxidation unit averaged over three test runs using the procedures in paragraph (d)(2) of this section.

(g) An owner or operator of a sterilization facility seeking to demonstrate compliance with the standards found at § 63.362(c), (d), or (e) with a control device other than an acid-water scrubber or catalytic or thermal oxidation unit shall provide to the Administrator the information requested under § 63.363(f). The owner or operator shall submit: a description of the device; test results collected in accordance with § 63.363(f) verifying the performance of the device for controlling ethylene oxide emissions to the atmosphere to the levels required by the applicable standards; the appropriate operating parameters that will be monitored; and the frequency of measuring and recording to establish continuous compliance with the standards. The monitoring plan submitted identifying the compliance monitoring is subject to the Administrator's approval. The owner or operator of the sterilization facility shall install, calibrate, operate, and maintain the monitor(s) approved by the Administrator based on the information submitted by the owner or operator. The owner or operator shall include in the information submitted to the Administrator proposed performance specifications and quality assurance procedures for their monitors. The Administrator may request further information and shall approve appropriate test methods and procedures.

(h) An owner or operator of a sterilization facility seeking to demonstrate compliance with the standards found at §§ 63.362(d) or (e) with a monitoring device or procedure other than a gas chromatograph shall provide to the Administrator information describing the operation of the monitoring device or procedure and the parameter(s) that would indicate proper operation and maintenance of the device or procedure. The Administrator may request further information and will specify appropriate test methods and procedures.

§ 63.366 Reporting requirements.

(a) The owner or operator of a source subject to the emissions standards in § 63.362 shall fulfill all reporting requirements in §§ 63.10(a), (d), (e), and (f) of subpart A, according to the applicability in Table 1 of § 63.360. These reports will be made to the Administrator at the appropriate address identified in § 63.13 of subpart A of this part.

(1) Reports required by subpart A and this section may be sent by U.S. mail, fax, or by another courier.

(i) Submittals sent by U.S. mail shall be postmarked on or before the specified date.

(ii) Submittals sent by other methods shall be received by the Administrator on or before the specified date.

(2) If acceptable to both the Administrator and the owner or operator of a source, reports may be submitted on electronic media.

(3) Content and submittal dates for excess emissions and monitoring system performance reports. All excess emissions and monitoring system performance reports and all summary reports, if required per § 63.10(e)(3) (vii) and (viii) of subpart A of this part, shall be delivered or postmarked within 30 days following the end of each calendar half or quarter as appropriate (see § 63.10(e)(3) (i) through (iv) for applicability). Written reports of excess emissions or exceedances of process or control system parameters shall include all information required in § 63.10(c) (5) through (13) of subpart A of this part as applicable in Table 1 of § 63.360 and information from any calibration tests in which the monitoring equipment is not in compliance with PS–9 or the method used for temperature calibration. The written report shall also include the name, title, and signature of the responsible official who is certifying the accuracy of the report. When no excess emissions or exceedances have occurred or monitoring equipment has not been inoperative, repaired, or adjusted, such information shall be stated in the report.

(b) *Construction and Reconstruction.* The owner or operator of each source using 10 tons shall fulfill all requirements for construction or reconstruction of a source in § 63.5 of subpart A of this part, according to the applicability in Table 1 of § 63.360, and in this paragraph.

(1) *Applicability.* (i) This paragraph and § 63.5 of subpart A of this part implement the preconstruction review requirements of section 112(i)(1) for sources subject to these emissions standards. In addition, this paragraph and § 63.5 of subpart A of this part include other requirements for constructed and reconstructed sources that are or become subject to these emissions standards.

(ii) After the effective date, the requirements in this section and in § 63.5 of subpart A of this part apply to owners or operators who construct a new source or reconstruct a source subject to these emissions standards after December 6, 1994. New or reconstructed sources subject to these emissions standards with an initial startup date before the effective date are not subject to the preconstruction review requirements specified in paragraphs (b) (2) and (3) of this section and § 63.5(d) (3) and (4) and (e) of subpart A of this part.

(2) After the effective date, whether or not an approved permit program is effective in the State in which a source is (or would be) located, no person may construct a new source or reconstruct a source subject to these emissions standards, or reconstruct a source such that the source becomes a source subject to these emissions standards, without obtaining advance written approval from the Administrator in accordance with the procedures specified in paragraph (b)(3) of this section and § 63.5(d) (3) and (4) and (e) of subpart A of this part.

(3) *Application for approval of construction or reconstruction.* The provisions of paragraph (b)(3) of this section and § 63.5(d) (3) and (4) of subpart A of this part implement section 112(i)(1) of the Act.

(i) *General application requirements.*

(A) An owner or operator who is subject to the requirements of paragraph (b)(2) of this section shall submit to the Administrator an application for approval of the construction of a new source subject to these emissions standards, the reconstruction of a source subject to these emissions standards, or the reconstruction of a source such that the source becomes a source subject to these emissions standards. The application shall be submitted as soon as practicable before the construction or reconstruction is planned to commence (but not sooner than the effective date) if the construction or reconstruction commences after the effective date. The application shall be submitted as soon as practicable before the initial startup

date but no later than 60 days after the effective date if the construction or reconstruction had commenced and the initial startup date had not occurred before the effective date. The application for approval of construction or reconstruction may be used to fulfill the initial notification requirements of paragraph (c)(1)(iii) of this section. The owner or operator may submit the application for approval well in advance of the date construction or reconstruction is planned to commence in order to ensure a timely review by the Administrator and that the planned commencement date will not be delayed.

(B) A separate application shall be submitted for each construction or reconstruction. Each application for approval of construction or reconstruction shall include at a minimum:

(*1*) The applicant's name and address.

(*2*) A notification of intention to construct a new source subject to these emissions standards or make any physical or operational change to a source subject to these emissions standards that may meet or has been determined to meet the criteria for a reconstruction, as defined in § 63.2 of subpart A of this part.

(*3*) The address (i.e., physical location) or proposed address of the source.

(*4*) An identification of the relevant standard that is the basis of the application.

(*5*) The expected commencement date of the construction or reconstruction.

(*6*) The expected completion date of the construction or reconstruction.

(*7*) The anticipated date of (initial) startup of the source.

(*8*) The type and quantity of hazardous air pollutants emitted by the source, reported in units and averaging times and in accordance with the test methods specified in the standard, or if actual emissions data are not yet available, an estimate of the type and quantity of hazardous air pollutants expected to be emitted by the source reported in units and averaging times specified. The owner or operator may submit percent reduction information, if the standard is established in terms of percent reduction. However, operating parameters, such as flow rate, shall be included in the submission to the extent that they demonstrate performance and compliance.

(*9*) Other information as specified in paragraph (b)(3)(ii) of this section and § 63.5(d)(3) of subpart A of this part.

(C) An owner or operator who submits estimates or preliminary information in place of the actual emissions data and analysis required in paragraphs (b)(3)(i)(B)(*8*) and (ii) of this section shall submit the actual, measured emissions data and other correct information as soon as available but no later than with the notification of compliance status required in paragraph (c)(2) of this section.

(ii) *Application for approval of construction.* Each application for approval of construction shall include, in addition to the information required in paragraph (b)(3)(i)(B) of this section, technical information describing the proposed nature, size, design, operating design capacity, and method of operation of the source subject to these emissions standards, including an identification of each point of emission for each hazardous air pollutant that is emitted (or could be emitted) and a description of the planned air pollution control system (equipment or method) for each emission point. The description of the equipment to be used for the control of emissions shall include each control device for each hazardous air pollutant and the estimated control efficiency (percent) for each control device. The description of the method to be used for the control of emissions shall include an estimated control efficiency (percent) for that method. Such technical information shall include calculations of emission estimates in sufficient detail to permit assessment of the validity of the calculations. An owner or operator who submits approximations of control efficiencies under paragraph (b)(3) of this section shall submit the actual control efficiencies as specified in paragraph (b)(3)(i)(C) of this section.

(4) *Approval of construction or reconstruction based on prior State preconstruction review.*

(i) The Administrator may approve an application for construction or reconstruction specified in paragraphs (b)(2) and (3) of this section and § 63.5(d)(3) and (4) of subpart A of this part if the owner or operator of a new or reconstructed source who is subject to such requirement demonstrates to the Administrator's satisfaction that the following conditions have been (or will be) met:

(A) The owner or operator of the new or reconstructed source subject to these emissions standards has undergone a preconstruction review and approval process in the State in which the source is (or would be) located before the effective date and has received a federally enforceable construction permit that contains a finding that the source will meet these emissions standards as proposed, if the source is properly built and operated;

(B) In making its finding, the State has considered factors substantially equivalent to those specified in § 63.5(e)(1) of subpart A of this part.

(ii) The owner or operator shall submit to the Administrator the request for approval of construction or reconstruction no later than the application deadline specified in paragraph (b)(3)(i) of this section. The owner or operator shall include in the request information sufficient for the Administrator's determination. The Administrator will evaluate the owner or operator's request in accordance with the procedures specified in § 63.5 of subpart A of this part. The Administrator may request additional relevant information after the submittal of a request for approval of construction or reconstruction.

(c) *Notification requirements.* The owner or operator of each source subject to the emissions standards in § 63.362 shall fulfill all notification requirements in § 63.9 of subpart A of this part, according to the applicability in Table 1 of § 63.360, and in this paragraph.

(1) Initial Notifications

(i)(A) If a source that otherwise would be subject to these emissions standards subsequently increases its use of ethylene oxide within any consecutive 12-month period after December 6, 1996, such that the source becomes subject to these emissions standards or other requirements, such source shall be subject to the notification requirements of § 63.9 of subpart A of this part.

(B) Sources subject to these emissions standards may use the application for approval of construction or reconstruction under paragraph (b)(3)(ii) of this section and § 63.5(d) (3) of subpart A of this part, respectively, if relevant to fulfill the initial notification requirements.

(ii) The owner or operator of a new or reconstructed source subject to these emissions standards that has an initial startup date after the effective date and for which an application for approval of construction or reconstruction is required under paragraph (b)(3) of this section and § 63.5(d) (3) and (4) of subpart A of this part shall provide the following information in writing to the Administrator:

(A) A notification of intention to construct a new source subject to these emissions standards, reconstruct a source subject to these emissions standards, or reconstruct a source such that the source becomes a source subject to these emissions standards with the application for approval of construction or reconstruction as specified in paragraph (b)(3)(i)(A) of this section;

(B) A notification of the date when construction or reconstruction was commenced, submitted simultaneously with the application for approval of construction or reconstruction, if construction or reconstruction was commenced before the effective date of these standards;

(C) A notification of the date when construction or reconstruction was commenced, delivered or postmarked not later than 30 days after such date, if construction or reconstruction was commenced after the effective date of these standards;

(D) A notification of the anticipated date of startup of the source, delivered or postmarked not more than 60 days nor less than 30 days before such date; and

(E) A notification of the actual date of initial startup of the source, delivered or postmarked within 15 calendar days after that date.

(iii) After the effective date, whether or not an approved permit program is effective in the State in which a source subject to these emissions standards is (or would be) located, an owner or operator who intends to construct a new source subject to these emissions standards or reconstruct a source subject to these emissions standards, or reconstruct a source such that it becomes a source subject to these emissions standards, shall notify the Administrator in writing of the intended construction or reconstruction. The notification shall be submitted as soon as practicable before the construction or reconstruction is planned to commence (but no sooner than the effective date of these standards) if the construction or reconstruction commences after the effective date of the standard. The notification shall be submitted as soon as practicable before the initial startup date but no later than 60 days after the effective date of this standard if the construction or reconstruction had commenced and the initial startup date has not occurred before the standard's effective date. The notification shall include all the information required for an application for approval of construction or reconstruction as specified in paragraph (b)(3) of this section and § 63.5(d)(3) and (4) of subpart A of this part. For sources subject to these emissions standards, the application for approval of construction or reconstruction may be used to fulfill the initial notification requirements of § 63.9 of subpart A of this part.

(2) If an owner or operator of a source subject to these emissions standards submits estimates or preliminary information in the application for approval of construction or reconstruction required in paragraph (b)(3)(ii) of this section and § 63.5(d)(3) of subpart A of this part, respectively, in place of the actual emissions data or control efficiencies required in paragraphs (b)(3)(i)(B)(8) and (ii) of this section, the owner or operator shall submit the actual emissions data and other correct information as soon as available but no later than with the initial notification of compliance status.

(3) The owner or operator of any existing sterilization facility subject to this subpart shall also include the amount of ethylene oxide used during the previous consecutive 12-month period in the initial notification report required by § 63.9(b)(2) and (3) of subpart A of this part. For new sterilization facilities subject to this subpart, the amount of ethylene oxide used shall be an estimate of expected use during the first consecutive 12-month period of operation.

§ 63.367 Recordkeeping requirements.

(a) The owner or operator of a source subject to the emissions standards in § 63.362 shall comply with the recordkeeping requirements in §§ 63.10(b) and (c) of subpart A of this part, according to the applicability in Table 1 of § 63.360, and in this section.

(b) The owners or operators of a source using 1 to 10 tons not subject to an emissions standard in § 63.362 shall maintain records of ethylene oxide use on a 12-month rolling average basis (until the source changes its operations to become a source subject to an emissions standard in § 63.362). These records shall be kept onsite at the source for a period of 5 years.

(c) The owners or operators of a source using less than 1 ton shall maintain records of ethylene oxide use on a 12-month rolling average basis (until the source changes its operations to become a source subject to the emissions standards in § 63.362). These records shall be kept onsite at the source for a period of 5 years.

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GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-9

[FPMR Amendment A-53]

RIN 3090-AF14

Federal Mail Management

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This regulation establishes Federal mail management policy within the Federal Property Management Regulations. The regulation is necessary to improve the management of Federal incoming, internal, and outgoing mail, and to reduce mail costs through a comprehensive mail management program. This mail management program requires that agencies keep mail processing steps to a minimum; apply sound workflow principles; use automation and modern equipment, supplies, and training to the maximum extent cost-effective; and streamline operations to increase efficiency. Each Federal agency is expected to establish an appropriate program for the management of mail at each agency facility as well as on an agencywide basis.

EFFECTIVE DATE: December 6,1994.

FOR FURTHER INFORMATION CONTACT: Bill Percival, Mail Management Branch (703-305-7577).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a significant rule for the purposes of Executive Order 12866.

Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment. Therefore the Regulatory Flexibility Act does not apply.

List of Subjects in 41 CFR Part 101-9

Government property management, Mail management.

For the reasons set forth in the preamble, 41 CFR Chapter 101 is amended as follows:

Part 101-9 is added to Subchapter A, General, to read as follows:

PART 101-9—FEDERAL MAIL MANAGEMENT

Sec.
101-9.000 Scope of part.

Subpart 101-9.1—General Provisions

101-9.101 Authority.
101-9.102 Objective.
101-9.103 Definitions.

Subpart 101-9.2—Program Implementation

101-9.201 Agency responsibilities.
101-9.202 Operational cost control functions at a facility level.

Subpart 101-9.3—Reporting Requirements

101-9.301 Agency mail manager information.
101-9.302 Agency mail program data.

Subpart 101–9.4—GSA Responsibilities and Services

Subpart 101–9.5—U.S. Postal Service Assistance

Subpart 101–9.49—Illustrations

101–9.4900 Scope of subpart.
101–9.4901 [Reserved]
101–9.4902 Format for mail profile data.

Authority: Sec. 2, Pub. L. 94–575, as amended; 44 U.S.C. 2904; Sec. 205(c), 63 Stat 390; 40 U.S.C. 486(c).

§ 101–9.000 Scope of part.

This part sets forth policy for efficient, effective, and economical management by Federal agencies of incoming, internal, and outgoing mail.

Subpart 101–9.1—General Provisions

§ 101–9.101 Authority.

Section 2 of Public Law 94–575, the Federal Records Management Amendments of 1976 (FRMA), as amended, requires the Administrator of General Services to provide guidance and assistance to Federal agencies on records management, which includes the processing of mail by a Federal agency. GSA's responsibility extends to all Federal agencies.

§ 101–9.102 Objective.

The objective of mail management is to ensure rapid handling and accurate delivery of mail throughout the agency at minimum cost consistent with agency mission requirements.

§ 101–9.103 Definitions.

In part 101–9, the following definitions apply:

Addressing standards means the rules and regulations governing the addressing of mail, developed by the U.S. Postal Service, that enhance the processing and delivery of mail, reduce "undeliverable as addressed" mail, and provide cost reduction opportunities.

Class of mail means the classes of mail (First-Class, Second-Class, Third-Class, Fourth-Class, and Express Mail) established by the U.S. Postal Service for U.S. domestic mail.

Courier means a private delivery company or an individual that works for such a company.

Expedited mail is a generic term used to describe mail to be delivered faster than U.S. Postal Service delivery of First, Second, Third, and Fourth-Class mail.

Facility means any location where mail is processed for dispatch.

Facility mail manager means the persons responsible for mail management at a facility.

Federal agency or agency means any executive department as defined in 5 U.S.C. 101, a wholly owned Government corporation as defined in 31 U.S.C. 9101, any independent establishment in the executive branch as defined in 5 U.S.C. 104, any establishment in the legislative or judicial branch of the Government (except the Supreme Court, the Senate, the House of Representatives, and the Architect of the Capitol and any activities under the direction of the Architect of the Capitol).

Incoming mail means mail coming into the agency delivered by an outside source (vendor or agency).

Internal mail means mail that is transmitted within an agency by that agency's mail center staff, including worldwide distribution, and is not processed for delivery by the U.S. Postal Service or any private company.

Letter means a message directed to a specific person or address and recorded in or on a tangible object. A message consists of any information or intelligence which is recorded on tangible objects such as paper in sheet and card form, or magnetic media.

Mail means letters, hard copies of electronic communications, memoranda, post and postal cards, documents, drawings, microfiche, publications, catalogs and other hard copy communications, as well as packages meeting U.S. Postal Service size and weight requirements, for distribution or dispatch regardless of the distribution, dispatch, or delivery method including messengers and couriers. An item is considered mailable if it meets the following requirements set by the U.S. Postal Service: a mailable item is an item that will not injure people or property, weighs 70 pounds or less, and is not more than 108 inches (combined length and girth). Mailability requirements, restrictions, and exceptions are found in the U.S. Postal Service's Domestic Mail Manual (other mail vendors provide similar written guidance for items sent via their delivery services).

Mail center means a centralized location where mail is processed.

Mail piece design means preparation of letters, cards, and flats consistent with U.S. Postal Service requirements and recommendations.

Mail preparation means those processes involved in preparing mail for dispatch in such a way that it meets U.S. Postal Service requirements. These processes include, but are not limited to: sorting, barcoding, banding, air control tagging (ACT), designing mail pieces, and palletizing.

Messenger means an agency employee who delivers agency mail.

Outgoing mail means mail generated from within an agency facility that is addressed for delivery outside that facility; i.e., within or outside the agency, and is processed for delivery by the U.S. Postal Service or a private company.

Service standard means the dependability (consistency of arrival at addressee's location) and timeliness (meets delivery standard established for the class of service procured) of mail delivery.

Special services means services for fees other than postage; e.g., registered, certified, insured, business reply mail, merchandise return, certificates of mailing, and return receipts.

Worksharing means presorting, barcoding, or otherwise processing outgoing mail in such a way as to qualify for reduced postage rates. Agencies may participate in worksharing through contracts with vendors, when authorized by that agency to enter into such contracts, or through in-house efforts.

Subpart 101–9.2—Program Implementation

§ 101–9.201 Agency responsibilities.

The head of each agency, or his or her designee, must designate an agency mail manager to be responsible for establishing an agencywide mail management program. The agency mail manager must have visibility within the agency and be at a managerial level enabling him or her to execute an agencywide program. The responsibilities of the agency mail manager include:

(a) Ensuring agencywide awareness and compliance with the mail management standards set forth by the U.S. Postal Service in the Domestic Mail Manual, the International Mail Manual, the Memo to Mailers, and the Postal Bulletin, as well as GSA standards and guidelines.

(b) Negotiating on behalf of the agency with the U.S. Postal Service for mail related services and implementing operational procedures for services acquired from private delivery vendors and couriers.

(c) Developing and distributing throughout the agency an agency mail cost control program. The agency cost control program must include, in addition to written policies regarding actions and procedures necessary to provide timely and cost-effective dispatch and delivery of mail, a plan for transition to automated mailing procedures, including: automated addressing, address list management, and electronic mail. This program must include:

(1) Developing and issuing on an agencywide basis program directives, guidance, and policies for timely and cost-effective mail management. Copies of program directives, policies, and guidance must be available for inspection by GSA. This includes at a minimum:

(i) Instructing mailers to use expedited mail only when required. Mail managers should require that mailers avoid excessive use of expedited mail services. Generally, expedited mail should not be used on Fridays, weekends, or the day before a holiday. When expedited mail is needed on Fridays, weekends, or the day before a holiday, the mail manager must coordinate with the mailer to ensure delivery to the addressee. For example, if the addressee's building will not be opened consider other delivery arrangements. The mail manager must establish control procedures including written instructions on cost-effective use of expedited mail and must review scheduled expedited mail dispatches to determine if expedited service is necessary. If expedited mail is not necessary, alternatives to be considered include, but are not limited to: First-Class and Priority Mail, from the U.S. Postal Service and package delivery services from other vendors, if the agency has the authority to contract for or enter into agreements with such vendors and in accordance with any existing contracts or agreements for such services to which the agency is a party.

(ii) Maximizing agency cost-effective participation in worksharing programs. This includes proper address list management, compliance with automation addressing standards, presorting, and barcoding.

(2) Monitoring through the agency's local mail managers at all mail facilities, mailings, and other mail management activities using onsite inspections, checklists, or other inspection/review methods.

(3) Developing and directing agency programs and plans for proper use of transportation, equipment, and supply vendors, relative to mail management.

(4) Maintaining records of agencywide volumes (in pieces) and agency postage expenditures (in dollars) by class, weight, special services, and subclass/rate category of mail. One consolidated report on outgoing mail volumes, postage expenditures, and mailable matter dispatched to all carriers must be maintained. (Suggested format appears in § 101–9.4902.)

(5) Establishing procedures for the review and verification of vendor charges including charges contained in the U.S. Postal Service's Official Mail Accounting System billings. U.S. Postal Service charges and other vendor charges must be reviewed and verified at each facility to ensure billing accuracy.

(6) Ensuring that facility mail managers increase their knowledge and skills in mail management on a continuing basis. Training sources include, but are not limited to: U.S. Postal Forums, Postal Customer Council meetings, and training offered by the GSA Interagency Training Center.

§ 101–9.202 Operational cost control functions at the facility level.

The following operations and procedures are applicable to all Federal mail centers, facilities, and offices that generate and process mail. Each facility must designate a mail manager. The facility mail manager is responsible for:

(a) Reviewing, on a continuing basis, facility mail practices and procedures to identify opportunities for improvement and simplification.

(b) Providing centralized control at each facility of all mail processing activities including regularly scheduled and specialized mail messenger services, equipment, and personnel.

(c) Providing training which:

(1) Informs all levels of facility personnel on cost-effective mailing practices for incoming, internal, and outgoing mail.

(2) Includes supplemental guidance and instruction in a format designed for easy reference, revision, and use by persons processing incoming, internal, and outgoing mail or using mail messenger operations. Such information must be distributed to all persons processing mail and users of mail messenger services.

(d) Establishes a policy of and procedures for participation in the Cooperative Administrative Support Unit (CASU) program where applicable and when cost-effective. A CASU can typically provide pickup, sorting, and dispatch of mail through a CASU-managed mail center.

(e) Where authorized, contracting for worksharing programs when mail volumes or lack of resources for proper mail preparation; e.g., presorting and barcoding, make contracting for worksharing the cost-effective choice. Any solicitation for contracting for a mail center must require the contractor to comply with operational procedures of the agency mail cost control program.

(f) Conducting discussions with local U.S. Postal Service for mail related services and implementing operational procedures for services acquired from mail delivery vendors or couriers.

(g) Processing mail by class with expedited mail, First-Class, and Priority Mail being processed before lower classes of mail.

(h) Attempting to deliver mail to the action office (the office responsible for taking action on the mail once it is received) within 6 hours after it is received by the agency from the carrier. Every attempt should be made to deliver mail to the address or addressee's office; however, incoming bulk business rate mail addressed to an individual may be discarded if the facility cannot readily ascertain the name or whereabouts of the addressee. Incoming First-Class mail that cannot be delivered must be returned to the sender, per the U.S. Postal Service's Domestic Mail Manual.

(i) Reporting unauthorized use of agency postage including penalty or commercial mail stamps, meter impressions, or other postage indicia immediately upon discovery to the agency Inspector General or internal security office, as appropriate.

(j) Reporting mail center deviations from the agency's occupational, safety and health program, in accordance with 29 CFR part 1960 and 29 CFR part 1910.

(k) Establishing and implementing procedures to ensure that mail complies with U.S. Postal Service addressing standards which include automated and electronically generated mailing addresses in order to eliminate as many handwritten addresses as possible. Compliance includes ensuring machine readability, proper formatting, use of directionals (N. Main St., 4th St., NW, etc.), and accurate mail preparation for the various classes and discount rates and/or for the best possible delivery service. The U.S. Postal Service publications (Domestic Mail Manual, International Mail Manual, Memo to Mailers, and the Postal Bulletins) contain all U.S. Postal Service regulations for proper mail preparation and dispatch, and must be utilized at each location where outgoing mail is processed.

(l) Establishing and reviewing annually in conjunction with the agency security office, a mail security program to ensure appropriate security requirements while not creating undue delay in mail processing. The mail security program must, at a minimum, detail policy and procedures for safe and secure facility operations and for the safe transportation and processing of mail.

(m) Reviewing, prior to the creation of the pieces to be dispatched, all mailings which will (i) consist of 200 or more pieces, or (ii) weigh 50 or more pounds, including mail to be dispatched on behalf of the agency by a third party, for

example, the Government Printing Office, to ensure that the agency's needs are met at the lowest possible cost. Mail managers will coordinate with agency printing specialists about the mailing portion of contracted printing jobs prior to entering into a printing agreement.

(n) Establishing and publishing the facility's mail delivery and pickup times, based on need for service, established through the study of mail volumes and service requirements. The facility mail manager's goal is to provide service to the facility at the lowest possible cost. Consistency in mail pickup and delivery can help achieve the goal.

(o) Maintaining close liaison with agency correspondence managers and providing guidance on correspondence management decisions such as the development and design of mailing materials including: Business Reply Mail, letterhead, mailing labels, and envelope design.

(p) Notifying facility personnel that personal incoming, internal, and outgoing mail may not be processed in agency facilities. An exception may be granted at a facility for personnel living on the facility, personnel stationed outside the United States, or other situations where agency/facility personnel would otherwise suffer hardship.

Subpart 101–9.3—Reporting Requirements

§ 101–8.301 Agency mail manager information.

Agencies will provide GSA with the name, title, mailing address, voice and fax telephone number (if applicable) of the designated agency mail manager (see § 101–9.201), and must update the information as necessary. This information will be submitted to GSA as follows: General Services Administration, Attn: Mail Management Branch (FBXM), Room 815, Washington, DC 20406–0001.

§ 101–9.302 Agency will program data.

(a) Agencies will maintain data, on mail volumes and postage expenditures. This data will conform with the requirements of § 101–9.201(c)(4) of this part. Maintaining this information is critical for agencies to accurately manage their mail programs and to gauge the impacts of rates and classification changes.

(b) Agencies are encouraged to submit narratives, at the end of each fiscal year, on cost savings achieved through more efficient mail management, especially worksharing efforts. The narratives should highlight specific cost savings achieved as a result of mail consolidation, presorting, barcoding, use of a more cost-effective class of mail, etc. In addition, the narrative should specify whether discounts in mail presorting and barcoding are gained through contracts with vendors or through in-house worksharing efforts. Submit narratives to the GSA address in § 101–9.301.

Subpart 101–9.4—GSA Responsibilities and Services

GSA provides agency support in the following areas: arranging for extensions of service from the U.S. Postal Service (i.e., enhancements of services based on specialized requirements as defined by the Domestic Mail Manual); establishing liaisons with U.S. Postal Service at the national level; providing support in developing procedures with mail delivery vendors; providing assistance in developing and implementing worksharing programs; providing assistance in developing policy and guidance in mail management and mail operations; providing onsite assistance visits; assisting with mail center layout and design specifications; and providing training in mail program management and effective mail operations.

Subpart 101–9.5—U.S. Postal Service Assistance

The U.S. Postal Service provides agency support in the following areas: supplies required for mail processing such as bags, tags, trays, hampers, priority envelopes, etc.; guidance on mail processing through national account representatives and other U.S. Postal Service personnel assigned to assist customers; training such as Postal Customer Councils and U.S. Postal Forums; and brochures, booklets, pamphlets, video tapes, posters, and other published materials on mail processing, mail classes, discount procedures, and current rate structure.

Subpart 101–9.49—Illustrations

§ 101–9.4900 Scope of subpart.

This subpart contains illustrations suggested for use in connection with the subject matter covered in Part 101–9.

§ 101.9–4901 [Reserved]

BILLING CODE 6820–24–M

§ 101-9.4902 Format for mail profile data

	ANNUAL VOLUME (PIECES)	ANNUAL POSTAGE COSTS	CURRENT SAVINGS
FIRST - CLASS MAIL			
LETTER & CARDS			
Barcoded & Presorted			
Presorted			
Other			
Full Rate Postage			
FLATS			
Barcoded			
Presorted			
Other			
Full Rate Postage			
EXPEDITED SERVICE			
USPS Express Mail			
Federal Express			
Other			
2 - DAY SERVICE			
Priority Mail			
Other			
SECOND - CLASS MAIL			
THIRD - CLASS MAIL			
Single Piece			
THIRD CLASS BULK			
Basic Presort			
Barcoded			
Other			
SURFACE PARCELS			
USPS Parcel Post			
Other			
OTHER USPS SERVICES			
Business Reply Mail			
BRMAS			
Merchandise Return			
Numbered Insured			
Registered			
Certified			
INTERNATIONAL MAIL			

BILLING CODE 6820-24-C

Dated: September 29, 1994.

Julia M. Stasch,

Acting Administrator of General Services.

[FR Doc. 94–29957 Filed 12–5–94; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Public Health Service

42 CFR Part 493

[HSQ–217–FC]

RIN 0938–AG86

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

AGENCY: Health Care Financing Administration (HCFA) and Public Health Service (PHS), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule extends certain effective dates for clinical laboratory requirements in regulations published on February 28, 1992, which implemented provisions of the Clinical Laboratory Improvement Amendments of 1988 (CLIA) and announces our approval of a certifying organization for qualifying cytotechnologists. This rule extends the date by which an individual must enroll in an HCFA-approved cytology proficiency testing (PT) program and the date by which an individual with a doctoral degree must possess board certification to qualify as a director of a laboratory that performs high complexity testing. In addition, we are extending the phase-in of the quality control requirements applicable to unmodified, moderate complexity tests cleared for commercial distribution by the Food and Drug Administration (FDA). We are extending the date to meet applicable CLIA QC requirements for laboratories using commercial, nonmodified tests to fulfill certain quality control (QC) requirements.

These effective date extensions do not reduce the current requirements for quality test performance. The date extensions are necessary due to the limited number and scope of currently operating cytology PT programs, resource constraints that have prevented commencement of the substantial number of quality control reviews, and inability of many laboratory directors to complete certification requirements within the time period originally specified.

DATES: These regulations are effective on December 6, 1994. Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 6, 1996.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ–217–FC, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HSQ–217–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Josephine A. Simmons (410) 597–5882.

SUPPLEMENTARY INFORMATION:

I. Background

On February 28, 1992, we published in the **Federal Register** at 57 FR 7002, final regulations with an opportunity for public comment that set forth requirements for laboratories that are subject to CLIA.

These regulations established uniform requirements for all laboratories regardless of location, size or type. In developing the regulations, we included requirements that would ensure the quality of service and be in the best interest of the public health. We recognized that a rule of this scope required time for laboratories to understand and to implement the new requirements. Therefore, certain requirements were phased-in and given prospective effective dates. We also planned to address comments on the February 28 rule and make modifications, if necessary, in a successor final rule.

On January 6, 1994, we published a final regulation in the **Federal Register**, at 59 FR 682. This revision to the February 28, 1992 rule extended the time for individuals to meet the educational qualifications for a cytotechnologist by either completing a training program or being certified by an approved organization. These changes were made to prevent the loss of qualified personnel in the field of cytotechnology and to allow the Department the time necessary to recognize organizations that certify cytology personnel.

In the February 28, 1992 regulations, there are three prospectively set dates that need extensions to prevent disruption in implementation of the CLIA requirements. At § 493.855, Standard; Cytology: Gynecologic examinations, we required the laboratory, by January 1, 1994, to enroll each individual engaged in the examination of gynecologic preparations in a PT program approved by HCFA. At § 493.1202, Standard; Moderate or high complexity testing, or both: Effective from September 1, 1992, to September 1, 1994, we established quality control (QC) requirements for high complexity or moderate complexity tests including less stringent requirements for unmodified, moderate complexity testing cleared for commercial distribution by the FDA. At § 493.1203, Standard; Moderate or high complexity testing, or both: Effective beginning September 1, 1994, we established a mechanism for laboratories using commercial, non-modified tests to fulfill certain QC requirements by following manufacturer's instructions that have been reviewed and determined by the FDA to meet applicable CLIA QC requirements. At § 493.1443, Standard; Laboratory director qualifications, until September 1, 1994, an individual holding a doctoral degree may qualify with either (1) board certification, or (2) two years of laboratory training or experience, or both, and two years of experience directing or supervising high complexity testing. After September 1, 1994, all individuals qualifying with a doctoral degree must have board certification.

For each of these requirements, we allowed what we considered as adequate time for laboratories to enroll personnel in a HCFA-approved cytology PT program, for manufacturers to obtain a QC review from the FDA, and for individuals to obtain certifications, given our planned publication date of the final regulations. However, approximately 16,000 comments were received on the February 28 rule, which required reevaluation of numerous provisions.

As of January 1994, no cytology PT program had met the requirements for HCFA approval, we have not yet been

able to implement the FDA review of QC instructions, and we do not anticipate that a final rule will be issued prior to the September 1994 date affecting the board certification requirement for an individual with a doctoral degree to qualify as a laboratory director. Therefore, we need to extend these prospectively set dates to allow time for laboratories and individuals to meet the CLIA requirements.

In the regulations published on February 28, 1992, we established a pathway at § 493.1483 that allows an individual to qualify as a cytotechnologist if she or he is certified in cytotechnology by an HHS-approved agency. In the preamble to this rule, we are announcing HHS approval of an agency to certify cytotechnologists.

In this rule we also address the comments we received in response to two major areas: Effective dates for implementation of the requirements mentioned above and approval of an agency to certify cytotechnologists. The comments on implementation effective dates focused on the need for phase-in periods, feasibility of achieving compliance with the requirements by the end of the phase-in periods, and alternatives to the phase-in periods. The comments on the cytology qualification requirements included recommendations that HHS approve an agency that certifies cytotechnologists.

II. Responses to Comments

A. Proficiency Testing of Individuals Who Examine Gynecological Preparations (§ 493.855)

Section 493.855 requires that a laboratory ensure that, as of January 1, 1994, each individual performing gynecologic cytology services is enrolled in a gynecologic cytology PT program approved by HCFA. A Request for Proposal was issued for a contractor to undertake procurement of glass slides necessary to operate the cytology PT program nationally. We received no responses. However, we did receive comments from the cytology societies and individuals indicating that the program was logistically and financially unworkable. The Centers for Disease Control and Prevention (CDC) cosponsored a cytology symposium in November 1993 to establish possible alternatives to providing a cytology PT program. In December 1993, the Clinical Laboratory Improvement Advisory Committee (CLIAC) established under § 493.2001 of our regulations recommended that legislative and regulatory changes be pursued to provide for an alternative program for cytology PT, including encouraging private or State-administered programs to meet current regulations. To date, only two cytology PT programs have applied for HCFA approval. The two programs are State-operated and enrollment capacity is limited.

Comment: One group of commenters believed that the PT requirements, as currently written, are impossible to implement. The commenters noted the limited availability of PT programs and believed that the timeframe for implementing cytology PT is unrealistic.

Response: We understand the commenters' concerns. Although a State program has been approved for calendar year 1995, it has not been possible to implement a national program within the timeframe specified in the regulations. Therefore, in this final rule, we are changing the effective date for individuals to enroll and participate in a HCFA-approved cytology PT program from January 1, 1994 to January 1, 1995. Enrollment by this date is required if an approved program is available in the State in which the individual is employed.

For individuals engaged in the examination of gynecologic preparations who are employed in a State in which an approved cytology PT program is available, cytology PT enrollment and participation is required beginning January 1, 1995. For individuals engaged in the examination of gynecologic preparations who are employed in a State in which a HCFA-approved cytology PT program is not available beginning January 1, 1995, enrollment and participation in cytology PT is required when a HCFA-approved program becomes available. We recognize that additional time is needed for development and approval of cytology PT programs that will apply nationwide. Presently, the major impediment in making cytology PT available on a national basis is the difficulty in obtaining a sufficient number of properly referenced glass slides. It has been suggested, and we agree, that programs using facsimiles of glass slides (for example, transparencies, computer images, etc.) should be considered for PT purposes. We plan to revise the regulations to allow approval of programs that employ testing media other than glass slides. The CDC is undertaking studies to evaluate alternative cytology PT programs. If alternative programs are feasible, we will ensure that such programs are comparable to glass side programs. Implementation of PT using alternative media will be phased-in to familiarize cytology personnel and evaluate the programs. During the phase-in, we will ensure that individuals are not penalized due to performance in an alternative program. We believe that this approach will meet the statutory mandate that PT be available nationwide to evaluate the performance of all cytology personnel.

B. Quality Control Requirements for Unmodified, Moderately Complex Tests (§§ 493.1202 and 493.1203)

Sections 493.1202 and 493.1203 provide for a 2-year phase-in period during which manufacturers could submit QC instructions relevant to their products to FDA for review and clearance. Under the regulations, laboratories would be in compliance with the QC provisions of part 493 subpart K by meeting less stringent QC requirements and following the manufacturer's instructions, as long as the laboratory has not modified the instrument, kit, or test system's procedure.

Comment: Of the approximately 16,000 letters of comment received in response to the February 28, 1992 regulations, nearly 300 were in reference to the general QC requirements of subpart K. Over 25 percent of these commenters were opposed to allowing a laboratory to meet the CLIA QC requirements by following the manufacturer's FDA-cleared QC instructions. The majority of commenters indicated that all laboratories should be subject to the same QC requirements. Less than two percent of the commenters agreed with the provision. Approximately two percent of the commenters expressed concern that a laboratory may be penalized if the FDA does not complete the assessment of a manufacturer's QC instructions prior to the end of the phase-in period.

Response: We acknowledge the commenters' concerns. Having encountered difficulties in commencing the review of manufacturers' QC instructions, we are extending the effective date of § 493.1203, which contains the quality control requirements for moderate or high complexity testing, or both, from September 1, 1994 to September 1, 1996. In addition, we are extending the September 1, 1994 sunset date until September 1, 1996 of § 493.1202, which contains the quality control standards for moderate or high complexity testing, or both.

C. Board Certification of a Laboratory Director With Doctoral Degree (§ 493.1443(b)(3))

Section 493.1443(b)(3) provides that a director of a laboratory performing high complexity testing who has an earned

doctoral degree in a chemical, physical, biological or clinical laboratory science from an accredited institution must, as of September 1, 1994, be certified by a board recognized by HHS. The 2-year phase-in was designed to allow HHS additional time to review requests for approval of certification programs and to ensure that a laboratory director with a doctoral degree had sufficient time to successfully complete the requirements for board certification.

A number of commenters on the final rule suggested that board certification not be a mandatory requirement for currently employed individuals. In addition, CLIAC has suggested, and we are considering, development of alternative provisions to qualify currently employed individuals with a doctoral degree on the basis of laboratory training or experience, in lieu of requiring board certification. Furthermore, in at least one specialty, there is currently no board certification, but a program is being developed.

Comment: One commenter suggested that doctoral degree training and education were sufficient without requiring board certification to qualify as a laboratory director. One commenter agreed with requiring board certification.

Response: In reply to these comments and to the recommendations of CLIAC, we are allowing additional time to review the qualifications required to ensure that they are appropriate. We are extending the phase-in period in § 493.1443 from September 1, 1994, to September 1, 1996 to allow additional time for this evaluation.

Comment: One commenter suggested that the director be board certified in the specialty of testing that the laboratory performs.

Response: We recognize that, at this time, not all specialties have board certification programs. In at least one specialty, certification programs are being developed. To allow additional time for boards to request HHS approval, for us to review the requirements for appropriateness, and to ensure that laboratory directors can continue to meet the requirements as boards apply, we are extending the time period in § 493.1443 from September 1, 1994, to September 1, 1996.

D. Agency Approved by HHS To Certify Cytotechnologists (§ 493.1483(b)(2))

In the personnel requirements in § 493.1483(b)(2), an individual may qualify as a cytotechnologist if he or she is certified in cytotechnology by a certifying agency approved by HHS. In response to the regulations published February 28, 1992, numerous commenters suggested that the American Society of Clinical Pathologists (ASCP) be recognized by the Department since it is a national certifying agency for cytotechnologists in the United States. The ASCP applied for approval and provided materials in support of its request for recognition as a cytotechnologist certifying agency. The qualifications used by ASCP to qualify an individual as a cytotechnologist include both educational and training components that are similar to, or more stringent than, the current CLIA requirements for cytotechnologists. In addition, ASCP requires successful completion of a competency examination to measure skills in cytology. Since the ASCP's requirements for certifying individuals in cytotechnology meet the CLIA requirements, we are announcing that, effective on the date of publication of this rule, we have approved the ASCP as a certifying agency for cytotechnologists. Cytotechnologists certified by ASCP now meet the CLIA cytotechnologists personnel qualification requirements.

III. Waiver of Delayed Effective Date

As required by the Administrative Procedure Act, we generally provide for final rules to be effective 30 days after the date of publication unless we find good cause to waive the delay. We believe that these revisions are essential to the effective implementation of the CLIA program and should be implemented immediately. Delaying the effective date of this regulation would potentially disrupt public access to laboratory services and create unnecessary confusion among laboratories in understanding the standards they must meet. Accordingly, we find good cause to waive the delayed effective date as contrary to the public interest.

IV. Regulatory Impact Statement

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

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

This final rule extends the date by which an individual must enroll in an approved cytology proficiency testing program, the date by which an individual with a doctoral degree must obtain board certification to qualify as a director of a laboratory that performs high complexity testing, and the expiration date of the phase-in for quality control requirements for unmodified, moderate complexity testing cleared through the FDA 510(k) or PMA processes. Because controlling components of the regulations (for example, approved PT programs and approved board certification programs) are not yet fully in place, compliance with these existing regulations is unachievable for most laboratories and their personnel. Extending the phase-in periods will result in continuation of previously published requirements and will not result in changed costs, savings, burden or opportunities to manufacturers, laboratories, individuals administering tests, or patients receiving them.

This rule also announces the approval of ASCP as a certifying agency for cytotechnologists. The February 28, 1992 regulation added certification by an approved certifying agency as an optional method of qualifying as a cytotechnologist. The majority of those who commented on the cytotechnologist qualification requirements specified in the February 28, 1992 rule identified certification by ASCP as the preferred alternative method of qualifying and recommended that ASCP be approved by HHS as a certifying agency. The ASCP's certification requirements have been shown to meet or exceed CLIA requirements; therefore, the announcement of ASCP's approval should be well received by all affected entities.

We are not preparing an analysis for either the RFA or section 1102(b) of the Act since we have determined, and the Secretary certifies, that this final rule will not result in a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals.

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

IV. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

Lists of Subjects in 42 CFR Part 493

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

PART 493—LABORATORY REQUIREMENTS

Part 493 is amended as follows:

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

Authority: Sec. 353 of the Public Health Service Act, secs. 1102, 1861(e), the sentence following sections 1861(s)(14), 1861(s)(15), and 1861(s)(16) of the Social Security Act (42 U.S.C. 263a, 1302, 1395x(e), the sentence following 1395x(s)(14), 1395x(s)(15), and 1395x(s)(16).

§ 493.855 [Amended]

2. In § 493.855(a), "January 1, 1994." is revised to read "January 1, 1995, if available in the State in which he or she is employed."

3. Section 493.1202 is amended by revising the section heading to change the expiration date from September 1, 1994 to September 1, 1996 and reads as follows:

§ 493.1202 Standard; Moderate or high complexity testing, or both: Effective from September 1, 1992 to September 1, 1996.

5. In § 493.1203, the section heading is revised to change the effective date from September 1, 1994 to September 1, 1996 and read as follows:

§ 493.1203 Standard; Moderate or high complexity testing, or both: Effective beginning September 1, 1996.

§ 493.1443 [Amended]

6. Section § 493.1443 is amended as set forth below:

a. In § 493.1443(b)(3)(ii), "September 1, 1994" is revised to read "September 1, 1996".

b. In § 493.1443(b)(3)(ii)(C), "September 1, 1994," is revised to read "September 1, 1996,".

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

Dated: August 24, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: September 6, 1994.

Philip R. Lee,

Assistant Secretary for Health.

Dated: September 28, 1994.

Donna E. Shalala,

Secretary.

[FR Doc. 94–29914 Filed 12–5–94; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7104

[AK–932–1430–01; AA–58374]

Partial Revocation of Executive Order Dated October 8, 1914, as Modified; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive order, as modified, insofar as it affects approximately 84 acres of public land withdrawn for the Bureau of Land Management's Powersite Reserve No. 460 at Salmon Creek, near Juneau. The land is no longer needed for the purpose for which it was withdrawn. This action also allows the conveyance of the land to the State of Alaska, if such land is otherwise available. Any land described herein that is not conveyed to the State is opened and will be subject to the terms and conditions of Public Land Order No. 5186, as amended, and any other withdrawal of record.

EFFECTIVE DATE: December 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. The Executive Order dated October 8, 1914, as modified, which withdrew public land for the Bureau of Land Management's Powersite Reserve No. 460 in the Salmon Creek area, is hereby revoked insofar as it affects the following described land:

Copper River Meridian

T. 41 S., R. 67 E.,

Secs. 2, 3, 9, 10, 11, and 12, partly surveyed, and more particularly described as:

All lands within 1/2 mile of that portion of the channel of Salmon Creek which lies between its point of discharge into Gastineau Channel about 3 miles northwest of Juneau, and a point 5 miles above said point of discharge; except such lands as are embraced in the Joint Final Power Permit (Juneau 02879) granted to the Alaska-Gastineau Mining Company, under the Act of February 15, 1901 (31 Stat. 790), by the Secretary of Agriculture and the Secretary of the Interior on January 24, 1918, and lands within 50 feet of the marginal limits thereof; and except all lands within 100 feet of the center line of Salmon Creek from its mouth to the dam at Salmon Creek Reservoir, located and described in said permit. Excluded from the land described above is all land within the boundary of the Federal Energy Regulatory Commission Power Project No. 2307 (approximately 263 acres).

The area described, less the exclusion, contains approximately 84 acres.

2. The State of Alaska application for selection made under Section 6(b) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988), and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (1988), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. Land not conveyed to the State is opened and will be subject to the terms and conditions of Public Land Order No. 5186, as amended, and any other withdrawal of record.

Dated: November 28, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–29978 Filed 12–5–94; 8:45 am]

BILLING CODE 4310–JA–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 91–140; FCC 94–267]

Revision of Radio Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: In the Second Memorandum Opinion and Order (Second Reconsideration Order), the Commission revises the national radio ownership limits to permit minority broadcasters to own a controlling interest in up to 25 AM and 25 FM stations, and to permit non-minority

broadcasters to hold a non-controlling interest in an additional five AM and five FM stations over the general national limits that are controlled by minorities or small businesses. The Commission declines to revise its local radio ownership limits or its rules and policies regarding time brokerage. The actions taken in the Second Reconsideration Order, in conjunction with the other actions taken in this proceeding, are needed to permit radio broadcasters to combine resources, as well as to provide greater opportunities for minority and small business broadcasters.

EFFECTIVE DATE: January 5, 1995.

FOR FURTHER INFORMATION CONTACT: Jane Hinckley Halprin, Mass Media Bureau, Policy and Rules Division, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Second Reconsideration Order in MM Docket No. 91–140, adopted October 20, 1994, and released November 8, 1994.

The complete text of the Second Reconsideration Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC, and also may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW, Washington, DC 20036, (202) 857–3800.

Synopsis of Second Reconsideration Order

1. The *Second Reconsideration Order* resolves issues raised in three petitions for reconsideration of the *Memorandum Opinion and Order* in MM Docket No. 91–140, 7 FCC Rcd 6387 (1992), 57 FR 42701 (Sept. 16, 1992) (*First Reconsideration Order*). Those petitions were filed by the League of United Latin American Citizens (LULAC), the National Association of Black Owned Broadcasters, Inc. and the National Black Media Coalition (NABOB/NBMC), and the Telecommunications Research and Action Center and the Washington Area Citizens Coalition Interested in Viewers' Constitutional Rights (TRAC/WACC). The *Second Reconsideration Order* also addresses a Petition for Rule Making (RM–8414) filed by the National Association of Broadcasters (NAB), and denies a NABOB/NBMC request for stay and rescission of the previous increase in the national ownership rules.

2. The *First Reconsideration Order*, upon which the *Second Reconsideration Order* is based, revised the Commission rules governing the ownership of interests in multiple radio stations. The *First Reconsideration Order* revised § 73.3555 of the Commission's Rules (47 CFR 73.3555) to increase the national radio ownership limit from 12 AM and 12 FM stations to 20 AM and 20 FM stations. The Commission also revised the national minority ownership cap, which had permitted non-minority owners to take a non-controlling interest in an additional two AM and two FM stations that were minority-controlled, and permitted minority owners to hold a controlling interest in 14 AM and 14 FM stations. The *First Reconsideration Order* modified the rule to permit all owners to take a non-controlling interest in an additional three stations per service above the national caps if those stations were controlled by minorities or small businesses. It declined to adopt a provision allowing minority broadcasters to own more stations outright.

3. The *First Reconsideration Order* also relaxed the local ownership limit, which had been one AM and one FM station per area, to permit common ownership of up to two AM and two FM stations, depending on the size of the market. Specifically, in markets with 15 or more stations, an individual or group was permitted to acquire up to two AM and two FM stations provided that the combined audience shares of those stations did not exceed 25 percent of the local radio market. In markets with fewer than 15 stations, a single owner was permitted to acquire a total of three stations, no more than two of which may be in the same service (*i.e.*, AM/AM/FM or AM/FM/FM), provided that the group owner's stations represent less than half of the total number of stations in the market. The *First Reconsideration Order* also declined to revisit the Commission's prior determination that certain time brokerage arrangements would be treated as attributable ownership interests for purposes of the multiple ownership rules.

4. The *Second Reconsideration Order* generally affirms the rules adopted in the *First Reconsideration Order*, except that the Commission has decided to revise the national ownership rule with respect to minority and small business broadcasters. The *Second Reconsideration Order* increase the national limits for minority owners to 25 AM and 25 FM stations, and raises to five the number, in excess of the national limits, of minority or small business controlled AM or FM stations in which a non-minority broadcaster may hold a non-controlling interest.

5. In addition, because of concerns raised by a number of parties with respect to the effects of the revised rules on competition and diversity in radio markets, the Commission, on its own motion, reviews the radio ownership rules in light of relevant economic and antitrust principles. Pursuant to its analysis of these principles, the Commission concludes that the radio ownership rules are consistent with established principles of competitive analysis and at the present time provide adequate safeguards to ensure acceptable levels of diversity in the radio marketplace.

Local Ownership Limits

6. The *First Reconsideration Order* revised § 73.3555 to permit a single owner in a larger market to own up to two AM and two FM stations, subject to an audience share cap of 25 percent, and to permit an owner in a smaller market to own up to three stations, provided that no more than two are in the same service and that the stations represent fewer than half of the total number of stations in the area. A "market" is defined with respect to overlapping signal contours. For instance, the relevant market with respect to a combination of two stations in the same market would encompass those two stations as well as all other radio stations whose principal community contours overlap those of the two stations involved in the proposed transaction.

7. Urging reconsideration, LULAC argues that the new local rules disadvantage small stations, and reiterates its suggestion that, rather than change the local ownership rules, the Commission should allow greater consolidation for financially failing radio stations. NABOB/NBMC reiterate their previous argument that increased ownership limits will substantially reduce opportunities for increased minority ownership in broadcasting and will force minority broadcasters out of the radio industry. In opposition, NAB contends that adoption of LULAC's proposal would impede the positive effects of the new rules.

8. The Commission notes that it directly addressed LULAC's suggestion to adopt a failed station standard in the *First Reconsideration Order*. It concludes that LULAC's argument, that its "failing" station would permit a troubled station to obtain ownership relief well before it actually fails, does not adequately address the Commission's fundamental concern with the vitality of the industry generally. It therefore finds that LULAC has presented no new evidence or argument to revisit that review. The Commission also concludes that NABOB/NBMC likewise have not presented any new information that

would persuade it to further modify the local limits.

9. While it does not modify its local ownership rules, the Commission does make a minor correction. A reference to "the most recent published audience share data available at the time that the application is filed" was deleted from § 73.3555(a)(3)(iii) when that rule section was revised (and renumbered) pursuant to the *First Reconsideration Order*. That deletion was inadvertent, and the quoted provision was intended by the Commission to remain in the rules. Section 73.3555(a)(3)(iii) will be modified to reinsert that language, as set forth below.

10. In its petition for rule making. NAB suggests that when only one of the stations in a proposed combination has a principal community contour that would place the transaction in a market of 15 or more stations, the parties to the transaction should be permitted to elect whether to be governed by (1) the rules for small markets based on the number of stations overlapping the smaller facility's contour (thus avoiding the audience share limitation); or (2) the rules for large markets, but with the audience share calculated based on all counties receiving any one of the 15 or more stations counted as in the market pursuant to § 73.3555(a)(3)(ii).

11. NAB also proposes that the local ownership rule be modified so that ownership of "not greater than 50 percent" of the stations in a market would be permitted rather than the current "less than 50 percent" rule. In addition, NAB contends that any single station or AM/FM combination licensee should be allowed in all situations to add one additional station to common ownership.

12. Finally, in the event the above changes are not adopted, NAB believes that a clear and liberal set of criteria should be established for requests for waiver of the local ownership rule in traditionally small markets. Among the critical elements of any waiver policy according to NAB, would be the effort to save a dark or failing station.

13. Duke Broadcasting, commenting on the NAB petition, raises similar concerns with the contour-based market definitions in the new rules when applied in small markets, but proposes a different solution. Duke suggests a delineation of two tiers of markets based on Metropolitan Statistical Area (MSA) ranking, with "larger" markets still subject to the combined audience share limitation of 25 percent, and "smaller" markets not subject to the combined audience share limitation in the absence of a showing that the particular combined share exceeding 25 percent creates an excessively high concentration of audience. Duke proposes that MSAs ranked above 150 would be placed in the larger market tier, while those ranked 150 and below, as well as non-MSA markets, would be placed in the smaller tier.

14. The Commission declines to modify the local ownership rules. It notes that in designing the signal overlap standard, it specifically rejected suggestions that Arbitron data, MSAs (proposed by Duke here) or other narrow geographic designations be employed to count the number of stations in a market. It concludes that there is no evidence to suggest that the rationale underlying the adoption of the contour overlap approach—a more accurate measure of where a station's signal can be adequately received and, therefore, where it can compete for listeners—is any less appropriate for stations in smaller markets under the circumstances presented by NAB and Duke. It notes that a station combination with an aggregate principal community contour overlapped by 15 or more stations can be expected to compete for listeners with those stations, and the audience share cap is applied in such a case as an additional safeguard intended to identify potential concentration problems that may threaten diversity and competition.

15. The Commission states that it declines to, in effect, ignore those stations, such as Class C FM stations, with superior signal coverage. It also declines to redefine the area to which county-by-county audience share calculations apply in the manner suggested by NAB. The Commission believes that the suggested change would unduly dilute the diversity and competition safeguards adopted in its previous orders, and, in any event, would not reflect competitive conditions in the areas in which stations proposed to be combined provide the majority of their service, *i.e.*, within their principal community contours.

16. With respect to NAB's other proposals, the Commission notes that it already expressly rejected a change of the rule applicable to markets of fewer than 15 stations to permit ownership of half of the stations in a small market because it could result in an unwarranted level of consolidation in too many markets. Further, the Commission states that it is not persuaded that the specific changes NAB advocates are warranted as a means of rescuing failing or dark stations. The Commission is concerned that the proposed changes would be applicable without regard to the circumstances of an individual facility or its financial condition, and would have the potential to increase concentration signifcantly. It also believes that cases involving a genuine threat of station failure are best addressed via a waiver process that can appropriately account for the specific factual circumstances at hand. Moreover, the Commission states that because of the variety of circumstances that may be present in any given radio market, requests for waiver of the rule should not be limited to specific criteria.

Minority Ownership and Small Business Incentives

17. NABOB/NBMC urge the Commission to reinstate the aspect of the prior rule that permitted minority-owned companies to take a controlling interest in additional stations above the national ownership caps. NABOB/NBMC maintain that the change from the prior rule will decrease the total number of stations that can be controlled by existing minority licensees, and, with the increase of the national ownership limits generally, will lead to further concentration of ownership in the broadcast industry, diluting substantially the opportunities for increased minority ownership. NABOB/NBMC also contend that the *First Reconsideration Order* did not provide evidence with which to evaluate the effect of the rule changes on minority ownership, and they reiterate their argument that the Commission's appropriations legislation prohibits modification of the minority ownership incentive. Further, NABOB/NBMC reiterate their request, denied in the *First Reconsideration Order*, that the national ownership limits be returned to 12 stations per service. LULAC, NABOB/NBMC and NAB urge the Commission to repeal the small business incentive established in the *First Reconsideration Order*. LULAC and NAB argue that adoption of the small business incentive violated the Administrative Procedure Act (APA), 5 U.S.C. 553, because such an incentive was not proposed in the initial *Notice of Proposed Rule Making* in this proceeding. They also maintain that the small business incentive will dilute or otherwise undermine any incentive for group owners to invest in minority-controlled stations.

18. The Commission states that it continues to believe, as discussed both above and previously in this docket, that further expansion of the national ownership limits would not hinder diversity of viewpoint and could spur competition in the industry. The Commission notes that the arguments

raised by petitioners with respect to the increase in the general national ownership limits from 12 to 20 stations per service were fully addressed earlier in this proceeding.

19. The Commission is persuaded by petitioners, however, that permitting minority owners to hold a controlling interest in additional radio stations will serve the goal of increasing minority ownership without posing a significant threat to competition or diversity. It will therefore amend § 73.3555 of its rules to permit minority owners to own and control additional stations over and above the general national caps. Moreover, based on its belief that further national consolidation is appropriate, it will increase from three to five the number of additional stations per service that may be acquired pursuant to the incentive. The Commission's aim in making these modifications is to permit minorities to own more stations as well as to make the investment incentive aspect of the rule more attractive to large group owners.

20. The Commission is not persuaded to delete the small business incentive. It states that its current application processing standards, which involve a case-by-case analysis of each transaction, are sufficient to guard against sham small business applications. With respect to petitioners' arguments regarding notice, the Commission points out that the *Notice of Proposed Rule Making* in this proceeding, 6 FCC Rcd 3275 (1991), 56 FR 26365 (June 7, 1991), invited commenters to discuss a range of issues regarding the national ownership caps, and some commenters emphasized that access to capital is a problem for new entrants and small businesses in general, not just minority-owned entities. The Commission further notes that it intends to explore minority ownership issues in an upcoming proceeding.

21. Pursuant to the rules adopted in the *First Reconsideration Order*, the national ownership limits automatically increased from 18 AM and 18 FM to 20 AM and 20 FM on September 16, 1994. On October 7, 1994, NABOB and NBMC filed a "Joint Motion for Rescission and Stay" asking the Commission to rescind the automatic increase and stay the effective date of that increase until the Commission has acted on their petition for reconsideration and evaluated the effect of the 18AM/18FM cap on minority ownership. The Commission notes that NABOB/NBMC's petition for reconsideration is resolved in the *Second Reconsideration Order*, and that the *Radio Station Ownership Report* released concurrently with that Order analyzes the effect that the increase in the national caps has had on minority broadcasters to the extent presently possible. The Commission finds the request for stay to be moot, and denies the request for rescission.

Time Brokerage Arrangements

22. The Commission defines time brokerage as a type of joint venture that generally involves the sale by a licensee of discrete blocks of time to a "broker" who then supplies the programming to fill that time and sells the commercial spot announcements to support it. The *First Reconsideration Order* affirmed the Commission's earlier holding that if a time brokerage agreement between two stations in the same market involves more than 15 percent of the brokered station's programming per week, the brokered station will be treated as if it was owned by the brokering station for purposes of the national and local ownership rules.

23. TRAC/WACC note that time brokerage decisions have been made by the Commission's staff and argue that the Commission should not be bound in future rulemakings by policy decisions of its staff made in *ex parte* informal adjudications. TRAC/WACC also note that members of the public are not given notice of, and may not have standing to participate in, declaratory rulings at the staff level. NAB counters that the revised time brokerage rules and policies, as adopted and applied by the staff in its rulings, are lawful and are designed to adequately ensure that licensees do not relinquish control of their stations and remain responsive to the obligations of a licensee.

24. The Commission states that the language of the *First Reconsideration Order* was intended to reflect the Commission's continuing view that particular situations are better resolved on a case-by-case basis. The Commission further finds that the specific aspects of time brokerage arrangements questioned by TRAC/WACC in its petition were thoroughly discussed previously in this proceeding, where the Commission adopted restrictions on time brokerage arrangements so that they will be counted as ownership interests where significant brokering between competing stations is involved. Furthermore, the Commission reiterates that a licensee must retain ultimate control over its station. The Commission concludes that TRAC/WACC has not introduced any new arguments to convince it that it needs to take further action in this proceeding with respect to time brokerage. It also states its belief that imposition of any additional restrictions on time brokerage arrangements would run counter to one of the objectives of this proceeding, which was to strengthen the radio industry by giving radio broadcasters more flexibility.

25. The Commission notes that it previously decided not to require the termination of an agreement that does not comply with the local ownership rules if the agreement was entered into prior to the effective date of the rules. These agreements were, in effect, "grandfathered." The Commission clarifies that when a brokering station is sold, an existing brokerage agreement that would be barred by the rules if entered initially at the time of the sale, may be transferred. The new owner may enjoy all rights and limitations with respect to the multiple ownership rules as the original owner, but only for the duration of the term of the agreement in effect at the time of transfer. The purchaser of a station or stations involved in a brokerage agreement, however, cannot create a new violation or exacerbate an existing rule violation by that acquisition. Thus, for example, a station combination that involves a brokerage agreement and that exceeds the 25 percent audience share limit, but is nonetheless permissible under the rules, could not be acquired by a party with another station in the same market. A similar station combination with an audience share of 24 percent could not be acquired by a licensee with a station enjoying a 3 percent share in the same market. In addition, parties will not be permitted to renew or extend time brokerage agreements, including those that are grandfathered, once the initial term expires if, at the time of expiration, the agreement would not be permissible under the rules.

Remaining Matters

26. There is an inconsistency between the language of the First Reconstruction Order and that of § 73.3555(a)(1)(ii) as published, as to the benchmark for permissible audience share. In order to remove any ambiguity on this point, the Commission states that it intended the language of the rule to be controlling. Thus, only audience shares that exceed 25 percent are to be considered *prima facie* inconsistent with the public interest.

27. Further, the Commission clarifies that while it is appropriate to exclude non-operational stations from calculation of the number of stations in the market where it cannot be presumed that they will add to the competition and diversity in a market, such as analysis is not appropriate when the

non-operational station is a part of the transaction under scrutiny, because the applicant has control over and can generally be presumed to intend to put the station on the air. Thus, if the non-operational station is one of the proposed commonly owned stations involved in the transaction, the principal community contour of the non-operational station will not be disregarded in calculating how many stations are counted as in the market or in determining the geographic area for which audience share is calculated.

28. The Commission also notes that current rules permit an AM licensee to own an existing AM station in the 535–1605 kHz band and apply for a construction permit for an AM station in the expanded band, 1605 kHz–1705 kHz, without regard to otherwise prohibited principal community contour overlap. Moreover, the national ownership restrictions are not applied when an entity with an attributable interest in an AM station in the existing band applies for an AM station in the expanded band. Note 10 to § 73.3555 specifies a five-year period during which joint ownership of existing band and expanded band AM authorizations will be acceptable; at the expiration of this five-year period, the licensee must elect to operate either the expanded band station or to operate the station on its former frequency in the existing band.

29. The Commission clarifies that if, during the five-year transition period, the licensee has not yet elected whether to move to the expanded band or retain its existing facility, the expanded band station will be disregarded for purposes of the local and national ownership rules. Thus, the principal community contour of the existing band station will be considered for purposes of determining the relevant market and for purposes of determining the number of stations in the market. Moreover, if it is necessary to determine whether the combination complies with the audience share cap, the Commission will consider only the audience share attributable in the relevant market to the existing band station.

Ordering Clauses

30. It is therefore ordered that, pursuant to the authority contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. section 154(i), 303(r), part 73 of the Commission's rules, 47 CFR part 73 is amended as set forth below.

31. It is further ordered that the petitions for reconsideration filed in this proceeding are granted to the extent indicated herein and are denied in all other respects.

32. It is further ordered that, pursuant to § 1.401(e) of the Commission's rules, 47 CFR 1.401(e), the Petition for Rule Making filed on August 23, 1993, by the National Association of Broadcasters, RM–8414, is denied.

33. It is further ordered that the Joint Motion for Rescission and Stay filed October 7, 1994, by the National Association of Black-Owned Broadcasters and the National Black Media Coalition is denied.

List of Subjects in 47 CFR Part 3

Radio broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Part 73 of title 47 of the U.S. Code of Federal regulations is amended to read as follows:

PART 73—RADIO BROADCAST SERVICES

1. The Authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334.

2. Section 73.3555 is amended by revising paragraphs (a)(3)(iii) and (e)(1)(i) to read as follows:

(a) * * *

(3) * * *

(iii) A station's "audience share" is the average number of persons age 12 or older on an average quarter-hour basis, Monday–Sunday, 6 a.m.–midnight, who listen to the station expressed as a percentage of the average number of persons listening to AM and FM stations in that radio metro market or a recognized equivalent, in which a majority of the overlap between the same service stations involved in the transaction takes place. The "combined audience share" is the total audience share of all AM or FM stations that would be under common ownership or control following a proposed acquisition. In situations where the majority of the overlap between the same service stations does not lie in a single metro market, the relevant audience share data is the data for all counties that are within the principal community contours of the mutually overlapping stations proposed for common ownership, in whole or in part, weighted based on the listening population, age 12 and older, and totalled to determine the average audience share. Audience share shall be calculated by using the most recent published audience share data available at the time that the application is filed, unless an alternative showing is submitted pursuant to the Note following 47 CFR 73.3555(a)(1)(ii).

* * * * *

(e) * * *

(1) * * *

(i) more than 20 AM or more than 20 FM stations, provided, however, that minority controlled entities may acquire an additional five stations per service above the national limit, and that multiple owners that are not minority controlled may hold an attributable, but not controlling, interest in five additional stations per service above the national limit that are minority controlled or small business controlled;

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[FR Doc. 94–29941 Filed 12–5–94; 8:45 am]

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47 CFR Part 73

[MM Docket No. 94–56; RM–8459]

Radio Broadcasting Services; Borger, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Zia Broadcasting Company, allots Channel 294A to Borger, Texas. *See* 59 FR 37020, July 20, 1994. Channel 294A can be allotted to Borger, Texas, in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 294A at Borger are North Latitude 35–39–24 and West Longitude 101–23–36. With this action, this proceeding is terminated.

DATES: Effective: January 13, 1995. The window period for filing applications will open on January 13, 1995, and close on February 13, 1995.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MM Docket No. 94–56, adopted November 21, 1994, and released November 29, 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, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–

3800, 2100 M Street, NW, Suite 140, Washington, D.C. 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel 294A, at Borger.

Federal Communications Commission.

John A Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–29940 Filed 12–5–94; 8:45 am]

BILLING CODE 6712-01-F

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47 CFR Part 76

[MM Docket Nos. 92–266 and 93–215, FCC 94–286]

Cable Television Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted a Sixth Order on Reconsideration and Fifth Report and Order to provide cable operators with additional incentives to expand their facilities and services in a way that both ensures that cable rates are reasonable and expands the opportunities for cable programmers to reach viewers. These incentives will: allow cable operators to offer new product tiers ("NPTs") to be priced as operators elect, provided certain limited conditions are met; permit cable operators to add new channels to existing cable programming services tiers ("CPSTs") subject to certain price caps; and create an additional option pursuant to which small cable operators may recover headend costs expended plus programming costs when they add channels to CPSTs. In addition, the Commission determined that a la carte packages are CPSTs and therefore subject to rate regulation. The Commission also confirmed that cable operators do not have to obtain the affirmative consent of subscribers before making rate adjustments so long as the changes are permitted under our rules and the fundamental nature of the affected tier is unaltered. Finally, the Commission decided not to adopt its proposal modifying restrictions on transactions between cable operators and their affiliates; instead it will retain its existing cable affiliate transaction rule.

The Commission also has adopted a Seventh Notice of Proposed Rulemaking, which is being printed separately in the **Federal Register.**

EFFECTIVE DATE: January 1, 1995, with the exception of § 76.922(e) (1), (2), and (7) and § 76.987(g) which contain new reporting requirements which will be effective on that date or as soon thereafter as they may be approved by the Office of Management and Budget. At a later date, the Commission will publish a document specifying the effective date.

FOR FURTHER INFORMATION CONTACT: Paul D'Ari or Joel Kaufman, (202) 416–0800.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Sixth Order on Reconsideration and Fifth Report and Order in MM Docket No. 92–266 and MM Docket No. 93–215, FCC 94–286, adopted November 10, 1994 and released November 18, 1994.

The complete text of this Sixth Order on Reconsideration and Fifth Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. ("ITS, Inc.") at (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of the Sixth Order on Reconsideration and Fifth Report and Order

A. Introduction

In this order, the Commission modifies its rules in light of comments, filed, in response to petitions for reconsideration, and on its own motion.

In this Report and Order, unless indicated otherwise, the Commission uses "CPSTs" to mean cable programming service tiers that are rate regulated under § 76.922 of its rules. Although new product tiers are CPSTs within the meaning of the Communications Act of 1934, as amended, 47 U.S.C. 543(l)(2), in this Report and Order, they are separately referred to as new product tiers or NPTs.

B. New Product Tiers

1. Background

The Cable Television Consumer Protection Act of 1992 ("1992 Cable Act"), 47 U.S.C. 543(c), requires the Commission to ensure that CPST rates are not unreasonable upon the receipt of a specific complaint. The Act requires the Commission to establish criteria for determining whether a rate is unreasonable after considering a number of factors, such as the rates of similar systems, the rates charged by cable operators that face competition, and the operator's costs and revenues. The 1992 Cable Act also permits the Commission to consider other relevant factors for determining what constitutes unreasonable rates for CPSTs. In the Report and Order and Further Notice of Proposed Rulemaking in MM Docket No. 92–266 ("Rate Order"), 58 FR 29736 (May 21, 1993), the Commission adopted benchmark and cost-of-service rules which reflect a reasonable balancing of the statutory factors. The Commission has also adopted rules which allow cable operators to increase rates for their Basic Service Tiers ("BSTs") and CPSTs to reflect inflation, increases in external costs, and the addition of new channels. The current formula for channel additions permits operators to collect a sliding per channel adjustment for adding new programming channels to CPSTs and to recover all programming expenses associated with adding channels, plus a 7.5% mark-up on new programming expenses. 47 CFR 76.922 (d), (e).

A number of programmers have expressed the view that the cable industry's ability to create new programming networks that can benefit consumers depends on operators' being able to offer new services in packages of programming. These programmers urge the Commission to provide increased incentives to cable operators to offer such packages of new programming services. Other commenters suggest that a marketplace system is preferable to regulation in certain programming and tiering decisions. In addition, as reflected in the record, many *ex parte* comments support the adoption of rules allowing operators to establish tiers of new services priced at market rates.

2. Discussion

The Commission is concerned, based on the comments filed by operators and programmers, that the current rules may not provide sufficient incentives for operators to expand capacity and provide new services to consumers. Accordingly, the Commission is establishing a new category of CPST—an NPT—that will provide additional incentives for operators to provide new services to consumers because operators will be permitted to price these tiers as they choose. The new rules also will help programmers by encouraging operators to add new attractive programming to NPTs in order to induce customers to subscribe to the NPTs.

NPTs are, by definition, "cable programming services" under the 1992 Cable Act, because NPTs are composed of video programming provided over cable systems that are not carried on the BST and are offered in a package rather than exclusively on a per channel or per program basis.[1] 47 U.S.C. 543(1)(2). The Commission therefore has a duty under the 1992 Cable Act to ensure that NPTs are not unreasonably priced.

The Commission finds that, so long as the conditions set forth below are met, the rates for NPTs will not be unreasonable. The conditions set forth below will ensure that subscribers may choose to subscribe to BSTs, NPTs, or CPSTs or combinations of those tiers and, that as a result, NPTs will face competition from BSTs and CPSTs.

First, operators offering NPTs are prohibited from making fundamental changes to what they offer on their BSTs and CPSTs on September 30, 1994. This requirement is necessary to ensure that cable subscribers continue to receive basically the same cable service they now receive at prices the Commission has set pursuant to its rate regulations. This requirement, however, is not intended to freeze BSTs and CPSTs. Operators remain free to move channels from the existing tier to a single channel offering or drop channels entirely, so long as the aggregation of such changes does not constitute a fundamental change of their BSTs or CPSTs.

Second, operators may not drop channels from BSTs and CPSTs and move them to NPTs (including time-shifted, slightly altered or renamed versions of channels offered on other tiers), if the channels were offered on their BSTs or CPSTs on September 30, 1994. This will protect consumers by ensuring that operators electing to provide NPTs do not dilute the BSTs and CPSTs that are currently available to consumers. This will also help ensure that BSTs and CPSTs provide a competitive option to NPTs. A channel that occupied a BST or a CPST part-time may be offered full-time on an NPT, as long as it continues to be offered on the BST or CPST under substantially the same conditions as it was offered on September 30, 1994. If a channel occupies a BST or CPST full-time, however, and is subsequently reduced to part-time on the BST and CPST, that channel may not be offered on an NPT full-time.

Third, BSTs and CPSTs must continue to be cognizable services. That is, the operator must continue to market its BSTs and CPSTs so that customers are reasonably aware of: (1) The availability of those tiers to the public; (2) the names of the channels available on those tiers; and (3) the price of the tiers. Within 30 days of the offering of an NPT, operators shall file with the Commission a copy of the new rate card that contains the following information on their BSTs, CPSTs, and NPTs: (1) The names of the programming services contained on each tier, and (2) the price of each tier. Operators also must file with the Commission copies of notifications that were sent to subscribers regarding the initial offering of NPTs. After this initial filing, cable operators must file updated rate cards and copies of customer notifications with the Commission within 30 days of rate or service changes affecting the NPT. This information will help the Commission ensure that operators are complying with our conditions for NPTs. No prior regulatory approval, however, is required to offer an NPT.

Furthermore, in accordance with the 1992 Cable Act's prohibition on negative option billing, an operator may not charge any subscriber for an NPT unless the subscriber has requested the NPT by name. Moreover, fundamental changes to an NPT must be approved by subscribers in accordance with the negative option billing rules. Channel changes involving relatively few channels generally will not change the fundamental nature of a tier and thus will not implicate the negative option billing rule.

Operators may not require the subscription to any tier, other than a BST, as a condition for subscribing to an NPT. Further, operators may not require subscription to an NPT as a condition to subscribing to a CPST. We believe that restricting the ability of operators to link the purchase of NPTs and other CPSTs will maximize subscriber choice and foster competition between NPTs and CPSTs. These buy-through restrictions will not apply, however, to cable operators that, prior to October 5, 2002, lack the capacity to offer BSTs and NPTs without also providing other intermediate tiers of service. See 47 CFR 76.921.

Apart from the foregoing limited, specific requirements, operators will have complete flexibility to offer programming services on an NPT. Thus, the Commission's NPT rules provide that operators may offer the same programming services on NPTs as are on one or more BSTs and CPSTs so long as they do not state or imply that any such channel is available only on an NPT.

Operators may add any channel to an NPT that was previously on a BST or CPST if the channel was dropped from the BST or CPST before September 30, 1994. If a channel was offered on a system on a BST or CPST on September 30, 1994, however, the channel may not be moved to an NPT unless the operator waits at least two years from the date the channel is dropped from the BST or CPST. However, operators may offer new channels (i.e., channels first offered on a system after September 30, 1994) on CPSTs before moving them to NPTs, subject to the conditions outlined in this Report and Order. The flexibility to move new channels to NPTs will keep the prices for CPSTs from becoming unreasonable and will create additional capacity for new services on CPSTs. This capacity should help create opportunities for programmers to establish an audience for their new channels.

If after initially electing to offer an NPT, a cable operator decides that offering an NPT is no longer desirable, the cable operator is free to drop the tier upon proper notice to subscribers. An operator that drops an NPT may reestablish that tier at a later time by complying with the conditions outlined above.

The Commission's conclusion that the rates at which cable operators choose to offer NPTs will not be unreasonable reflects its consideration of the statutory factors that it must consider in establishing criteria for determining whether a rate for a CPST is unreasonable. As explained above, the Commission believes that the rates charged for NPTs will be constrained by the rates charged for BSTs and CPSTs. The rate standards for BSTs and CPSTs were set directly by analysis of the factors the 1992 Cable Act instructs the Commission to consider. The Commission believes that the rates charged for NPTs must be competitive with the rates charged for CPSTs or consumers will decline to subscribe to NPTs. Therefore, the rates charged for NPTs will reflect the Commission's analysis of the statutory factors because cable operators will have to offer NPTs at prices that are attractive in comparison to services subject to benchmark or cost-of-service regulation.

B. A La Carte Package Offerings

1. Background

Under the 1992 Cable Act, video programming offered on a per channel or per program (a la carte) basis is not subject to rate regulation. 47 U.S.C. 543(l)(2). In the April 1993 Rate Order, 58 FR 29736 (May 21, 1993), the Commission held that it would not regulate packages of otherwise exempt

[1] For purposes of the FCC Forms 1200 and 1210, however, channels that are on an operator's NPT will not be considered regulated channels.

per channel or per program services so long as: (1) The price for the combined package does not exceed the sum of the individual charges for each component of service, and (2) the cable operator continues to provide the component parts of the package to subscribers separately. The Commission stated that the second condition would be met only when the per channel offering provides subscribers with a realistic service choice. *Id* at 29746.

In the Second Reconsideration Order, 59 FR 17943 (April 15, 1994), in order to address concerns that some packages established by operators in response to rate regulation were not consistent with the 1992 Cable Act and Commission regulations, and the fact that other offerings raising similar concerns could be initiated in the future, the Commission provided 15 interpretive guidelines for determining whether an operator's collective offering of a la carte channels should be accorded regulated or unregulated treatment. The Commission also determined that packages of a la carte channels offered prior to April 1, 1993, (the date it adopted the Rate Order) would be accorded unregulated treatment. This limited "grandfathering" of packages available on April 1, 1993, was intended to avoid elimination of discounts that were available to consumers and clearly were not offered to evade rate regulation. *Id.* at 17951–17952.

Also, on November 17, 1993, the Commission issued 16 letters of inquiry to various cable operators, and on December 13, 1993, it issued another 35 letters of inquiry, most of which addressed the issue of removal and repackaging of channels. On February 22, 1994, the Commission issued 11 letters of inquiry to cable operators that, among other things, asked operators to justify a la carte offerings that may be inconsistent with the Commission's rate regulations.

The Commission has received numerous comments with respect to a la carte issues. Most of the commenters requested greater clarification of the Commission's a la carte rules and guidelines. Commenters also made suggestions concerning the treatment of a la carte offerings that are found not to meet Commission guidelines. Some suggest that cable operators should not be penalized for failing to satisfy the Commission's test for a la carte packages because it is unclear.

2. Discussion

The evidence obtained in response to the letters of inquiry issued to cable operators offering a la carte packages and the comments we received from cable operators convinced the Commission that it should reconsider its approach. It seems clear that some cable operators have evaded rate regulation by purporting to offer channels a la carte, when in fact the individual offerings were not a realistic service alternative. On the other hand, there is merit to the industry's claim that neither the Commission's original two-part test nor its interpretative guidelines provides a clear answer with respect to the permissibility of some a la carte packages that have been offered. Indeed, it is perhaps inevitable that the test would not be capable of precise application in many instances because it is not clear how various factors should be weighed and applied.

The Commission's analysis leads it to conclude, contrary to its prior decisions, that a la carte packages are CPSTs within the meaning of the 1992 Cable Act. The conclusion that all packages are "cable programming services" is supported by the language of the statute, the legislative history, and practical considerations as well.

Section 3(l)(2) of the 1992 Cable Act defines CPSTs as "any video programming provided over a cable system, regardless of service tier, including installation or rental of equipment used for the receipt of such video programming, other than (A) video programming carried on the basic service tier, and (B) video programming offered on a per channel or per program basis." 47 U.S.C. 543(l)(2). A package of channels, whether or not the channels also are offered a la carte, plainly is "video programming provided over a cable system," and hence is a "cable programming service." The package is not "video programming offered on a per channel or per program basis;" the individual channels are. Accordingly, it is apparent from the statutory language that a la carte packages are cable programming services. The conclusion that a package of a la carte channels is a CPST is further supported by the legislative history, which focused on the fact that bundled offerings of cable programming would be subject to rate regulation.

A conclusion that rate regulation does not apply at all to video programming packages if the channels are offered individually would fatally undermine the rate regulations rules Congress enacted. If a package of a la carte channels is not a CPST, any cable operator may avoid rate regulation simply by announcing the offering of channels on an a la carte basis even if very few subscribers would choose the a la carte offerings rather than the package.

However, as the Commission recognized in the Rate Order, there are sound policy reasons to treat as reasonable any price offered for a package of channels that traditionally have been offered on a per-channel basis. Indeed, the Commission can not envision circumstances in which any price of a collective offering such as the commonly offered "HBO/Showtime" package would be found to be unreasonable. For the future, the new rules authorizing "new product tiers" should provide cable operators with sufficient flexibility to offer such packages at whatever price they choose. Although cable operators may not remove channels from regulated tiers and offer them on NPTs, they are free to create packages of a la carte channels under the new rules governing NPTs. Moreover, as stated above, the Commission previously "grandfathered" packages available on April 1, 1993. The difficult question concerns the treatment of a la carte packages created between April 1, 1993, and September 30, 1994. In some cases, the Commission thinks it is clear that the package at issue was not a permissible package under a fair reading of its test. In other cases, however, it is not clear how the test should be applied to the package at issue. In those cases, the Commission thinks it is fair, in light of the uncertainty created by its test, to allow cable operators to treat existing packages as NPTs even though it would not qualify under the new rules, provided that such packages involve only a small number of migrated channels.[2] The Commission sees little reason to require an operator to "reverse migrate" a package that was not clearly ineligible for unregulated treatment under our a la carte policy. The Commission intends to address whether specific operator packages should be treated as NPTs in rulings on individual cases in the near future.

C. Adjustments to Capped Rates for Addition, Deletion and Substitution of Channels on CPSTs

1. Background

Pursuant to Section 623 of Communications Act, 47 U.S.C. 543, the Commission adopted a comprehensive framework governing the rates for BSTs and CPSTs. Under this framework, once initial rates are set pursuant either to the benchmark or cost-of-service approaches set forth in the rules, rates are governed by a price cap designed to

[2] As noted above, competition between an NPT and a BST and/or CPST is the primary reason that we conclude rates for NPTs will not be unreasonable.

assure that rates for regulated cable services remain reasonable. Under the cap, operators may adjust rates annually for inflation as measured by the gross national product price index ("GNP–PI") and for certain categories of external costs. 47 CFR 76.922(b),(c),(d).

The Commission's price cap rules were amended in March, 1994 to specify a "going forward" mechanism under which capped rates are adjusted for changes in the number of channels offered on BSTs and CPSTs. Fourth Report and Order 59 FR 17943, 17955–17956 (April 15, 1994). Under these provisions, operators first remove all external costs from the tier charge and then adjust the residual component of the tier charge by a specified per channel adjustment amount when the total number of regulated channels changes. The methodology for adjusting capped rates when channels are added or deleted from a regulated tier is set forth in detail in § 76.922(e) of the Commission's rules and in FCC Form 1210.

The March, 1994 rule amendments also permitted operators to include a mark-up of 7.5% on new programming expense related to programming added on or after May 15, 1994. Form 1210 allows the 7.5% mark-up on all programming cost increases occurring after March 31, 1994, no matter when the channel was first offered.

Parties filing petitions for reconsideration and many commenters filing in response to the Fifth Notice of Proposed Rulemaking ask the Commission to revise the existing going forward rules substantially. Many criticize the existing per channel adjustment on the grounds that it fails to provide sufficient incentives to add channels. Some cable operators, programmers, and networks state that the percentage-based approach to the programming mark-up results in disincentives for operators to add low or no-cost services to BSTs and CPSTs (noting that 7.5% of zero is zero).

Most of the alternatives on going forward issues proposed by the industry involve a flat per channel charge. Two Commenters submitted economic studies to support a flat per channel adjustment of at least 25 to 30 cents. Some propose a flat-fee mark-up subject to an annual cap.

2. Discussion

As noted, the Commission previously adopted a machanism by which cable operators may adjust rates when adding channels to BSTs and CPSTs. The Commission is supplementing its existing going forward rules by creating an alternative channel adjustment methodology. Cable operators adding channels to CPSTs under the new, supplemental rules may receive (1) a flat per channel mark-up, subject to a cap through December 31, 1997, and (2) recovery of programming costs, subject to a cap through December 31, 1996, and pursuant to the Commission's existing rules on permitted programming costs through December 31, 1997, modified to remove the 7.5% mark-up. In so doing, the Commission seeks to permit operators to provide new services on CPSTs, while assuring that rates for CPSTs are not unreasonable.

Operators may adjust rates for CPSTs pursuant to the new going forward rules beginning January 1, 1995, the effective date of the new rules, for channel changes, if any, made to these tiers on or after May 15, 1994, the effective date of the existing going forward rules. Operators adding channels to CPSTs on and after May 15, 1994, may use either the new rules or the existing rules for adjusting rates. Thus, the permitted charge for a CPST will consist of two elements. The first element is the permitted rate for channels offered on CPSTs on May 14, 1994, determined under current rules. The second element is the permitted rates for channels added to, or dropped from, CPSTs on or after May 15, 1994, determined under the new rules, or, if the operator so elects with respect to channel additions, the current rules as modified to remove the 7.5% mark-up on increases in programming costs under certain circumstances described below.

Operators must elect to apply either the new rules or the current rules the first time they adjust rates after December 31, 1994, to reflect a channel addition to a CPST that occurred on or after May 15, 1994, and must use the elected methodology for all rate adjustments through December 31, 1997. The Commission is allowing operators to choose to continue using the current rules because the current rules provide greater channel addition incentives than the new rules in certain limited circumstances and some operators may have relied on the current rules in deciding to add channels. While the Commission is requiring that operators use either the existing or the new going forward rules consistently for channel additions to CPSTs after December 31, 1994, an operator that chooses to use the new rules after that date may, but is not required to, adjust rates to reflect the new rules for channel additions made between May 15, 1994 and December 31, 1994. Rates for the BST will continue to be governed exclusively by the current rules, except that where a system offered only one tier on May 14, 1994, the cable operator will be allowed to use the revised rules for channel additions to the BST, as if the tier was a CPST.

a. "Going Forward" price cap structure. Operators electing to use the new rules may adjust their rates between January 1, 1995 and December 31, 1997, by up to 20 cents, exclusive of license fees, for each new channel added to CPSTs on or after May 15, 1994, subject to the Operator's Cap and the reserve for license fees, described below. Operators are not required to raise rates, but rather are permitted to do so. Operators may add channels under the new rules at any time from May 15, 1994, to December 31, 1997. They may not, however, raise their prices as a result of channel additions by more than $1.20 per subscriber per month between January 1, 1995, and December 31, 1996, and by more than $1.40 between January 1, 1995, and December 31, 1997 ("Operator's Cap").

Operators may use may portion of the Operator's Cap to pay for license fees between January 1, 1995, and December 31, 1996, for channels added between May 15, 1994, and December 31, 1996. Moreover, operators may recover an additional amount of not more than 30 cents per subscriber per month for license fees (the "License Fee Reserve") between January 1, 1995, and December 31, 1996, for channels added between May 15, 1994, and December 31, 1996. After December 31, 1996, license fees may be passed through to subscribers pursuant to the existing rules, except that, as described below, operators will not be allowed the current 7.5% mark-up on programming costs for channels on or after May 15, 1994. The Operator's Cap and License Fee Reserve only apply to costs associated with new channels on CPSTs and do not affect the ability of operators to obtain rate adjustments for inflation or changes in external costs other than increases in programming costs of channel added under the new going forward rules. See 47 CFR 76.922(d)(2), (3). The new going-forward rules for channel additions should benefit consumers by increasing their viewing options on existing CPSTs, while avoiding unreasonable price increases for those tiers.

b. Per channel adjustment factor. As indicated, the Commission establishes a "per channel adjustment factor" of up to 20 cents per channel for channels added to CPSTs. Operators may increase rates by up to 20 cents, exclusive of programming costs, for each channel added to a CPST on and after May 15, 1994, subject to the Operator's Cap of $1.20 on rate increases attributable to

channel additions through December 31, 1996, and $1.40 through December 31, 1996, and $1.40 through December 31, 1997. An operator may choose a lower per channel adjustment, if that would further its business plan by, for example, allowing it to devote a portion of the Operator's Cap to license fees. An operator that added a channel on or after May 15, 1994, and raised pursuant to the existing rules, may revise its rates after December 31, 1994, using the new channel addition rules. As noted, an operator must use either the existing or the revised rules consistently for all channel additions on and after January 1, 1995.

The per channel adjustment factor will compensate the operator for its costs of adding the channel plus a reasonable profit. Twenty cents falls within the historical range of 15–22 cents by which operators in a competitive environment would adjust rates for the addition of a new programming channel, exclusive of programming costs. The methodology the Commission used in deriving the 15–22 cent range is set forth in the Technical Appendix to the full text of this Report and Order.

The Commission's rules provide that any revenues received from a programmer, or shared by a programmer and an operator, must be netted against costs for purposes of calculating whether there has been an increase or decrease in external costs. 47 CFR 76.922(d)(3)(x). We extend this requirement for offsetting revenues against costs to the per channel adjustment factor for channels added to CPSTs pursuant to our revised channel adjustment rules. The revenues must be deducted from programming costs and then, to the extent revenues are remaining, from the per channel adjustment. Offsetting will apply on a channel-by-channel basis. Commissions received by an operator from programmers will be treated as revenues received from programmers.

The per channel adjustment factor permitted by this Report and Order will apply only to net increases in channels from the highest number of channels offered on all CPSTs (excluding NPTs) on May 15, 1994, or any date thereafter.[3] If an operator substitutes a new channel for an existing channel, no per channel adjustment may be made under the revised channel adjustment rules. Rather, the operator should continue to charge the residual associated with the channel that was dropped. To permit an operator to receive a per channel adjustment in these situations would encourage operators to evade the purpose of the revised going forward incentives by substituting new for existing channels simply to get an additional per channel adjustment.

c. Operator's cap. For the addition of new channels to CPSTs on or after May 15, 1994, the Commission establishes a per subscriber cap on the amount by which monthly cable rates may increase between January 1, 1995, and December 31, 1997. Operators may not make rate adjustments to monthly rates totalling more than $1.20 per subscriber over the first two years of the three-year period or more than $1.40 over the full three-year period. Rate changes prior to January 1, 1997, resulting from programming costs of new channels must fall within the Operator's Cap unless they are covered by the License Fee Reserve. Price increases will be counted against the Operator's Cap when rates are increased as a result of channel additions, not when the addition occurs. Any rate increases pursuant to the revised rules shall be subject to the notice and prior approval requirements of the Commission's regulations. See 47 CFR 76.932, 76.933, 76.958, 76.964. In addition, operators will be required to send the Commission copies of the notices sent to subscribers. The Operator's Cap will apply only to operators using the 20 cent per channel adjustment in our new rules. It will not apply to operators that elect to use the existing rules to adjust rates for channel additions occurring on and after May 15, 1994.

The Operator's Cap on the rate increase attributable to the addition of new channels to CPSTs is based on historical increases in numbers of channels offered. It is necessary because without such a cap, the per channel mark-up could create an incentive for operators to add large numbers of channels to CPSTs so as to increase the aggregate mark-up received. This result would undermine the 17% competitive rate reduction previously ordered by the Commission and could raise overall rates toward monopoly levels that would have occurred in the absence of the 1992 Cable Act. An unreasonable CPST rate also would cause the CPST to be an unattractive choice for subscribers, thereby removing it as a viable competitor to an NPT.

In addition, the Commission adopts the Operator's Cap because there is no evidence that consumers want to pay for an unlimited number of channels in CPSTs. The cap will also provide operators with incentives to choose which new services offered on CPSTs would be most demanded by subscribers. Finally, because the per channel adjustment of up to 20 cents reflects an average based on historical data, adjusted for the lack of effective competition, it may provide some operators with a greater incentive to add channels than would exist in a competitive market.

d. License fee reserve. The Commission also establishes a License Fee Reserve of 30 cents which operators may use, between January 1, 1995, and December 31, 1996, to recover programming costs for new channels. The License Fee Reserve may be applied against the initial license fee or any increase in the license fee for channels added during the first two years that the Operator's Cap is in effect. During this period, operators also may use all or any portion of the amount permitted as a per channel adjustment under the Operator's Cap to pay for license fees in excess of the License Fee Reserve. License fees incurred in the third year the Operator's Cap is in effect may be passed through to subscribers as external costs without counting against either the License Fee Reserve or the Operator's Cap.

The 30 cents License Fee Reserve would allow 6 channels to be added at an average license fee of 5 cents per channel. The 5-cents average, per channel license fee falls within the range which the Commission observed.

The Commission has adopted a License Fee Reserve in response to programmers' concerns that a cap on total rate increases attributable to new channels, without a reserve for license fees, might give rate-regulated cable operators incentives to increase profits by adding only no cost or low cost channels.

e. Programming cost increase mark-up. The Commission has decided not to allow operators using the per channel adjustment under the new rules to take the 7.5% mark-up on programming cost increases, including retransmission consent fees and copyright fees incurred for coverage of broadcast signals, for channels for which the per channel mark-up of up to 20 cents was taken. The Commission's analysis indicates that the per channel adjustment of up to 20 cents for additional channels, in

[3] An operator may receive a per channel adjustment for channel X if it substitutes channel Y for channel X and then adds channel X back to the system, so long as the addition of channel X represents the required net increase in the number of CPST channels. In contrast, an operator that had 20 channels on its CPSTs on May 15, 1994, 22 channels on its CPSTs on May 15, 1995, and 21 channels on its CPSTs on January 1, 1996, may not obtain a per channel adjustment for adding the 22nd channel back to its system on May 15, 1996. Rather, the 22nd channel is treated as a channel substitution.

addition to the License Fee Reserve, will provide full and fair compensation to operators adding channels to CPSTs. Operators who have added channels prior to the effective date of the new rules will not be harmed by this change since the operators may elect to add channels to CPSTs under the old or the new rules.

f. Deletion and substitution of channels. The new regulations also specify how operators shall adjust rates for BSTs and CPSTs when channels are dropped from, or moved between, BSTs and CPSTs. In general, when dropping a channel from a BST or CPST, operators will be required to make their rates reflect the net reduction in external costs as is required under the existing rules. See 47 CFR 76.922(d)(3)(i) and (ii). Operators also will be required to reduce the price of that tier by the "residual" associated with that channel. For channels that were on a BST or CPST on or before May 14, 1994 or channels added after that date pursuant to the current rules, the per channel residual is the charge for the tier, minus the external costs for the tier, and any per channel adjustments made after that date, divided by the number of channels on the tier. For channels added to a CPST on or after May 15, 1994, pursuant to the new channel addition rules, the residuals shall be the actual per channel adjustment taken for that channel when it was added to the tier plus any inflation adjustment since that time. The residual and programming cost shall be calculated as of the date the channel is dropped.

As noted above, when an operator substitutes a new channel for an existing channel on a CPST, no per channel adjustment may be taken. The residual for the new channel is that of the channel it replaced. Operators substituting channels will be required to adjust their rates for changes in license fees as provided by the current rules. To preserve the overall effectiveness of the Operator's Cap and the License Fee Reserve, if the license fee for the new service is greater than the license fee for the replaced service, and the operator chooses to pass that increase through to subscribers, the excess shall count against the aggregate of the Operator's Cap and the License Fee Reserve. If the license fee for the new channel is less than the license fee for the replaced channel, no credit shall be given against the cap or the reserve, so as not to create an artificial incentive to replace higher license fee channels with lower license fee channels. With respect to channels to which the 7.5% markup on new programming costs applies, the operator shall treat the mark-up as part of its programming costs and subtract the mark-up from its external costs when a channel is dropped. When such a channel is substituted, the operator may retain in its rates the 7.5% mark-up on the license fee of the dropped channel, so long as that amount is not more than 7.5% of the license fee of the new channel.

When a channel is shifted between a BST and a CPST or between CPSTs, it shall be treated as if it was dropped from one tier and the residual and programming cost associated with the shifted channel shall be shifted to the other tier. The residuals associated with the shifted channel shall be adjusted by reference to the number of subscribers on each tier to ensure aggregate revenues remain the same.[4] Revenue neutrality protects consumers by ensuring that the Commission's requirements do not create incentives for operators to move channels to tiers with more subscribers solely to increase revenues. And because the per channel adjustment of up to 20 cents applies only to the CPSTs, an operator may not move a channel for which it received a per channel adjustment under the new rules from a CPST to the BST.

g. Headend upgrades for small systems. The Commission decided to adopt a special streamlined cost-of-service procedure for independent small systems and small systems owned by small MSOs that upgrade their headend equipment to add new channels to CPSTs. Small systems may find it difficult to recover the fixed costs of the headend equipment required for adding channels, since the cost must be recovered over a small subscriber base. The Commission limits this relief to independent small systems and small systems owned by small MSOs because (1) systems with more than 1,000 subscribers can spread the fixed costs of headend equipment over a larger customer base and (2) small systems owned by larger operators should have adequate financial resources to add channels under our generally applicable rules. Qualified small systems that add channels to their CPSTs, therefore, have the option of either using this special procedure or using the existing or revised going forward rules applicable to all operators.

Under this streamlined cost-of-service procedure for upgrading headend equipment, independent small systems and small systems owned by small MSOs may increase rates to recover the costs associated with new headend equipment that is used to add channels to CPSTs. In order to recover costs for headend equipment, qualified small systems will be required to certify to the Commission the level of costs they have actually incurred for adding headend equipment.

The Commission also decided to limit the amount small systems may recover under this special allowance to prevent unreasonably sharp rate increases to small system subscribers. The amount a small system may recover for each channel added shall be limited to programming costs incurred plus the lesser of the actual cost of the headend equipment or $5,000, which is consistent with comments that the addition of a satellite channel can cost between $2,500 and $5,000.

Headend costs that are to be recovered through increased rates must be depreciated over the useful life of the equipment. While the Commission has not prescribed depreciation rates, cable operators are required to follow reasonable depreciation practices. Depreciation and useful life of the equipment are to be submitted to the Commission with the cost certification. In addition, the rate of return the small system may earn on this investment may not exceed 11.25%.

Small systems may apply this streamlined cost-of-service procedure for channels added after May 14, 1994, but may not use this methodology to increase rates to reflect channel additions until January 1, 1995. Moreover, small systems that increase rates as a result of any channel additions pursuant to either this methodology may add a maximum of seven channels to CPSTs over the next three years. This is equal to the number of channels that a system taking the maximum 20 cent per channel adjustment may add under the Operator's Cap.

h. Systems with more than 100 channels. In the Fifth Notice of Proposed Rulemaking, the Commission noted that the Fourth Report and Order 59 FR 17943, 17955–17956 (April 15, 1994), established per channel adjustments for systems with total channels on regulated tiers of 100 channels or fewer. It did not establish per channel rates for systems that provide more than 100 channels. The Commission solicited comment on whether it should establish a method for adjusting capped rates in situations

[4] An operator may use the equivalent billing ("EBU") methodology in calculating the number of subscribers on a tier, provided it does so for both the tier from which the channel is shifted and the tier to which the channel is shifted and provided that the operator otherwise meets the conditions for using EBU methodology. See Public Notice: Question and Answer on Cable Television Rate Regulation (July 27, 1994) Question and Answer 1.

where there are more than 100 regulated channels and, if so, what that method should be. The Commission additionally asked whether the going forward methodology should be modified to provide greater or lesser compensation to operators for adjustments to capped rates when channels are added or deleted from BSTs and CPSTs, and whether this would better meet the goals of encouraging infrastructure development and growth of programming.

The existing going forward regulations use a declining per channel adjustment as the number of channels on a system increase. In contrast, in this Report and Order the Commission has decided to allow (1) a flat per channel adjustment for the addition of new channels to CPSTs, subject to an Operator's Cap, and the License Fee Reserve, and (2) NPTs for which cable operators set the price. Because the revised regulations allow operators to set the price for an unlimited number of channels on NPTs, the Commission does not believe it is necessary to adopt any other rules that are based on a specific number of channels. Cable operators continuing to add channels under the current rules may receive a per channel incentive only for the first 100 channels on BSTs and CPSTs.

i. Term of the revised channel addition rules. A. The new rule for adjusting rates when channels are added, deleted or substituted on CPSTs will be in place through December 31, 1997, and will be reviewed prior to the end of that period to determine if there is any reason to continue to provide incentives to increase the number of channels on any CPST. The new rule will expire on that date and will be replaced by the existing rule unless the new rule is reinstated by the Commission. The special streamlined cost-of-service procedure for headend equipment costs for small systems also will expire on December 31, 1997, unless it is reinstated by the Commission.

D. Negative Option Billing

1. Background

Section 3(f) of the 1992 Cable Act, 47 U.S.C. 543(f), prohibits negative option billing, which occurs when a cable operator charges a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. A subscriber's failure to refuse a cable operator's proposal to provide such service or equipment may not be deemed to be an affirmative request for such service or equipment. The Rate Order, 58 FR 29736, 29748 (May 21, 1993), provided that changes in the mix of programming in a tier, including additions or deletions of channels, will not be subject to the negative option billing provision unless they change the fundamental nature of the tier. The Commission believed that, on balance, the benefits to subscribers from giving operators the ability to diversify, improve or otherwise modify their offerings in a tier outweigh the slight reduction in subscriber choice that results from exempting such changes from the negative option billing prohibition.

In the Third Reconsideration Order, 59 FR 17961, 17969–17970 (May 21, 1993), the Commission concluded that the Commission concluded that the Commission and state and local governments have concurrent jurisdiction to regulate negative option billing. The rationale for this conclusion was that regulation of negative option billing, while discussed in the section of the 1992 Cable Act governing rate regulation, is more in the nature of a consumer protection measure than rate regulation per se. Section (8)(c)(1) of the 1992 Cable Act, codified in Section 632(c)(1) of the Communications Act, 47 U.S.C. 552(c)(1), provides that nothing in the "Consumer Protection Laws" title of the Communications Act may "be construed to prohibit any State or any franchise authority from enacting or enforcing any consumer protection law, to the extent not specifically preempted by this title."

Commenters request that the Commission clarify what channel additions to a tier will not require affirmative marketing under Section 3(f) of the 1992 Cable Act. They also ask the Commission to declare that local authorities may not require affirmative marketing for channel additions under state or local laws. More specifically, NCTA asks the Commission to clarify that three specific "scenarios" do not trigger the federal negative option billing rule and that state or local authorities are preempted from enacting or enforcing their own negative option billing laws.

2. Discussion

In determining whether any of the scenarios involve negative option billing, the Commission is guided by the language of the negative option billing provision, its legislative history, and our prior interpretations. In light of that guidance, the Commission reaffirms that a change in the mix of channels in a tier, including additions or deletions of channels, will not be subject to the negative option billing provision, unless they change the fundamental nature of the tier. With respect to NCTA's first scenario, which involved passing through external costs or inflation adjustments, the Commission holds that these types of rate changes do not in and of themselves invoke the federal negative option billing rule. As an initial matter, they do not constitute "service or equipment" within the meaning of Section 3(f). Moreover, under our rate regulations, operators are specifically permitted to pass through to subscribers increases in external costs and inflation adjustments. 47 CFR 76.922(d). These types of rate changes do not constitute a change in the fundamental nature of a tier, and, therefore, do not implicate the federal negative option billing prohibition for that reason as well.

With regard to the second and third scenarios identified in NCTA's letter, the Commission stated in the Rate Order, 58 FR 29748 (May 21, 1993), that "a change in the mix of channels in a tier, including additions or deletions of channels, will not be subject to the negative option billing provision, unless they change the fundamental nature of the tier." Determinations as to what constitutes a change in the fundamental nature of a tier will generally depend on the individual circumstances of each case. Channel changes involving relatively few channels generally will not change the fundamental nature of that tier, and thus will not implicate the federal negative option billing rule. Consistent with this approach, additions of channels and rate adjustments within the Operator's Cap and License Fee Reserve of the revised going forward rules generally will not change the fundamental nature of a tier. Affirmative marketing also is not required when an operator moves channels pursuant to our conditions for establishment of NPTs, so long as the movements do not change the fundamental nature of the tier. Because the Commission's rules require operators to give subscribers 30-days' advance notice of any changes in rates, programming or channel positions, the Commission does not believe subscribers need the additional protection of the negative option billing provision for relatively modest changes. See 47 CFR 76.309(c)(3)(i)(B); 76.964(b).

Section 632(c)(1) of the Communications Act makes clear that state and local authorities generally may apply statutes proscribing fraud or misleading advertising practices to cable operators. However, Section 3(a)(1) of the 1992 Cable Act makes clear that regulation of "the rates for the provision of cable service" is governed exclusively by the federal statute and Commission regulations. The scenarios NCTA

presents require the Commission to consider again the relationship between Section 632(c)(1) of the Communications Act and Section 3(a)(1) of the 1992 Cable Act.

The Commission concludes that a two-step approach is warranted. First, is the state or local negative option rule consistent with the federal rule? If it is, then the state or local rule may be enforced. If the state or local rule is inconsistent with the federal rule, then it is necessary to consider whether its enforcement "approaches, actual regulation of 'rates for the provision of cable service." In elaborating on that inquiry, the Commission now concludes that state or local consumer protection laws may not be enforced in a manner that conflicts with or undermines our rate regulation rules established pursuant to Section 3 of the 1992 Cable Act. If there is an actual conflict between federal and state law or where state law stands as an obstacle to the accomplishment and execution of the full objectives of Congress, the state law is preempted. *See, e.g., Free* v. *Bland*, 369 U.S. 663 (1962); *Hines* v. *Davidowitz*, 312 U.S. 52 (1941).

The scenarios NCTA presents involve situations where enforcement of state and local negative option billing rules would be inconsistent with the federal rule and enforcement might undermine implementation of the cable rate rules promulgated pursuant to Congress's instruction. With respect to the first scenario, the federal negative option billing rule plainly would not require cable operators to obtain affirmative consent from subscribers before passing through external costs and inflation adjustments as permitted by the Commission's rules, as explained above. In addition, enforcement of a state or local negative option billing rule requiring affirmative consent prior to the pass-through of external costs and cost-of-service increases, as permitted by the Commission's rate rules, would undermine the federal regime governing cable rates. The Commission has issued detailed rate rules implementing Section 3 of the 1992 Cable Act. Under the Commission's rules, most cable operators must reduce their rates from pre-1992 levels, many by as much as 17%, to ensure that cable rates are reasonable. However, as the first scenario presented by NCTA recognizes, the rules also allow cable operators to increase their rates to reflect increases in the cost-of-living or other external costs, most of which are beyond cable operators' control. The 17% rate reduction and the rules authorizing the pass-through of external costs and inflation adjustments are of a piece; the rate cut would not be fair to cable operators if they were prohibited from raising rates to reflect increased costs that are beyond their control.

The other two scenarios presented by NCTA involve the addition, deletion and replacement of channels. The negative option billing regulation makes clear that the requirement that cable operators obtain affirmative consent before charging for a new service "shall not preclude the addition or deletion of a specific program from a service offering, the addition or deletion of specific channels from an existing tier of service, or the restructuring or division of existing tiers of service that do not result in a fundamental change in the nature of an existing service, or tier of service." 47 CFR 76.981. Accordingly, the replacement of a single channel, NCTA's third scenario, would not be prohibited by the federal negative option billing provision, because that would not result in a "fundamental change" unless the tier was very small. With respect to NCTA's second scenario, involving the addition or deletion of channels, the answer would depend on how many channels were added or deleted and other factors relevant to determining whether a "fundamental change" had occurred. As stated above, however, changes that are permitted under the "Operator's Cap" generally would not constitute "fundamental changes."

If the addition, deletion, or replacement of channels did not constitute a fundamental change in a tier, so that the federal negative option billing rule was not triggered, preemption of enforcement of a stricter state or local negative option billing rule would depend on whether enforcement would conflict with or undermine the rate regulation rules established pursuant to Section 3 of the 1992 Cable Act. It is not possible to provide a blanket response to NCTA's second and third scenarios in the absence of a specific set of facts to evaluate. However, it bears emphasis that the rate rules governing the addition, deletion, and replacement of channels are designed to ensure reasonable rates without impeding the provision of new services. Indeed, the rate rules are designed to encourage the provision of new services that subscribers desire at the reasonable rates mandated by Congress. Therefore, an interpretation of state or local law that required a cable operator to obtain the affirmative consent of every subscriber before making a change that did not fundamentally alter the affected tier would, in most cases, interfere with the accomplishment of Congress's objectives. In relatively few cases, in the Commission's view, would state or local officials be likely to seek to enforce negative option billing rules that conflict with or undermine federal rate regulation provisions. But in any event, on further consideration the Commission is convinced that, however numerous such cases are likely to be, state and local officials may not enforce negative option billing rules that obstruct the accomplishment of the objectives of Congress's cable rate provisions.

E. Affiliate Transactions

1. Background

In the Cost Order in MM Docket No. 93–215, 59 FR 17975 (April 15, 1994), the Commission promulgated a rule for valuing transactions between cable operators and affiliated companies. The Commission found that it would be inconsistent with Congressional intent to allow rates for regulated cable service to reflect the prices affiliates charge each other for transactions that occur at other than arm's length. The Commission found that allowing cable companies to pass increases in their costs through to rate payers could motivate those companies to pay excessive amounts for assets and services obtained from unregulated affiliates. The Commission therefore adopted a rule for affiliate transactions that applies to cable operators who elect cost-of-service regulation or seek to adjust benchmark/price cap rates for affiliated programming costs.

In the Cost Further Notice, 59 FR 18066, 18067–18068 (April 15, 1994), the Commission tentatively concluded that the general changes it proposed for affiliate transactions involving telephone companies should be applied to cable operators. The Commission tentatively concluded that the use of prevailing company pricing as a valuation method for transactions between cable operators and their affiliates should only be permitted where the predominant purpose of the transaction is to serve non-affiliates. To that end, the Commission proposed that any affiliate that sells less than 75 percent of its output to non-affiliates has too large a volume of affiliate transactions to be deemed to have a predominant purpose of serving non-affiliates. The Commission therefore proposed to continue to allow prevailing company pricing as a valuation method for affiliate transactions only where at least 75 percent of the cable operators output is sold to non-affiliates.

The cable industry generally opposes the proposed rule arguing that the proposal would require operators and programmers to adopt costly, inefficient and unnecessary methodologies to document the estimated fair market value of the assets or services exchanged. Some operators argue that the 75% bright-line test would impose administrative burdens that would be excessive and outweigh the speculative benefits that might result. Several other parties oppose the proposed rules on the grounds that these requirements would discourage vertical integration and would result in decreased investment in quality cable programming. Others also oppose the proposal and state that the only rationale for the rules comes from an incorrect premise that the application of such rules in the telephone context necessitates similar rules in the cable industry.

2. Discussion

The Commission declines to adopt the proposal to prevent cable operators from valuing assets or services at the operators' prevailing company prices unless the providing affiliates sell more than 75% of their output to non-affiliates. The Commission finds that this proposal would prevent, in many cases, cable operators from establishing a prevailing company price for programming services that have achieved wide distribution among cable operators. In addition, the Commission is concerned that by preventing cable operators from valuing programming at the prevailing company price, it may discourage major MSOs with substantial resources from investing in cable programming and related services that could benefit subscribers.

The Commission will, therefore, retain the existing cable affiliate transaction rule which provides that a cable operator may value an asset or service at the prevailing company price if the provider has sold the same kind of service or asset to a substantial number of third parties at a generally available price. For cable affiliate transactions, the sale of an asset to a substantial number of third parties will ensure that cable operators will not have an incentive to pay excessive prices when they obtain services and assets from affiliates because in such cases the primary purpose of the transaction would not be to provide services and assets to the affiliated programmer. However, the Commission will continue to examine our test for the establishment of a prevailing company price in MM Docket No. 93–215 and as the Commission gains experience with our current cable affiliate transaction rule, it may seek further comment in order to refine the rule.

Finally, the Cost Further Notice sought comment on (1) the proposal to require cable operators that do not meet the prevailing company price test to value services at the higher of cost and fair market value when the cable operator is the seller and the lower of cost and fair market value when the cable operator is the buyer; (2) whether the current definition of an affiliate should be retained; (3) whether the interim cable affiliate transaction rules should be adopted as our final rules; and (4) whether our final cable affiliate transaction rule should be included in the uniform system of accounts that we adopted for cable operators. The Commission will address these issues in conjunction with our general consideration of final cost rules in MM Docket No. 93–215 at a later time.

Administrative Matters

Regulatory Flexibility Act Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601–12, the Commission's final analysis with respect to the Sixth Order on Reconsideration and Fifth Report and Order is as follows:

Need and purpose of this action. The Commission, in compliance with section 3(i) of the Cable Television Consumer Protection and Competition Act of 1992 pertaining to rate regulation, adopts rules and procedures intended to ensure cable subscribers reasonable rates for cable services with minimum regulatory and administrative burden on cable entities.

Summary of issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis. There were no comments submitted in response to the Initial Regulatory Flexibility Analysis. The Chief Counsel for Advocacy of the United States Small Business Administration (SBA) filed comments in the original rulemaking order. The Commission addressed the concerns raised by the Office of Advocacy in the Rate Order. The SBA also filed reply comments in response to the Fifth Notice.

Significant alternatives considered and rejected. Petitioners representing cable interests and franchising authorities submitted several alternatives aimed at minimizing administrative burdens. In the course of this proceeding, the Commission has attempted to accommodate the concerns expressed by these parties. For example, the revised going forward mechanisms are designed to enhance incentives to add new channels to regulated tiers without creating new regulatory burdens and to provide additional options tailored to the concerns of small systems. In addition, the New Products Tier is designed to ensure that regulated cable service rates are reasonable while reducing administrative burdens.

Paperwork Reduction Act

The requirements adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and are found to impose a new or modified information collection requirement on the public. Implementation of any new or modified requirement will be subject to approval by the Office of Management and Budget as prescribed by the Act.

Ordering Clauses

Accordingly, *it is ordered*, That, pursuant to Sections 4(i), 4(j), 303(r), 612, 622(c) and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 532, 542(c) and 543, the rules, requirements and policies discussed in this Sixth Order on Reconsideration and Fifth Report and Order, are adopted and Part 76 of the Commission's rules, 47 CFR Part 76, is amended as set forth in below.

It is further ordered, That the Secretary shall send a copy of this Report and Order, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

It is further ordered, That the requirements and regulations established in this decision shall become effective January 1, 1995,[5] with the exception of new reporting requirements which will become effective on that date or as soon thereafter as they may be approved by the Office of Management and Budget.

List of Subjects in 47 CFR Part 76

Cable television.

[5] Good cause exists to make these requirements effective on less than 30 days notice in the **Federal Register**. *See* 5 U.S.C. section 553(d)(3). Good cause exists to make the requirements effective January 1, 1995 because this Order provides additional opportunities and incentives to cable operators and many of the Commission's rate regulations apply on a calendar quarter system.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

Amendatory Text

Part 76 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat. as amended, 1064, 1065, 1066, 1081, 1082,1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 535, 542, 543, 552 as amended, 106 Stat. 1460.

2. Section 76.901 is amended by adding paragraph (d) to read as follows:

§ 76.901 Definitions

* * * * *

(d) *New Product Tier.* A new product tier ("NPT") is a cable programming service tier meeting the conditions set forth in § 76.987.

3. Section 76.922 is amended by revising paragraphs (d)(3)(x), (d)(3)(xi) and (e) to read as follows:

§ 76.922 Rates for the basic service tier and cable programming services tiers.

* * * * *

(d) * * *

(3) * * *

(x) Adjustments to permitted charges on account of increase in costs of programming shall be further adjusted to reflect any revenues received by the operator from the programmer. Such adjustments shall apply on a channel-by-channel basis.

(xi) In calculating programming expense, operators may add a mark-up of 7.5% for increases in programming costs occurring after March 31, 1994, except that operators may not file for or take the 7.5% mark-up on programming costs for new channels added on or after May 15, 1994 for which the operator has used the methodology set forth in paragraph (e)(3) of this section for adjusting rates for channels added to cable programming service tiers. Operators shall reduce rates by decreases in programming expense plus an additional 7.5% for decreases occurring after May 15, 1994 except with respect to programming cost decreases on channels added after May 15, 1994 for which the rate adjustment methodology in paragraph (e)(3) of this section was used.

(e) *Changes in the number of channels on regulated tiers*—(1) *Generally.* A system may adjust the residual component of its permitted rate for a tier to reflect changes in the number of channels offered on the tier on a quarterly basis. Cable systems shall use FCC Form 1210 (or FCC Form 1211, where applicable) to justify rate changes made on account on changes in the number of channels on a basic service tier ("BST") or a cable programming service tier ("CPST"). Such rate adjustments shall be based on any changes in the number of regulated channels that occurred from the end of the last quarter for which an adjustment was previously made through the end of the quarter that has most recently closed preceding the filing of the FCC Form 1210 (or FCC Form 1211, where applicable). However, when a system deletes channels in a calendar quarter, the system must adjust the residual component of the tier charge in the next calendar quarter to reflect that deletion. Operators must elect between the channel addition rules in paragraphs (e)(2) and (e)(3) of this section the first time they adjust rates after December 31, 1994, to reflect a channel addition to a CPST that occurred on or after May 15, 1994, and must use the elected methodology for all rate adjustments through December 31, 1997. A system that adjusted rates after May 15, 1994, but before January 1, 1995 on account of a change in the number of channels on a CPST that occurred after May 15, 1994, may elect to revise its rates to charge the rates permitted by paragraph (e)(3) of this section on or after January 1, 1995, but is not required to do so as a condition for using the methodology in paragraph (e)(3) of this section for rate adjustments after January 1, 1995. Rates for the BST will be governed exclusively by paragraph (e)(2) of this section, except that where a system offered only one tier on May 14, 1994, the cable operator will be allowed to elect between paragraphs (e)(2) and (e)(3) of this section as if the tier was a CPST.

(2) *Adjusting Rates for increases in the number of channels offered between May 15, 1994, and December 31, 1997, on a basic service tier and at the election of the operator on a cable programming service tier.* The following table shall be used to adjust permitted rates for increases in the number of channels offered between May 15, 1994, and December 31, 1997, on a basic service tier and subject to the conditions in paragraph (e)(1) of this section at the election of the operator on a CPST. The entries in the table provide the cents per channel per subscriber per month by which cable operators will adjust the residual component using FCC Form 1210 (or FCC Form 1211, where applicable).

Average No. of regulated channels	Per-channel adjustment factor	Average No. of regulated channels	Per-channel adjustment factor
7	$0.52	14	0.14
7.5	0.45	14.5	0.13
8	0.40	15–15.5	0.12
8.5	0.36	16	0.11
9	0.33	16.5–17	0.10
9.5	0.29	17.5–18	0.09
10	0.27	18.5–19	0.08
10.5	0.24	19.5–21.5	0.07
11	0.22	22–23.5	0.06
11.5	0.20	24–26	0.05
12	0.19	26.5–29.5	0.04
12.5	0.17	30–35.5	0.03
13	0.16	34–46	0.02
13.5	0.15	46.5–99.5	0.01

In order to adjust the residual component of the tier charge when there is an increase in the number of channels on a tier, the operator shall perform the following calculations:

(i) Take the sum of the old total number of channels on tiers subject to regulation (*i.e.*, tiers that are, or could be, regulated but excluding New Product Tiers) and the new total number of channels and divide the resulting number by two;

(ii) Consult the above table to find the applicable per channel adjustment factor for the number of channels produced by the calculations in paragraph (e)(2)(i) of this section. For each tier for which there has been an increase in the number of channels, multiply the per-channel adjustment factor times the change in the number of channels on that tier. The result is the total adjustment for that tier.

(3) *Alternative methodology for adjusting rates for changes in the number of channels offered on a cable programming service tier or a single tier system between May 15, 1994, and December 31, 1997.* This paragraph at the Operator's discretion as set forth in paragraph (e)(1) of this section shall be used to adjust permitted rates for a CPST after December 31, 1994, for changes in the number of channels offered on a CPST between May 15, 1994, and December 31, 1997. For purposes of this paragraph (e)(3) of this section, a single tier system may be treated as if it were a CPST.

(i) *Operators cap attributable to new channels on all CPSTs through December 31, 1997.* Operators electing to use the methodology set forth in this paragraph may increase their rates between January 1, 1995, and December 31, 1997, by up to 20 cents per channel, exclusive of programming costs, for new

channels added to CPSTs on or after May 15, 1994, except that they may not make rate adjustments totalling more than $1.20 per month, per subscriber through December 31, 1996, and by more than $1.40 per month, per subscriber through December 31, 1997 (the "Operator's Cap"). Except to the extent that the programming costs of such channels are covered by the License Fee Reserve provided for in paragraph (e)(3)(iii) of this section, programming costs associated with channels for which a rate adjustment is made pursuant to this paragraph (e)(3) of this section must fall within the Operator's Cap if the programming costs (including any increases therein) are reflected in rates before January 1, 1997. Inflation adjustments pursuant to § 76.922(d)(2) are not counted against the Operator's Cap.

(ii) *Per channel adjustment.* Operators may increase rates by a per channel adjustment of up to 20 cents per subscriber per month, exclusive of programming costs, for each channel added to a CPST between May 15, 1994, and December 31, 1997, except that an operator may take the per channel adjustment only for channel additions that result in an increase in the highest number of channels offered on all CPSTs as compared to May 14, 1994, and each date thereafter. Any revenues received from a programmer, or shared by a programmer and an operator in connection with the addition of a channel to a CPST shall first be deducted from programming costs for that channel pursuant to paragraph (d)(3)(x) of this section and then, to the extent revenues received from the programmer are greater than the programming costs, shall be deducted from the per channel adjustment. This deduction will apply on a channel by channel basis.

(iii) *License fee reserve.* In addition to the rate adjustments permitted in paragraphs (e)(3)(i) and (e)(3)(ii) of this section operators that make channel additions on or after May 15, 1994 may increase their rates by a total of 30 cents per month, per subscriber between January 1, 1995, and December 31, 1996, for license fees associated with such channels (the "License Fee Reserve"). The License Fee Reserve may be applied against the initial license fee and any increase in the license fee for such channels during this period. An operator may pass-through to subscribers more than the 30 cents between January 1, 1995, and December 31, 1996, for license fees associated with channels added after May 15, 1994, provided that the total amount recovered from subscribers for such channels, including the License Fee Reserve, does not exceed $1.50 per subscriber, per month. After December 31, 1996, license fees may be passed through to subscribers pursuant to paragraph (d) of this section, except that license fees associated with channels added pursuant to this paragraph (d)(3) of this section will not be eligible for the 7.5% mark-up on increases in programming costs.

(iv) *Timing.* For purposes of determining whether a rate increase counts against the maximum rate increases specified in paragraphs (e)(3)(i) through (e)(3)(iii) of this section, the relevant date shall be when rates are increased as a result of channel additions, not when the addition occurs.

(4) *Deletion of Channels.* When dropping a channel from a BST or CPST, operators shall reflect the net reduction in external costs in their rates pursuant to paragraphs (d)(3) (i) and (ii) of this section. With respect to channels to which the 7.5% mark-up on programming costs applied pursuant to paragraph (d)(3)(xi) of this section, the operator shall treat the mark-up as part of its programming costs and subtract the mark-up from its external costs. Operators shall also reduce the price of that tier by the "residual" associated with that channel. For channels that were on a BST or CPST on May 14, 1994, or channels added after that date pursuant to paragraph (e)(2) of this section, the per channel residual is the charge for the tier, minus the external costs for the tier, and any per channel adjustments made after that date, divided by the total number of channels on the tier minus the number of channels on the tier that received the per channel adjustment specified in paragraph (e)(3) of this section. For channels added to a CPST after May 14, 1994, pursuant to paragraph (e)(3) of this section, the residuals shall be the actual per channel adjustment taken for that channel when it was added to the tier.

(5) *Movement of channels between tiers.* When a channel is moved from a CPST or a BST to another CPST or BST, the price of the tier from which the channel is dropped shall be reduced to reflect the decrease in programming costs and residual as described in paragraph (e)(4) of this section. The residual associated with the shifted channel shall then be converted from per subscriber to aggregate numbers to ensure aggregate revenues from the channel remain the same when the channel is moved. The aggregate residual associated with the shifted channel may be shifted to the tier to which the channel is being moved. The residual shall then be converted to per subscriber figures on the new tier, plus any subsequent inflation adjustment. The price of the tier to which the channel is shifted may then be increased to reflect this amount. The price of that tier may also be increased to reflect any increase in programming cost. An operator may not shift a channel for which it received a per channel adjustment pursuant to paragraph (e)(3) of this section from a CPST to a BST.

(6) *Substitution of channels on a BST or CPST.* If an operator substitutes a new channel for an existing channel on a CPST or a BST, no per channel adjustment may be made. Operators substituting channels on a CPST or a BST shall be required to reflect any reduction in programming costs in their rates and may reflect any increase in programming costs pursuant to paragraphs (d)(3)(i) and (d)(3)(ii) of this section. If the programming cost for the new channel is greater than the programming cost for the replaced channel, and the operator chooses to pass that increase through to subscribers, the excess shall count against the License Fee Reserve or the Operator Cap when the increased cost is passed through to subscribers. Where an operator substitutes a new channel for a channel on which a 7.5% mark-up on programming costs was taken pursuant to paragraph (d)(3)(xi) of this section, the operator may retain the 7.5% mark-up on the license fee of the dropped channel to the extent that it is no greater than 7.5% of programming cost of the new service.

(7) *Headend upgrades for small systems.* When adding channels to CPSTs, independent small systems, as defined in § 76.901(c), and small systems owned by small multiple system operators, as defined in § 76.922(b)(5), may choose among the methodologies set forth in this paragraph and in paragraphs (e)(2) and (e)(3) of this section. Operators choosing the methodology of this paragraph may increase rates to recover the actual cost of the headend equipment required to add up to seven channels to CPSTs, not to exceed $5,000 per additional channel, plus any applicable programming costs. Rate increases pursuant to this paragraph may occur between January 1, 1995, and December 31, 1997, as a result of additional channels offered on those tiers after May 14, 1994. Headend costs shall be depreciated over the useful life of the headend equipment. The rate of return on this investment shall not exceed 11.25 percent. In order to recover costs for headend equipment pursuant to this paragraph, small

systems must certify to the Commission their eligibility to use this paragraph, the level of costs they have actually incurred for adding the headend equipment and the depreciation schedule for the equipment.

(8) *Sunset provision.* Paragraph (e) of this section shall cease to be effective on January 1, 1998 unless renewed by the Commission.

* * * * *

4. Section 76.964 is amended by revising the section heading to read as follows:

§ 76.964 Written notification of changes in rates and services.

* * * * *

5. Section 76.981 is revised to read as follows:

§ 76.981 Negative option billing.

(a) A cable operator shall not charge a subscriber for any service or equipment that the subscriber has not affirmatively requested by name. A subscriber's failure to refuse a cable operator's proposal to provide such service or equipment is not an affirmative request for service or equipment. A subscriber's affirmative request for service or equipment may be made orally or in writing.

(b) The requirements of paragraph (a) of this section shall not preclude the adjustment of rates to reflect inflation, cost of living and other external costs, the addition or deletion of a specific program from a service offering, the addition or deletion of specific channels from an existing tier or service, the restructuring or division of existing tiers of service, or the adjustment of rates as a result of the addition, deletion or substitution of channels pursuant to § 76.922, provided that such changes do not constitute a fundamental change in the nature of an existing service or tier of service and are otherwise consistent with applicable regulations.

(c) State and local governments may not enforce state and local consumer protection laws that conflict with or undermine paragraph (a) or (b) of this section or any other sections of this Subpart that were established pursuant to Section 3 of the 1992 Cable Act, 47 U.S.C. 543.

6. Section 76.986 is revised to read as follows:

§ 76.986 "A la carte" offerings.

(a) Collective offerings of unregulated per-channel or per-program ("a la carte") video programming shall be regulated as CPSTs pursuant to § 76.922. For purposes of this section, "multiplexed" channels shall be treated as one channel.

(b) A discounted package price offered by a cable system is not unreasonable with respect to any collective offering of channels if the component channels' collective offering also have been continuously available on the system on a per channel basis since April 1, 1993.

(c) A collective offering of per channel offerings may be treated as New Product Tier if:

(1) The collective offering meets the conditions set forth in § 76.987; or

(2) The operator had reasonable grounds to believe the collective offering involving only a small number of migrated channels complied with the Commission's requirements as of the date it was first offered.

(d) In reviewing a basic service rate filing, local franchising authorities may make an initial decision addressing whether a collective offering of "a la carte" channels will be treated as a cable programming service tier that is an NPT under § 76.987 or a CPST that is regulated under § 76.922. The franchising authority must make this initial decision within the 30 day period established for review of basic cable rates and equipment costs in § 76.933(a), or within the first 60 days of an extended 120 day period (if the franchise authority has requested an additional 90 days) pursuant to § 76.933(b). The franchising authority shall provide notice of its decision to the cable system and shall provide public notice of its initial decision within seven days pursuant to local procedural rules for public notice. Operators or consumers may make an interlocutory appeal of the initial decision to the Commission within 14 days of the initial decision. Operators shall provide notice to franchise authorities of their decision whether or not to appeal to the Commission within this period. Consumers shall provide notice to franchise authorities of their decision to appeal to the Commission within this period.

(e) A limited initial decision under paragraph (b) of this section shall toll the time periods under § 76.933 within which local authorities must decide local rate cases. The time period shall resume running seven days after the Commission decides the interlocutory appeal, or seven days following the expiration of the period in which an interlocutory appeal pursuant to paragraph (b) of this section may be filed.

(f) A local franchising authority alternatively may decide whether a collective offering of "a la carte" channels will be treated as an NPT as a part of its final decision setting rates for the basic service tier. That decision may then be appealed to the Commission as provided for under § 76.945.

7. Section 76.987 is added to read as follows:

§ 76.987 New product tiers.

(a) Operators may establish a category of CPSTs, referred to as "new product tiers" ("NPTs"), and offer these tiers to subscribers at prices they elect.

(b) In order to be eligible to offer NPTs, cable operators must meet the following conditions:

(1) Operators offering NPTs are prohibited from making fundamental changes to what they offer on their BSTs and CPSTs offerings on September 30, 1994. Operators may drop channels or move channels between BSTs and/or CPSTs or to an a la carte offering so long as the aggregation of such changes do not constitute a fundamental change in their BST or CPSTs.

(2) Operators may not drop channels that were offered on their BSTs or CPSTs on September 30, 1994 and move them to NPTs unless they wait at least two years from the date the channels were dropped from the BSTs or CPSTs. Time shifted versions, slightly altered versions or renamed versions of channels offered on BSTs and CPSTs on September 30, 1994 shall not be exempt from this restriction.

(3) Operators must market their BSTs and CPSTs so that customers should be reasonably aware that:

(i) Those tiers are being offered to the public;

(ii) The names of the channels available on those tiers; and

(iii) The price of the tiers. A subscriber may not be charged for an NPT unless the cable operator has obtained the subscriber's affirmative consent. Changes to the fundamental nature of an NPT must be approved by subscribers in accordance with § 76.981.

(4) Operators may not require the subscription to any tier, other than a BST, as a condition for subscribing to an NPT and operators may not require subscription to an NPT as a condition for subscribing to a CPST. These restrictions will not apply to cable operators prior to October 5, 2002, if such operators lack the capacity to offer BSTs and NPTs without also providing other intermediate tiers of service as provided in § 76.900(c).

(c) Operators may offer the same service on NPTs as are on one or more BSTs or CPSTs. A channel that occupied a CPST or BST part-time on September 30, 1994 also may be offered full-time on an NPT as long as it continues to be offered at least part-time on CPST or BST, under substantially the

same conditions as before it was offered on the NPT. If a channel occupies a BST or CPST (regulated pursuant to § 76.922) full-time on September 30, 1994, and is subsequently reduced to part-time on the BST or CPST, that channel may not be offered on an NPT full-time. Operators that offer a channel both on an NPT and a BST or CPST will have a continuing obligation to ensure that subscribers are aware that the channels are available on the CPST or BST.

(d) Operators may temporarily place new channels on CPSTs for marketing purposes and then move them to NPTs. In order for an operator to move a channel from a CPST to an NPT pursuant to this paragraph, the channel must not have been offered on a BST or CPST prior to October 1, 1994.

(e) After initially electing to offer an NPT, a cable operator may cease to provide the NPT, upon proper notice to subscribers pursuant to § 76.964. If an operator drops an NPT and subsequently determines to reestablish that tier, at the time of the reestablishment it must comply with the conditions for offering NPTs set forth in paragraph (b) of this section.

(f) If the Commission receives a complaint about an NPT, the operator need not file the rate justification provided in § 76.956, but shall within the time period provided by that rule file documentation that the NPT meets all the conditions set forth in this section.

(g) Within 30 days of the offering of an NPT, operators shall file with the Commission, a copy of the new rate card that contains the following information on their BSTs, CPSTs and NPTs:

(1) The names of the programming services contained on each tier; and

(2) The price of each tier. Operators also must file with the Commission, copies of notifications that were sent to subscribers regarding the initial offering of NPTs. After this initial filing, cable operators must file updated rate cards and copies of customer notifications with the Commission within 30 days of rate or service changes affecting the NPT.

[FR Doc. 94–29442 Filed 12–5–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 663

[Docket No. 931249–3349; I.D. 112594B]

Pacific Coast Groundfish Fishery

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

ACTION: Closure; fishing restrictions; request for comments.

SUMMARY: NMFS announces the closure of the commercial fishery for sablefish and a reduction in the trip limits for Dover sole and thornyheads north of 36°00′ N. lat., and a reduction in the coastwide trip limit for widow rockfish in the groundfish fishery off Washington, Oregon, and California. This action is authorized by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP). The closure and trip limits are designed to keep landings as close as possible to the 1994 harvest guidelines for these species while extending the fisheries as long as possible during the year.

DATES: Effective from 0001 hours (local time) December 1, 1994, until the effective date of the 1995 annual specifications and management measures, as published in the **Federal Register**. Comments will be accepted through December 21, 1994.

ADDRESSES: Submit comments to William Stelle, Jr., Regional Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN–C15700, Seattle, WA 98115–0070; or Hilda Diaz-Soltero, Regional Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140; or Rodney McInnis at 310–980–4040.

SUPPLEMENTARY INFORMATION: The FMP and its implementing regulations (50 CFR part 663) provide for rapid changes to specific management measures that have been designated "routine." Trip landing and frequency limits (hereafter referred to as trip limits) for Dover sole, thornyheads, sablefish, and widow rockfish are among those management measures that have been designated as routine at 50 CFR 663.23(c). Implementation and further adjustment of those measures may occur after consideration at a single Pacific Fishery Management Council (Council) meeting.

A trip limit is defined at 50 CFR 663.2 as the total allowable amount of a groundfish species or species complex by weight, or by percentage of weight of fish on board, that may be taken and retained, possessed, or landed from a single fishing trip. Trip limits may limit the amount of fish that a vessel may legally land per fishing trip or cumulatively per unit of time, or the number of landings that may be made by a vessel in a given period of time. A daily trip limit is the maximum amount that may be taken and retained, possessed or landed per vessel in 24 consecutive hours, starting at 0001 hours local time. Only one landing of groundfish may be made in that 24-hour period. A cumulative trip limit is the maximum amount that may be taken and retained, possessed, or landed per vessel in a specified period of time, without a limit on the number of landings or trips. Cumulative trip limits for 1994 apply to calendar months.

Background

Sablefish: The 1994 sablefish harvest guideline of 7,000 metric tons (mt) north of 36°00′ N. lat. is divided among several fishing groups (59 FR 685; January 6, 1994). After subtracting 300 mt for the Washington coastal treaty Indian tribes, the remaining 6,700 mt is allocated 6,070 mt for the limited entry fishery and 630 mt for the open access fishery. The limited entry allocation is further subdivided 3,520 mt (58 percent) for the trawl fishery and 2,550 mt (42 percent) for the nontrawl fishery. At the Council's October 1994 meeting, review of the best available information on sablefish catches indicated that, at current catch rates, the limited entry allocation for the trawl fishery would be reached by November 4, and if not curtailed, would be exceeded by about 529 mt, or 15 percent, by the end of 1994. By October 8, 1994, the nontrawl limited entry fishery had already exceeded its allocation by 681 mt, or 27 percent. The open access sablefish fishery has not reached its allocation, 630 mt, and is not likely to before the end of 1994. Nevertheless, the overall harvest guideline north of 36°00′ N. lat. has already been reached and is projected to be exceeded by about 9 percent in 1994 if landings are not curtailed. To keep landings from further exceeding the harvest guideline in 1994, the Council recommended closure of the commercial sablefish fishery north of 36°00′ N. lat. for the remainder of the year, beginning December 1, 1994. NMFS agrees with the Council's recommendation, and is implementing a closure by setting the trip limit for sablefish at zero for all commercial gear

types north of 36°00′ N. lat. Although closure of the entire sablefish fishery results in closure of the open access fishery for sablefish as well, it was considered necessary to prevent the transfer of effort from the limited entry fishery, which could result in the open access allocation quickly being reached and the harvest guideline being further exceeded. Even with the closure in December, the 1994 harvest guideline for sablefish will be exceeded by an estimated 4.7 percent. Since the 1994 sablefish harvest guideline does not apply to the area south of 36°00′ N. lat., that area remains open to sablefish fishing under existing trip limits. Those are 350 lb (159 kg) daily for limited entry nontrawl and open access fisheries, and for the limited entry trawl fishery, 6,000 lb (2,722 kg) cumulative per month, with a per-trip limit of no more than 1,000 lb (454 kg) or 33.333 percent of the legal thornyheads and Dover sole, whichever is greater.

Limited Entry Trawl Fishery—Dover Sole and Thornyhead Trip Limits

In the limited entry trawl fishery, Dover sole, thornyheads, and sablefish are managed collectively as the "DTS complex," because they are unavoidably caught together. If the trawl trip limits for Dover sole and thornyheads are not reduced to minimal levels, substantial amounts of sablefish are likely to be caught and discarded. In order to minimize the incidental catch and wastage of sablefish in the trawl fishery for Dover sole and thornyheads after the retention of sablefish is prohibited, the Council also recommended reductions in the trip limits for these species. NMFS agrees with this recommendation. The Dover sole cumulative monthly trip limit is reduced from 30,000 lb (13,608 kg) to 6,000 lb (2,722 kg) and the cumulative monthly trip limit for thornyheads is reduced from 8,000 lb (3,629 kg) to 1,500 lb (680 kg) beginning December 1, 1994. Because sablefish cannot be landed, the cumulative limit for the DTS complex, which was designed primarily to protect sablefish, is no longer needed and will no longer apply north of 36°00′ N. lat. At the Council's October 1994 meeting, the best available data suggested that, at then-current rates, 58 percent of the coastwide harvest guideline for Dover sole (16,900 mt) would be utilized (9,854 mt), and the harvest guideline for thornyheads (7,000 mt) would be reached near December 15, 1994, with about a 2 percent overage by the end of the year. These trip limit reductions will exacerbate the failure to achieve the harvest guideline for Dover sole, but may keep landings within the harvest guideline for thornyheads.

Operating north and south of 36°00 N. lat.: This action results in different trip limits south and north of 36°00 N. lat.; the trip limits for thornyheads and Dover sole south of 36°00 N. lat. are less restrictive. It also closes all commercial fishing for sablefish north of 36°00 N. lat.; and current trip limits for trawl and nontrawl gear are unchanged south of 36°00 N. lat. This raises questions about the application of trip limits and the sablefish closure for vessels that operate both north and south of 36°00 N. lat. during December 1994.

The trip limits and sablefish closure will be applied in much the same way as the trip limits for bocaccio and the *Sebastes* complex are applied north and south of Cape Mendocino, CA (59 FR 46002, September 6, 1994). In the limited entry fishery, a vessel that fishes for any species north of 36°00 N. lat. during the month is subject to, for the entire month, the closure for trawl-caught sablefish and the trip limits for Dover sole and thornyheads caught north of 36°00 N. lat., no matter where the fish are possessed or landed. Similarly, if a vessel fishes for Dover sole and thornyheads south of 36°00 N. lat. and possesses or lands them north of 36°00 N. lat., the northern limits apply to that vessel for the entire month. No vessel may possess or land sablefish north of 36°00 N. lat. during December, no matter where the fish are harvested. In the limited entry nontrawl and open access fisheries for sablefish, the daily trip limit and closure would be applied the same way, except on a daily rather than a monthly basis.

Widow Rockfish: The 1994 harvest guideline for widow rockfish is 6,500 mt, which is further allocated between the limited entry (6,260 mt) and the open access fisheries (240 mt). On January 1, 1994, the cumulative trip limit for widow rockfish was set at 30,000 lb (13,608 kg) per month (59 FR 685, January 6, 1994).

At the Council's October 1994 meeting, a continuing review of the best information available indicated that, through early October, 80 percent (5,207 mt) of the 1994 harvest guideline for widow rockfish had been landed and the harvest guideline would be reached by November 25, 1994. Therefore, the Council recommended that the cumulative trip limit for widow rockfish be reduced from 30,000 lb (13,608 kg) per month to 3,000 lb (1,361 kg) per trip. NMFS agrees. Even by reducing the trip limit to 3,000 lb (1,361 kg) on December 1, the harvest guideline may still be exceeded by about 3 percent for the year.

Secretarial Action

NMFS hereby announces, pursuant to 50 CFR 663.23 (b)(2), (c)(1), and (c)(2), changes to the following management measures for the limited entry and open access fisheries as announced at 59 FR 685, January 6, 1994, and subsequently modified at 59 FR 23638, May 6, 1994; 59 FR 29736, June 9, 1994; 59 FR 33700, June 30, 1994; and 59 FR 46002, September 6, 1994. In addition, paragraphs E.(3)(b) through (e) on sablefish and the DTS complex are redesignated as E.(3)(c) through (f). All other current provisions remain unchanged.

1. Widow Rockfish

B(1) *Limited-entry Fishery.* No more than 3,000 lb (1,361 kg) of widow rockfish may be taken and retained, possessed, or landed per vessel per trip. (Widow rockfish are also called brownies.)

B(2) *Open-access Fishery.* Within the rockfish open access trip limits (see section G., 59 FR 23638, May 6, 1994), no more than 3,000 lb (1,361 kg) per trip may be widow rockfish.

2. Sablefish

All Gear, All Fisheries North of 36°00 N. Lat.:

E.(3)(b) *Sablefish Closure*—Limited Entry and Open Access Fisheries. The trip limit for all commercial gear north of 36°00 N. lat. is zero. It is unlawful to take and retain, possess, or land sablefish north of 36°00 N. lat. in the limited entry and open access fisheries. For vessels that operate both north and south of 36°00 N. lat. during December 1994 (see paragraph E.(5)).

3. Dover sole, Thornyheads and Trawl-Caught Sablefish—Limited Entry Fishery

E.(3)(c)(ii) *Trip Limits.*

(1) North of 36°00 N. lat., no more than 6,000 lb (2,722 kg) cumulative of Dover sole and no more than 1,500 lb (680 kg) cumulative of thornyheads may be taken and retained, possessed, or landed per vessel in a calendar month. (2) South of 36°00 N. lat., no more than 30,000 lb (13,608 kg) cumulative of the DTS complex may be taken and retained, possessed, or landed per vessel in a calendar month, of which no more than 8,000 lb (3,629 kg) cumulative of thornyheads and 6,000 lb (2,722 kg) cumulative of trawl-caught sablefish may be taken and retained, possessed, or landed per vessel in a calendar month. (3) In any trip south of 36°00 N. lat., no more than 1,000 lb (454 kg) or 33.333 percent of the legal thornyheads and Dover sole, whichever is greater, may be trawl-caught sablefish; and no

more than 5,000 lb (2,268 kg) may be trawl-caught sablefish smaller than 22 inches (56 cm) (total length). (4) For vessels that operate both north and south of 36°00 N. lat. during December 1994 (see paragraph E.(5)).

4. Sablefish—Nontrawl Limited Entry Fishery South of 36°00 N. Lat.

E.(3)(d)(iii)(2) The daily trip limit for sablefish caught with nontrawl gear by a vessel in the limited entry fishery south of 36°00 N. lat. remains at 350 lb (159 kg). This trip limit applies to sablefish of any size. For vessels that operate both north and south of 36°00 N. lat. during December 1994 (see paragraph E.(5)).

5. Sablefish—Open Access Fishery South of 36°00 N. Lat.

E.(4) *Open-access Fishery.* The daily trip limit for sablefish south of 36°00 N. lat. is 350 lb (159 kg). For vessels that operate both north and south of 36°00 N. lat. during December 1994 (see paragraph E.(5)).

6. Sablefish/Dover Sole/Thornyheads—All Gear, All Fisheries

E.(5) *Operating North and South of 36°00 N. Lat.*

(a) *Dover Sole, Thornyheads, and Trawl-caught Sablefish.* If a vessel is used to fish for any species north of 36°00 N. lat. during the month, then that vessel is subject to, for the entire month, the sablefish closure and the trip limits for Dover sole and thornyheads north of 36°00 N. lat., no matter where the fish are possessed or landed. Similarly, if a vessel is used to take and retain Dover sole or thornyheads south of 36°00 N. lat. and possesses or lands Dover sole or thornyheads north of 36°00 N. lat., that vessel is subject to the northern trip limit for these species. No vessel may possess or land sablefish north of 36°00 N. lat. during December 1994, no matter where the fish are harvested.

(b) *Nontrawl Sablefish.* If a vessel is used to fish for any species north of 36°00 N. lat. during a day, then that vessel may not take and retain sablefish during that day, no matter where the fish are taken and retained, possessed or landed. No vessel may possess or land sablefish north of 36°00 N. lat., no matter where the fish are harvested.

7. Sablefish—Open Access Fishery South of 36°00 N. Lat.—Set Net, Hook-and-Line, Pot, and Other Exempt Gear Except Exempted Trawl Gear

G.(1)(b) *Sablefish.* The daily trip limit for sablefish south of 36°00 N. lat. is 350 lb (159 kg). For vessels that operate both north and south of 36°00 N. lat. during December 1994 (see paragraph E.(5)).

8. Shrimp and Spot and Ridgeback Prawn Open Access Fisheries

G.(2)(c) Within these limits, a vessel may not take and retain, possess, or land more widow rockfish, Pacific ocean perch, thornyheads, sablefish, DTS complex, *Sebastes* complex, yellowtail rockfish, bocaccio, Dover sole, or Pacific whiting than authorized in the limited-entry fishery. Therefore it is unlawful to take and retain, possess, or land sablefish taken with shrimp, spot prawn, or ridgeback prawn trawl gear north of 36°00 N. lat. (see paragraphs B.(1), C.(2), D.(1), E.(3), and F.(1)).

9. California Halibut or Sea Cucumber Open Access Fisheries [South of Point Arena, CA (38°57'30" N. lat.)]

G.(3)(c) No groundfish landing by California halibut or sea cucumber trawl may be in excess of the limited-entry trip limit for trawl gear. Therefore, it is unlawful to take and retain, possess, or land sablefish taken with California halibut or sea cucumber trawl gear north of 36°00 N. lat. (see paragraphs B.(1), C.(2), D.(1), E.(3), and F.(1)).

Classification

The determination to take these actions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the Office of the Regional Director, Northwest Region, (see ADDRESSES) during business hours. There was an opportunity for public comment at the Council's October 1994 meeting in San Francisco, CA.

This action is taken under the authority of 50 CFR 663.23(c) and is not subject to review under E.O. 12866.

Dated: November 30, 1994.

David S. Crestin,

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

[FR Doc. 94–29908 Filed 11–30–94; 4:54 pm]

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Proposed Rules

Federal Register
Vol. 59, No. 233
Tuesday, December 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 AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 318 and 381

[Docket No. 93–008P]

RIN 0583–AB68

Poultry Products Produced by Mechanical Separation and Products In Which Such Poultry Products Are Used

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal poultry products inspection regulations to prescribe a definition and standard of identity and composition for the finely comminuted poultry product that results from the mechanical separation and removal of most of the bone from poultry carcasses and parts of carcasses ("Mechanically Separated (Kind) (MS(K))" including requirements for bone solids content (measured as calcium content) and bone particle size; specify certain limitations for the use of MS(K); establish recordkeeping requirements for bone solids content and bone particle size; and establish labeling requirements for MS(K), and for poultry products and meat food products containing MS(K) as an ingredient. This proposed action is intended to establish the Agency's requirements with respect to poultry products produced by mechanical separation, including the requirement that they be labeled as, in the case of MS(K) derived from chicken carcasses, "mechanically separated chicken." Such action would help ensure that meat and poultry products distributed to consumers are not labeled in a false or misleading manner and are not misbranded.

DATES: Comments must be received on or before February 6, 1995.

ADDRESSES: Written comments to: Policy, Evaluation and Planning Office, Attn: Diane Moore, FSIS Docket Clerk, Room 3171, South Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments should be directed to Mr. John W. McCutcheon, (202) 720–2709. (See also "Comments" under "Supplementary Information.")

FOR FURTHER INFORMATION CONTACT: John W. McCutcheon, Deputy Administrator, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, Area Code (202) 720–2709.

SUPPLEMENTARY INFORMATION:

Purpose of the Proposal

This proposal would amend the regulatory requirements for the finely comminuted poultry product resulting from the mechanical separation and removal of most of the bone from poultry carcasses and parts of carcasses and for the finished poultry products and meat food products in which this product is used as an ingredient. The Department first conducted a rulemaking regarding this product in 1969. Over the years, the amount of such product being manufactured and the number and range of poultry products and meat food products in which it is used as an ingredient, has increased significantly. Moreover, the Department has gained a great deal of knowledge from its rulemakings regarding the livestock product resulting from the mechanical separation and removal process which is called Mechanically Separated (Species) (MS(S)). More recently, in a lawsuit, *Bob Evans Farm, Inc. et al.*, v. *Mike Espy, Secretary of Agriculture (D D.C. Civil Action No. 93–0104)*, several red meat sausage manufacturers alleged that, without a regulatory definition and standard for poultry products produced by mechanical separation, a disparate situation exists between labeling mechanically separated poultry and the livestock product resulting from the mechanical separation and removal process for which a regulatory definition and standard exist. The red meat sausage manufacturers have alleged that the disparate labeling situation poses an unfair advantage for the manufacturers of mechanically separated poultry products.

In view of these developments, and taking into account the information and experience acquired since 1969 and current regulatory policies, the Agency reviewed and reevaluated the existing regulations, particularly in light of the labeling issues. As a result of its review and reevaluation, the Agency believes that further regulatory action is necessary pursuant to its statutory responsibilities to protect the public and prevent the preparation and distribution in commerce of poultry products and meat food products which are misbranded or not properly marked, labeled, or packaged. See sections 4(h) and 8 of the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451 *et seq.)* and sections 1(n) and 7 of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*); 21 U.S.C. 453(h), 457 and 601(n), 607. In particular, the Department now believes:

(1) The method of deriving poultry products by the mechanical separation and removal of most of the bone from the meat and other tissues of poultry carcasses and parts of carcasses results in a product whose physical form and texture differ materially from those of other boneless poultry products produced by traditional deboning techniques. Mechanically separated poultry is derived using a machine that operates on the differing resistance of bone and tissue to passage through small openings, whether it employs sieves, screens, or other devices. Such machines mechanically separate and remove most of the bone from poultry carcasses and parts of carcasses resulting in a finely comminuted, paste-like product. The starting materials, which may have undergone an initial bone breaking process, are pushed under high pressure through equipment with apertures that allow a small amount of powdered bone to pass through with the soft tissue. This is different than boneless poultry derived by traditional means, i.e., hand-deboning, and such differences have potential consequences for consumer expectations. FSIS has statutory responsibilities under the PPIA and FMIA to assure that consumers receive poultry and meat food products that are not adulterated and that bear labeling that is not false or misleading. Despite this, the regulations do not distinguish between poultry products produced by mechanical separation and poultry products produced by traditional deboning techniques, i.e., hand-

deboning, in terms of product identity and composition or use.

(2) Mechanically separated poultry is produced by essentially the same technology and has characteristics (i.e., physical form and texture) similar to those of the livestock product, MS(S). Yet, the regulatory requirements for labeling these two products currently are inconsistent with one another.

Therefore, the Department is proposing to amend the poultry products inspection regulations (9 CFR Part 381) to revise and supplement the requirements for the manufacture, characteristics, and labeling of poultry products produced by mechanical separation and the labeling of products in which they are used as ingredients. Under this proposal, mechanically separated product derived from chicken or turkey would be labeled as "mechanically separated chicken" or "mechanically separated turkey," as the case may be.

Background

I. Introduction

Poultry products produced by mechanical separation, also referred to as mechanical deboning, are characteristically finely comminuted (i.e., finely ground) in form and result from the mechanical separation and removal of most of the bone from attached skeletal muscle and other tissue of poultry carcasses and parts of carcasses. The products are prepared from various materials, including necks, backs, and whole carcasses. These starting materials may be raw or cooked, may contain varying amounts of muscle and/or skin, and may contain kidneys, except when product is made from mature chickens or mature turkeys. Kidneys of mature chickens or turkeys may not be used as human food (9 CFR 381.65(d)).

The technology to mechanically separate and remove most of the bone from attached skeletal muscle and other tissue of poultry carcasses and parts of carcasses began in the late 1950's or early 1960's. The Agency's initial reaction was to consider the resulting product adulterated because of the amount of bone present and the physical size of the bone particles. By the mid-1960's, the industry had modified and improved the equipment used to produce poultry product by mechanical separation such that the product contained 1 percent or less bone solids with an extremely small bone particle size. This prompted the Agency to reevaluate its position. Widespread commercial production of products containing mechanically separated poultry began in the early 1970's. By 1975, poultry product produced by mechanical separation was being used as an ingredient in poultry and meat food products such as franks, bologna, salami, and rolls.

Today, poultry products made with poultry produced by mechanical separation include cooked poultry sausages (such as chicken frankfurters, turkey salami, and turkey bologna), poultry patties and nuggets (such as chicken patties and nuggets), and poultry baby foods. The level at which it is used has depended in part on technological capabilities and has reached 100 percent of the poultry product portion of a number of cooked poultry sausage products. Poultry product produced by mechanical means is also used at up to 49 percent of the formulations of certain meat food products, e.g., beef and turkey chili, provided that it is identified in the product name as "turkey" or "chicken," and used in meat food products including cooked sausages, such as frankfurters and bologna, at a level of up to 15 percent of the total ingredients, excluding water (9 CFR 319.180) without being identified in the product name.

Over the years, the poultry and meat food industries have also referred to poultry products produced by mechanical means as "comminuted (i.e., ground) poultry." Terminology such as "finely comminuted," "finely ground," and "mechanically deboned" have been used on poultry product labels to describe the form (i.e., physical appearance) and composition of the product according to 9 CFR 381.117(d).

Poultry products produced by mechanical means are currently subject to 9 CFR 381.117(d) relating to boneless poultry products. This regulation requires boneless poultry products to be labeled in a manner that accurately describes their actual form and composition. The product name must indicate the form of the product, e.g., emulsified or finely chopped, and the kind name of the poultry from which it is derived. If the product does not consist of natural proportions of skin and fat, as they occur in the whole carcass, the product name must also include terminology that describes the actual composition. If the product is cooked, it must be so labeled. Section 381.117(d) also limits the bone solids content of boneless poultry products to 1 percent.

Existing regulations do not distinguish between boneless poultry products produced by mechanical separation and poultry products produced by traditional methods, e.g., hand-deboning. Poultry product produced by mechanical separation is declared in the ingredients statement of a product in which it is used, along with any other boneless poultry product used, as "chicken" or "turkey" where skin and fat are included but not in excess of their natural proportions, or as "chicken meat" or "turkey meat" when skin with attached fat is not included.

II. Report on Health and Safety of Mechanically Deboned Poultry

In 1976, the Department initiated an analytical program to obtain data on a number of nutrients and substances of potential health concern in poultry products produced by mechanical separation. Data were also gathered from scientific literature, industry, other government agencies, and university scientists. Details of the analytical program and a resulting evaluation were published in a June 1979 report entitled "Health and Safety Aspects of the Use of Mechanically Deboned Poultry" (hereafter referred to as the 1979 Report). An errata supplement correcting certain items in the report was prepared and published on August 14, 1979 (44 FR 47576). (The 1979 Report and the errata supplement are available for public inspection in the FSIS Docket Clerk's office.) On June 29, 1979, the Agency announced the availability of this report and encouraged interested members of the public to comment on its content. The Department also notified the public that it was particularly interested in receiving comments regarding the proper labeling of products containing poultry product produced by mechanical separation and what means, if any, should be taken to implement the labeling recommendations in the report (44 FR 37965).

The Department received 221 comments, most of which were general reactions to the labeling issues raised in the notice, and health, safety, or economic concerns. Of the 187 commenters that expressed a general opinion on the adequacy of the regulations concerning mechanically deboned poultry products, 175 were supportive. Some commenters stated that the regulations have effectively controlled the use of product produced by mechanical separation over many years with a wide base of consumer acceptance, that such product is not significantly different from product produced by hand-deboning, that these regulations provide truthful labeling, and/or that the report and scientific literature support the adequacy of current regulations. Other commenters indicated that mechanically deboned

poultry should be regulated the same as mechanically separated (species) (MS(S)) (then named mechanically processed (species) product).

III. GAO Report on Mechanically Separated Products

In 1983, the General Accounting Office (GAO) issued a report recommending that the Secretary of Agriculture direct the Administrator of FSIS to establish specific standards on poultry products produced by mechanical separation and labeling requirements on products made with such poultry products as had been done for MS(S) and products made with MS(S). MS(S) is a finely comminuted product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of livestock carcasses and parts of carcasses that meets the provisions of 9 CFR 319.5.

IV. Improvements in Machinery for Poultry Products Produced by Mechanical Separation

The Agency has monitored the advances in the technology for mechanically separating poultry, also referred to as mechanical deboning, over the last decade. There have been improvements in the efficiency of the mechanical separation and removal of most of the bone from attached skeletal muscle and tissue of poultry carcasses and parts of poultry carcasses. Today, it has been estimated that roughly 1 billion pounds of raw poultry materials are used to manufacture 700 million pounds of mechanically separated poultry, also referred to as mechanically deboned poultry (MDP), which is used, in turn, to formulate approximately 400 million pounds of poultry sausages (including franks, bologna, and salami), and 300 million pounds of poultry nuggets and poultry patties.[1] There have been major advances in mechanical deboning machinery in terms of the effectiveness of bone removal from skeletal muscle and other tissues of poultry carcasses and parts of carcasses. This has been accomplished through enhancements and modifications of the bone-removal devices that are part of the mechanical deboning machines. There have been continued refinements of certain operational parameters of the machinery, e.g., the ability for operators to adjust the pressure needed to force ground poultry bones with adhering muscle and other tissues through screens to separate muscle and other tissues from bone, and the size of the apertures (i.e., holes) in the screens and sieves through which the ground bones, muscle, and other tissues are pushed.

In 1969, the Agency amended the regulations for poultry and poultry products inspection to, among other things, provide labeling requirements for boneless poultry products, as well as a prescribed bone solids content of not more than 1 percent (34 FR 13991). This limit was based on an evaluation conducted by the Department of the operating results in a series of poultry establishments that used mechanical deboning equipment. Analyses were made of 485 samples of raw, mechanically deboned product from nine commercial operations that used the three types of machines most often used in the process. The analyses showed that the equipment, at that time, could be operated under commercial conditions to produce boneless poultry that contained no more than 1 percent bone solids, on a raw weight basis, and the Department concluded that it was demonstrated that it was practical to limit the bone content in deboned poultry to 1 percent.

In light of the improvements that have occurred with regard to the machinery used to mechanically separate and remove most of the bone from the muscle and other tissues of poultry carcasses and parts of carcasses, FSIS recently conducted a study of the bone solids content of mechanically separated poultry.[2] The percentage of bone solids content (determined by calcium analysis) in boneless poultry products produced by mechanical deboning was collected from approximately 50 establishments during August 1993, and represented a sampling of over 2000 products. The data indicate that the mean bone solids content of the samples of these products was approximately 0.6 percent; generally, half of the samples were above 0.6 percent and half were below 0.6 percent.

V. RTI Study

In response to complaints from industry, some of them longstanding, that the Agency is "not regulating meat and poultry equitably," FSIS contracted out to the Research Triangle Institute (RTI) a comparison of the meat and poultry inspection regulations. RTI found many differences in the two sets of regulations and narrowed down to 12 the areas of the regulations where significant differences exist.[3] FSIS has studied these areas to determine whether, in the actual conduct of inspection, they result in an inequitable application of the inspection laws, and, if so, what might be done to mitigate the inequities.

Among the areas identified in the RTI study is mechanically separated product. It notes that regulations exist on the use of MS(S), but not on the use of MDP. The RTI study concluded that, in general, "the regulations covering meat and poultry have been designed with the same intent—to protect 'the health and welfare of consumers by assuring that meat and meat food products [or poultry products] are wholesome, not adulterated, and properly marked, labeled, and packaged' (21 U.S.C. 602 and 451). Although the intent of the regulations remains the same, the actual requirements are quite different." The study further concludes that the bases for no comparable regulation for MDP are "unfavorable consumer perceptions and court decisions resulting in label and use restrictions for MS(S); poultry has no definitional requirements for MS(S) (e.g., can be defined as 'chicken' or 'turkey')."

Mechanically separated red meat food product became the subject of consumer criticism in the mid-1970's after USDA proposed to allow its use in meat products and to allow it to be labeled as meat (i.e., beef or pork). USDA also issued an interim rule that included standards for the use of mechanically separated red meat product. A lawsuit soon followed in which the court found that this product is not "meat" as traditionally defined within the scope of the Federal Meat Inspection Act. The court further found that USDA had not considered adequately the health and safety effects of mechanically separated red meat food product.

To respond to questions on health and safety raised by the court, a panel of government scientists was convened to examine the questions. The panel found that scientific studies established no unique health risks associated with mechanically separated red meat food product, but that the product is sufficiently different from muscle tissue meat in consistency and composition to require separate labeling. The panel recommended, among other things, that usage limitations be placed on this product.[4]

[1] Information provided by industry is available for public inspection at the FSIS Docket Clerk's office.

[2] Data available for public inspection at the FSIS Docket Clerk's Office.

[3] A copy of the RTI study is available for public inspection in the FSIS Docket Clerk's office.

[4] The panel's conclusions and recommendations were published in reports titled "Health and Safety

Continued

The panel reports, among other things, led FSIS to issue final regulations on June 20, 1978, that established preparation, composition, usage, and labeling requirements for mechanically separated red meat food product and required that it be produced only under a quality control program approved by the Agency (43 FR 26416). This rule established a definition and standard of identity for this product that necessitated it being listed separately from meat in the ingredients statement of a product in which it was used. Additional rulemaking on June 29, 1982, reaffirmed the Agency's position that the product, now called MS(S), is not "meat" as traditionally defined (47 FR 28214).

During this same period, MDP underwent product development separately from mechanically separated red meat food product without similar FSIS regulation. Early distinctions in regulatory treatment were largely due to historical differences in how the two industries used these products and the way in which they came to public attention. One significant difference is that mechanically separated red meat food product was being considered for use in products that had previously contained muscle meat. The use of MDP in poultry hotdogs created less controversy. Poultry hotdogs did not exist before they were made with MDP. Thus, consumers had no prior expectations about the formulation.

Differences in regulatory treatment of the product, now called MS(S), and MDP have continued since that time. The meat industry claims that the effect of those differences has been a reluctance on the part of processors to use MS(S), while MDP use has expanded. In response to the early rulemakings on MS(S), the meat industry claimed that consumers would not buy products if MS(S) is listed on the label. Similarly, in responding to the March 1994 advance notice of proposed rulemaking (ANPR) on MDP (discussed later in this document), the poultry industry claimed that, if they had to label MDP as a poultry ingredient, consumers would be misled into thinking that they are purchasing products inferior to what they have historically purchased or that the product has changed. If the industry believes that consumers will be misled into thinking the product has changed, it should find some way other than inaccurate labeling to assure them it is the same product. The Agency believes that if the current labeling is misleading, it has no choice but to assure that the ingredients statement accurately informs the consumer what is in the product. If consumers would behave differently with different information, then that is itself evidence that the information is important to them. It is the Agency's responsibility under its consumer protection mission to assure the information is accurate and not misleading.

The Agency's regulation on the use of MS(S) and the absence of regulation on the use of MDP have raised two major policy issues. The first is whether current regulations are adequately protecting consumers. The second is whether different regulatory treatment for these similar products is justified. FSIS is not proposing this regulation because of the current differences in the regulatory treatment of MDP and MS(S), but rather because its basic statutory mission is to assure that products bear labeling that is truthful and not misleading. Accordingly, FSIS has determined that providing this assurance requires the regulation of MDP.

V. Advance Notices of Proposed Rulemaking

On June 15, 1993, FSIS published an advance notice of proposed rulemaking (ANPR) (58 FR 33040) soliciting comments, information, scientific data, and recommendations regarding the consideration of the need for labeling of poultry product produced by mechanical separation and products in which such poultry product is used. FSIS received 2744 comments in response to the ANPR, most of which were general reactions to labeling issues. The majority of commenters responded to whether there was a need to identify mechanically separated poultry in the ingredients statement on the labels of meat and poultry products in which it is used as an ingredient. One thousand four hundred eighty-seven commenters supported identifying mechanically separated poultry in the ingredients statement because, the commenters stated that, among other things, consumers have "a right to know" it is an ingredient. One thousand two hundred fifty-seven commenters did not support identifying mechanically separated poultry in the ingredients statement, citing, in part, that current policies are satisfactory and that labeling it would mislead consumers into thinking that they are purchasing products that are inferior or different than the product they have historically purchased. FSIS concluded that there is a "truth-in-labeling" issue that is founded in the mandate under which the Agency operates, viz., protecting consumers from misbranded poultry and meat products.

Subsequently, FSIS decided to obtain the information and data necessary to pursue the development of amendments to the Federal poultry products inspection regulations to define and standardize, or establish other requirements for poultry products produced by mechanical separation, including possible provisions for the composition, characteristics, and use of such products, and requirements for manufacturing and labeling such products. On March 3, 1994, FSIS published another ANPR (59 FR 10230) which solicited comments and information from the meat and poultry industries and industry-related organizations, the scientific community, academia, consumers and consumer groups, and other interested parties on its tentative positions regarding poultry products produced by mechanical separation and products in which such poultry products are used.

In the March 1994 ANPR, FSIS considered, among other things, that certain poultry products produced by mechanical separation, i.e., those with greater than 0.6 percent bone solids content, but no more than 1 percent bone solids content be separately identified on the labels of products in which they are used as ingredients by a distinct name. However, because of the improvements in separating the bone from muscle and other tissues of poultry carcasses and parts of carcasses, FSIS considered that some poultry products derived from mechanical separation machinery, i.e., those with 0.6 percent or less bone solids, be identified on the label of products in which they are used as poultry or poultry meat, e.g., "chicken" and "turkey meat."

VI. Discussion of Comments on March 1994 ANPR

FSIS received 106 comments in response to the March 1994 ANPR. Fifty-one comments were submitted by food manufacturers/distributors, 44 comments by consumers, 7 by trade associations, 2 by academia, 1 by a law firm, and 1 by a developer of machinery. The majority of the comments did not support the ANPR. The comments are summarized below.

A. *Bone Solids Content and Labeling.* According to the tentative positions presented in the March 1994 ANPR, the tentative provisions for poultry product produced by mechanical separation

Aspects of the Use of Mechanically Deboned Meat, Volume I—Final Report and Recommendations, Select Panel" and "Health and Safety Aspects of the Use of Mechanically Deboned Meat, Volume II—Background Materials and Details of Data." These reports are available for public review in the FSIS Docket Clerk's office.

would classify or "categorize" such product by bone solids content (as measured by calcium content). Mechanically separated poultry with 0.6 percent or less bone solids content would be termed "(Kind)" or "(Kind) meat," where "kind" refers to chicken or turkey. Mechanically separated poultry with greater than 0.6 percent bone solids content (but not greater than 1 percent) would be termed "Mechanically Separated (Kind)."

Eighty-one commenters addressed the issue regarding the classification of poultry products produced by mechanical separation according to bone solids content. Of the 81 commenters, 78 disagreed with the requirements discussed in the ANPR which tentatively considered that only product with 0.6 percent or less bone solids content could be labeled "(kind)" or "(kind) meat," without the reference to "mechanically separated." The commenters stated that the establishment of a 0.6 percent bone solids content demarcation between what would be labeled as "(kind)" or "(kind) meat," and "mechanically separated (kind)," based on data collected in August 1993 (data presented by FSIS in the report entitled "Determination of Acceptable Limits of Percent Bone Solids in Ground Poultry Products") would basically eliminate half of the currently produced product and reduce the available amount of this low cost poultry ingredient for further processed poultry and meat food products by 60 to 70 percent. Moreover, commenters further emphasized that, to operate within the current 1 percent bone solids content limit for boneless poultry, most processors must target their operations at about 0.6 percent bone solids content. The commenters indicated that achievement of the low levels of percent bone solids content that were reported by FSIS in the report of the August 1993 data occurred because it is necessary for producers to target well below the current 1 percent limit in order to consistently meet and not exceed the 1 percent requirement. Thus, setting a requirement at 0.6 percent for what could be called "(kind)" or "(kind) meat" would require producers to aim at significantly lower levels of bone solids content which would present an unreasonable burden on the industry. Manufacturers would have to adjust their mechanical deboning machines to adjust the pressure needed to force ground poultry bones with adhering muscle and other tissues through screens in the mechanical deboning equipment to eliminate more bone from the finished product, thereby reducing product yield. According to the commenters, in order to label a product as "chicken" or "turkey meat," i.e., to meet the "upper control limit" of 0.6 percent, a processor would have to target a 0.3 percent bone solids content level to qualify for that product category because of the lack of precise controls in the operation of the deboning equipment.

One commenter claimed that industry data submitted to the Agency "shows, under the principles of statistical process control, a controlled process that targets 0.6 percent bone solids will result in a product that meets the 1 percent bone solids requirement 99.5 percent of the time." Another commenter claimed that the industry data presented indicate that the average percent bone solids content is 0.57 percent with a standard deviation of 0.227 percent, so that "at the 99 percent confidence limit, evidence that a process may not be running efficiently is when an individual sample analysis is greater than 1.15 percent." Therefore, according to the commenters, the Agency is wrong to advocate an average bone solids content of 0.6 percent as the current measure of good manufacturing practices for poultry products produced by mechanical separation. The same commenters criticized the FSIS report on bone solids content stating that "no statistical analysis, factorial or otherwise, was done to describe the two categories of mechanically separated poultry based on bone solids content to determine if, in fact, they are different and/or whether members of the populations were in fact similar." The commenters further asserted that the data presented by FSIS did not actually demonstrate that two "categories" of mechanically separated poultry exist. The commenters asserted that such an analysis may show that the only difference was due to the type of starting materials (e.g., necks versus carcass frames versus backs) or that there are, in fact, no separable populations.

Further, it was asserted by several commenters that the usual practice in quality control is to use 3 standard deviations above a target criteria as a control limit, rather than the standard deviation of 2.33 (corresponding to a 99 percent confidence that the process is not in control), as was suggested by FSIS in its report of the 1993 study. One commenter provided an example of how the 3 standard deviations approach would be applied. It was explained that since the mean percent bone solids content presented in the report of the 1993 study was 0.68 percent and that the average standard deviation by establishment was 0.138, then 3 standard deviations above the mean control limit would be approximately 1.1 percent bone solids content.

As a general response to the comments on bone solids content and labeling, FSIS first reiterates its reasons for having considered in the March 1994 ANPR the defining of a product standard for poultry products produced by mechanical separation based, in part, on percent bone solids content. In 1969, the Agency promulgated rules on deboned poultry products specifying that no more than 1 percent bone solids content would be allowed for this product. As indicated previously, this decision was based on the Agency's careful appraisal of the operating results in a series of poultry establishments that used mechanical deboning equipment. Analyses were made of 485 samples of raw, mechanically deboned products from nine commercial operations, representing three makes of machines most often used in this process. The analyses demonstrated that it is practical and acceptable to limit the bone "residue" in mechanically deboned poultry and that the equipment for manufacturing such product can be operated under commercial conditions to produce poultry product that contains no more than 1 percent of bone. This provision of the 1969 amendments was promulgated to assure that deboned poultry products are wholesome in accordance with the Poultry Products Inspection Act.

Also, it is important to note that at the time of the 1969 regulation, the mechanical separation process was new and FSIS had limited information concerning the consequences of it. FSIS conducted extensive studies on mechanically deboned poultry products during the 1970's and monitored the technology improvements during the 1980's. The results of these studies and the information considered during rulemakings, or other documents considering the need for rulemaking, regarding poultry and livestock products produced by mechanical separation over the past 2 decades have shown that there are differences between the mechanically deboned product and traditionally deboned products (i.e., hand-deboned). The principal characteristics that distinguish mechanically separated poultry product and boneless poultry produced by traditional methods are bone solids content, and its physical form and consistency. Informing consumers of such differences via the distinct labeling of the presence of poultry product produced by mechanical means is supported by the statutory

responsibility of FSIS to assure that all labels on poultry and meat food products are not false or misleading. FSIS received comments that expressed this sentiment in response to its solicitations for public input in the June 1993 ANPR and the March 1994 ANPR.

In the March 1994 ANPR, FSIS suggested that, because of the differences in percent bone solids content among mechanically separated poultry products, which were shown in the data presented in the FSIS report "Determination of Acceptable Limits of Percent Bone Solids in Ground Poultry Products," the Agency would regulate poultry products produced by mechanical separation so that producers of a product with a low percent bone solids content that met the established limitation would be able to label such products without a reference to the mechanical means of processing.

In review of the tentative approach presented in the March 1994 ANPR and the comments received in response to this ANPR and the prior June 15, 1993, ANPR, FSIS now believes that the continuation of the present labeling policy, even for those finished products with mechanically separated poultry that has a low bone solids contents, does not inform the consumer that these products contain mechanically separated poultry as an ingredient and that this may result in misleading labeling. The statutes under which FSIS operates provide the authority to protect the public and prevent the distribution in commerce of products that are misbranded and are not properly marked, labeled, or packaged. FSIS believes that the labeling of poultry and meat food products containing poultry product produced by mechanical separation as an ingredient must inform the consumer of its contents, unless it is clearly demonstrated that any omitted information would not mislead the consumer or otherwise render the product misbranded. This labeling position must be adhered to consistently across all types of poultry and meat food products containing mechanically separated poultry as an ingredient.

FSIS's tentative consideration in the March 1994 ANPR was to define and standardize certain mechanically separated poultry by concentrating on the product characteristics that the Agency believes distinguishes this product from poultry produced by traditional deboning methods, i.e., hand-deboning. A different way of defining and standardizing this product based on starting materials was suggested by one commenter. It was suggested that a certain type of statistical analysis (factorial analysis) be performed in order to identify a relationship between percent bone solids content and types of starting materials used to manufacture mechanically separated poultry. By suggesting this type of statistical analysis, the commenter supported a procedure for establishing a standard that would account for the materials used, and percent bone solids content limits would vary by the processing procedure employed by the processor. However, it was never the intention of the March 1994 ANPR to suggest possibly defining and standardizing mechanically separated poultry by starting materials used. The data collected by FSIS in 1993 and used in the report previously cited, came from industry records. Information was collected on starting materials but not on the percentages of use nor on processing parameters, e.g., pressures, settings, used during processing. Thus, data could not be used for establishing process control parameters or for determining the relationship between bone solids content and other product characteristics, the materials used, and processing parameters employed by establishments in the study. The purpose of collecting the data was to examine the levels of bone solids in mechanically separated poultry produced today, and to get an idea of the variability of the percentage of bone solids contents within an establishment. Information on starting materials was collected to ensure that the sample of establishments represented the different types of materials used to manufacture mechanically separated poultry. If in establishing standards for the product, the Agency had intended to use explicit starting materials to manufacture poultry product produced by mechanical separation, then more data would need to be collected under known or controlled conditions. FSIS believes that any standard established for mechanically separated poultry should not preclude a manufacturer from using any type of starting materials so long as the requirements of the standard are satisfied.

Further, in response to comments about the application of an acceptable tolerance for meeting bone solids content criteria based on statistical variation, FSIS agrees that the establishment of such a tolerance should be considered. However, because this issue requires indepth technical review, FSIS will consider it for possible rulemaking in the future.

B. *Handling Requirements.* The tentative position presented in the March 1994 ANPR indicated that FSIS was tentatively considering that starting material to be processed into poultry product produced by mechanical separation be processed into this product within 2 hours from the time it is separated from the bones of poultry carcasses or parts of carcasses, except that such product may be held for no more than 72 hours at 40° F (4° C) or less, or held indefinitely at 0° F (−18° C) or less. Additionally, the ANPR indicated that FSIS was considering proposing that mechanically separated poultry be chilled to 40° F (4° C) or less within 2 hours of the mechanical deboning operation, or frozen at 0° F (−18° C) or less, or cooked. Furthermore, it was indicated that FSIS was considering proposing that such product be used as an ingredient in a poultry or meat food product directly after being processed, except that it might be held prior to such use for no more than 72 hours at 40° F (4° C) or less or indefinitely at 0° F (−18° C) or less.

Twenty-seven commenters addressed the issue of handling requirements for poultry products produced by mechanical separation. All of the commenters disagreed with the need for handling requirements and, specifically, the need for a time constraint by which the raw material used to manufacture poultry product produced by mechanical separation has to be processed into such product. Commenters stated that chicken can be held for varying times and still be safe depending on manufacturing practices, and that the raw materials used need to be organoleptically evaluated and not set up on a time schedule, i.e., processed within 72 hours.

The commenters also stated that there are already adequate regulations on handling and storage, and any additional handling requirements should be handled in a more inclusive way, e.g., as part of a Hazard Analysis Critical Control Point (HACCP) effort.

FSIS believes that handling requirements are necessary to produce a safe and wholesome product, and that potential bacterial hazards are diminished as long as handling accords with good manufacturing practices. FSIS believes that it is the manufacturer's responsibility, in concert with FSIS', to assure that wholesome materials are used in the manufacture of its product within sound timeframes, and the safety of such product is not negatively affected.

Although the data reviewed in the 1979 Health and Safety Report indicate that poultry products produced by mechanical separation generally are acceptable from a microbiological standpoint, the data also show that

where bacterial loads tend to be higher, it can be attributed to the starting material used. This is not unique to poultry products produced by mechanical separation; it can be applied to other finely comminuted and comminuted products as well. Common starting materials for mechanical separated and other comminuted products are products that remain after the removal of a substantial portion of skeletal muscle or other tissue (e.g., skin) from poultry carcasses or parts of carcasses. As a result, the resistance of the exposed surface area to microbial penetration has been reduced and the ratio of the surface area to the volume of total product which is exposed to contaminating influences has been increased. Higher microbial counts have been associated with the conditions of holding such starting materials.

Poultry products produced by mechanical separation are not unique; all finely comminuted and comminuted products present opportunities for excessive microbiological growth because they consist of small particles which have a greater surface area than most poultry products and because during its preparation any microorganisms that are present are distributed throughout the product. Therefore, FSIS agrees with the commenters that there is a general need to address the issue of handling requirements for all poultry products, including finely comminuted and comminuted products. FSIS is currently developing a separate rulemaking that will deal with this issue more fully and that will include handling requirements for poultry products produced by mechanical separation, and the materials from which they are manufactured. Therefore, FSIS will not propose handling requirements for poultry products produced by mechanical separation in this rulemaking.

FSIS believes that the promulgation of handling requirements for all comminuted poultry, including mechanically separated poultry products, and the starting materials from which they are made, would eliminate the need to require that the temperature of rooms or compartments in which equipment for mechanical deboning of raw poultry is operated be maintained at 50° F or less (9 CFR 381.47(e)). When such requirements are promulgated, FSIS will address the need to rescind 9 CFR 381.47(e).

C. *Protein Quality*. Twenty-five commenters addressed the issue of protein quality for boneless poultry products produced by mechanical separation. Of the 25 comments, 24 disagreed with the need to have a protein quality requirement for any mechanically separated poultry product with up to 1 percent bone solids. The commenters stated the following reasons for their disagreement: (1) the typical U.S. diet provides for an adequate intake of sufficiently high quality protein, therefore, protein quality is not a public health concern in the U.S.; (2) the U.S. is not a protein-deficient society which requires every protein source to be the highest "quality"; a typical diet consists of proteins from a variety of sources and of varying quality; (3) the Nutrition Labeling Education Act (NLEA) of 1990 indicated that a daily value requirement for protein quality is not necessary; (4) over a 20-plus year history of producing mechanically separated poultry, there has never been a problem identified with the protein quality of products manufactured from this low cost ingredient; (5) processors have no control over the amino acid content of the chicken parts used to manufacture mechanically separated poultry—it is determined by genetics and not processing equipment; and (6) the protein quality testing requirements suggested in the ANPR for mechanically separated poultry are expensive, burdensome, and unnecessary.

After careful review of the comments, FSIS is in agreement with commenters that oppose the tentative position that poultry products produced by mechanical separation must meet a minimum protein quality requirement, i.e., a protein digestibility corrected amino acid score of not less than 40 expressed as a percent or the alternative measurement of essential amino acids being at least 33 percent of the total 17 amino acids present. The lack of the need for a protein quality requirement is founded on scientific literature provided and cited by comments from academia and statements made by other commenters regarding the status of the quality of protein in diets of individuals in the U.S. The literature stated that the protein quality of mechanically deboned poultry is comparable to hand-deboned poultry.[5] Therefore, mechanically deboned poultry can be used in poultry and meat food products without sacrificing protein quality. According to the literature, during the 20 to 30-year history of the use of MDP in many food products, there has not been an indication of problems identified with protein quality. Furthermore, consumption of enough high-quality protein by humans in the U.S. is not a problem. In the preamble of the final nutrition labeling regulations, both FSIS and the Food and Drug Administration (FDA) stated that current evidence suggests that the diet typically consumed in the U.S. provides for an adequate protein intake of sufficiently high quality to meet the nutritional needs of adults and children 4 or more years of age (58 FR 632 and 2079). Furthermore, since there are no outstanding health implications requiring the establishment of protein quality criteria for food products, in general, it would be unnecessary to require such criteria for a specific poultry product, viz., mechanically deboned poultry.

D. *Quality Control*. Twenty-one commenters addressed the issue of quality control for all poultry products produced by mechanical separation. Nineteen of the 21 commenters did not believe that a mandatory quality control program was needed for the production of such products. The commenters stated that (1) quality control programs, including partial quality control programs (PQC), should remain voluntary programs, and (2) that FSIS should focus compliance program efforts on issues of health and safety of products and allow manufacturers to determine quality parameters. The commenters also noted that they operate under PQC programs for manufacturing mechanically deboned poultry that are approved by FSIS, and any additional concerns for assuring their processes are in conformance with current regulations should be incorporated into their present PQC programs rather than by issuance of a formal requirement through rulemaking.

FSIS believes that establishments manufacturing poultry products that are mechanically separated must have controls in place to assure that such products comply with the Agency's proposed definition, standard, and other criteria. However, after reviewing the comments and re-examining the Agency's current regulatory agenda, FSIS believes that because there are efforts underway within the Agency to study and address ways of reducing the potential for situations that would render any poultry or meat food product adulterated, unwholesome, and/or misbranded it is premature to address the need for a mandatory quality control program for this one distinct category of poultry product. FSIS does, however, believe that records of achieving compliance with parameters established for mechanically separated poultry product, e.g., bone solids content and

[5] Public comment, including attached research article, submitted by R.A. Field, University of Wyoming, is available for review in the FSIS Docket Clerk's office.

bone particle size criteria, should be maintained to substantiate that boneless poultry criteria meets the proposed regulatory manufacturing practices.

E. *Protein/Fat.* Nineteen commenters responded to the tentative position on establishing a minimum protein content and a maximum fat content requirement for poultry product produced by mechanical separation with greater than 0.6 percent bone solids content. All nineteen commenters disagreed with FSIS' position on establishing such a protein and fat content requirement for this mechanically separated poultry. The commenters stated that poultry product produced by mechanical separation is used as an ingredient in ready-to-consume products of which most have established protein and/or fat standards. Furthermore, the commenters stated that most poultry and meat food products are now required to have nutrition labeling.

FSIS does not agree that "most ready-to-consume" poultry and meat food products have established protein and fat standards, as asserted by the commenters. Standards of identity and composition for poultry and meat food products generally do not include minimum protein content requirements. Of the products for which standards stipulate a maximum fat content, most are sausages composed of meat from livestock. There are no fat limitations associated with sausages made from poultry, according to FSIS policies.

FSIS does agree, however, with the comments regarding the benefits of fat and protein content information provided by nutrition labeling. Since the products that typically contain mechanically separated poultry, e.g., poultry sausages, are composed of this ingredient as the majority of their formulation, the nutrition labeling for such product will primarily reflect the protein and fat contributed by the mechanically separated poultry component. For this reason, a minimum protein content and a maximum fat content requirement for poultry products produced by mechanical separation are not needed, given the implementation of the Department's nutrition labeling regulations on July 6, 1994 (58 FR 632). The nutrition labeling regulations require the declaration of protein and fat on the labeling (i.e., the Nutrition Facts panel) of most multi-ingredient meat and poultry products. Nutrition labeling is now required on most processed products purchased by consumers in retail stores, and this, together with the Department's voluntary nutrition labeling program established for retail store information on single-ingredient raw products, makes FSIS believe that consumers will have sufficient information on protein and fat for most products purchased for consumption at home.

FSIS further believes that the need to establish a fat and protein requirement is minimized because current regulatory controls will limit the amount of skin or fat that may be used in formulating poultry products with mechanically separated poultry. According to the poultry regulations, viz., 9 CFR 381.117, raw materials used to manufacture boneless poultry, e.g., "mechanically separated chicken" and "mechanically separated turkey," must be labeled to reflect the presence of skin and attached fat when the proportions of skin and attached fat are in excess of that which occurs naturally on a whole carcass. Therefore, products currently labeled as "mechanically separated chicken" or "mechanically separated turkey" contain no more skin with attached fat than that which occurs naturally on a whole carcass, for which there is no maximum fat content established. Furthermore, like all other animal products, poultry (e.g., whole carcasses and parts of carcasses) is composed of water, fat, protein, and inorganic matter (i.e., ash). If the fat content is controlled, the proportion of the other components, including protein, should remain the same as that which occurs naturally.

F. *Bone Particle Size.* Fourteen commenters addressed the issue of bone particle size in poultry product produced by mechanical separation. Twelve of the 14 commenters disagreed with restricting the size of the bone particles present in poultry product produced by mechanical separation to a maximum of less than 1.5 millimeter (mm) in the greatest dimension. Furthermore, commenters sought clarification of the quantity of particles of acceptable dimension that would be permitted. The commenters also stated that there is no justification for requiring standardized bone particle size limitations; such a criteria will result in increased analytical costs to the processor without improving food safety. Other commenters cited the 1979 report on "Health and Safety Aspects of the Use of Mechanically Deboned Poultry" which states that over 90 percent of the bone particles found in mechanically deboned poultry are less than 150 microns (0.15 mm) in size and only 1 percent were greater than 400 microns (0.4 mm).

FSIS believes that a bone particle size limitation augments the bone solids content restriction, and is a meaningful indication of a poultry deboning operation that effectively controls bone breakage. The 1979 health and safety report recommended that bone particle size be controlled to ensure that equipment type or processing does not result in unacceptably large bone fragments in mechanically deboned poultry. FSIS agrees with this recommendation and continues to support its tentative position of restricting the bone particle size in poultry products produced by mechanical separation. However, FSIS is in agreement with the comments that reflected a need to clarify the parameters for such a restriction. In order to simplify such a requirement for mechanically separated poultry products, FSIS is proposing that at least 98 percent of the bone particles present in mechanically separated poultry should have a maximum size no greater than 1.5 mm and no bone particles should be greater than 2.0 mm in their greatest dimension. These parameters are similar to the requirements for bone particle size for MS(S), a similar livestock product.

G. *Limitations on Use.* In the March 1994, ANPR, FSIS tentatively proposed that, in certain cases, poultry product produced by mechanical separation should be restricted from use as an ingredient in other products. It was considered that imposing such restrictions was necessary for mechanically separated poultry because of the potential fluoride contribution of mechanically separated poultry made from fowl (i.e., mature female chickens). It was also tentatively suggested that use restrictions for all poultry product produced by mechanical separation be considered (i.e., any product with bone solids not greater than 1 percent) based on the characteristics of such product, including the kind of poultry from which it is made, and its consistency.

Thirteen commenters addressed the issue of limitation on use of poultry product produced by mechanical separation, in general, as an ingredient in other products. Twelve of the commenters disagreed with the general premise of establishing any use limitations on mechanically separated poultry products because there are no safety or health concerns regarding poultry product produced by mechanical separation. The commenters also stated that the marketplace is a much better judge of quality (i.e., use levels of poultry product produced by mechanical separation) than FSIS.

FSIS believes that poultry products that are mechanically separated should not be used in poultry products that are represented as being composed of whole poultry muscle, other than where it is used as a binding agent (i.e., a substance that holds muscle pieces together) at a

level that is sufficient for this purpose. When used as a binder, it is FSIS' belief that, without the declaration of mechanically separated poultry as an ingredient on the labels of the poultry and meat food products that purport to be intact, whole muscle products, the labels of such products would be misbranded.

It is poultry meat, particularly muscle(s), that characterizes parts and cuts of poultry. The physical and sensory characteristics (i.e., mouthfeel, texture, color) associated with a part or cut of poultry can be retained when trimmings removed during processing are reincorporated; and the characteristics associated with the cut remains when there is chunking, chopping, or grinding of the muscle as in versions of turkey ham product (9 CFR 381.171). FSIS regards these processes as different than using product made by the mechanical separation of bones with attached poultry tissue. Poultry product produced by mechanical separation does not, in FSIS' view, retain the characteristics of the cuts themselves. It appears inconsistent with the basic characteristics expected of products represented as having been made from a particular part or cut of the poultry carcass, to include this finely comminuted ingredient, especially when the muscle from that part is essentially intact or has been processed only to the extent of cutting or grinding. Therefore, FSIS continues to support its tentative position stated in the March 1994 ANPR that poultry product produced by mechanical separation not be permitted in products expected to be composed of whole muscle or pieces of muscle, e.g., "(Kind) steak or (Kind) fillet" (9 CFR 381.162).

FSIS agrees with commenters that, except for the potential health effects associated with the fluoride content of mechanically separated chicken from fowl, there are no health and safety concerns regarding the use of poultry products produced by mechanical separation. Issues raised in the past concerning cholesterol and calcium content are addressed by the requirements of the new nutrition labeling. Calcium and cholesterol contents of most foods will be required as part of the nutrition label. However, FSIS continues to support its consideration, as stated in the March 1994 ANPR, that poultry product produced by mechanical separation, i.e., any such product with no greater than 1 percent bone solids, made, in whole or in part, from fowl (i.e., mature female chickens, as defined in 9 CFR 381.170(a)(1)(vi)) not be permitted in baby, junior, or toddler foods. The basis for this is that the fluoride content associated with mechanically separated chicken made from fowl has potential health implications. There were no data submitted in response to the ANPR to support opposition to this aspect of use limitations for mechanically separated poultry.

H. *Product Name and Labeling.* The majority of the commenters (primarily food manufacturers) stated that FSIS should continue with its current labeling policy regarding mechanically separated poultry that allows the declaration of mechanically separated poultry as "(Kind)" or "(Kind) meat" when used as an ingredient in a poultry or meat food product. The commenters suggested that any changes in the current policy will have a severe economic impact on both the poultry and meat industries. Many of the commenters stated that, "since there are no health or safety issues regarding the use of mechanically separated poultry, nutrition labeling satisfies the remaining issue of the consumer's right to know" that mechanically separated poultry is in the foods they consume. Therefore, the majority of commenters supported continuance of the current policy regarding the product name and labeling of mechanically separated poultry (e.g., as "chicken" or "turkey meat"). On the other hand, a few commenters stated that meat and poultry products should be labeled the same as Mechanically Separated (Species) (MS(S)).

FSIS must decide whether, under its statutory authorities, consumers would be protected from misbranded and improperly labeled poultry and meat food products without the separate declaration of mechanically separated poultry by a regulated term. The intent of nutrition labeling is to assist consumers in making sound choices in terms of nutrients in the diet. FSIS believes that nutrition labeling provides some of the information about a food that is important to the consumer in planning a healthful diet; however, it does fully inform the consumer about the ingredients used to formulate a food product. Rather, it is the ingredients statement on the label of a product that is the labeling feature that informs the consumer of the ingredients used to formulate a poultry or meat food product. Therefore, FSIS believes that nutrition labeling, coupled with an ingredients statement that accurately reflects the ingredients that are used to formulate a product, is necessary to protect the consumer from misbranded meat and poultry products, i.e., improperly labeled meat and poultry products.

FSIS evaluated the comments that opposed the establishment of a labeling requirement for mechanically separated poultry based on the "adverse economic impact" of identifying this product by a specific product name in the ingredients statements of products in which it is used as an ingredient, i.e., as "Mechanically Separated (Kind)." The comments opposing the declaration of mechanically separated poultry by a specific name associated with a standard did not fully elaborate why consumers would be concerned about its presence in the products they consume. It was suggested by a few commenters that the name suggested in the tentative position presented by FSIS was pejorative and that consumers would think that the product they had purchased previously was now formulated with another ingredient, and would not purchase the product again because it was different or inferior. However, FSIS believes that such a labeling requirement is necessary in order to fulfill its statutory responsibility to protect consumers by assuring that the labels of poultry and meat food products are not false or misleading. FSIS also believes that its continued support of the tentative position stated in the March 1994 ANPR to establish a standardized name for mechanically separated poultry would be consistent with past Court decisions and regulatory actions regarding MS(S), a similar product made from livestock, which was determined to be materially different than "meat." Consumers had the opportunity to provide views on the importance of knowing that MS(S) is an ingredient in their food during rulemaking actions on MS(S). FSIS' 1982 final rulemaking on MS(S) (47 FR 28214) indicates that material differences in the consistency and composition of MS(S) place it outside the scope of the product traditionally defined as meat (9 CFR 301.2 (rr)), and that its differences are such that it should be defined as a distinctive standardized product. Thus, MS(S) must be identified as a distinct meat food product, e.g., "mechanically separated pork (or beef)," and labeled as such on the products in which it is used as an ingredient (9 CFR 317.2(c) and (f), 319.1, and 319.5) in order to assure that the labeling of such products is accurate and not misleading.

Currently, products that contain mechanically separated poultry are marketed using trade names that identify any poultry ingredient they are made up of only by the kind name of the poultry used (e.g., "Chicken Nuggets" and "Turkey Franks"). FSIS believes

that it is appropriate to allow these products to continue to be marketed under such names. These names have a long and uniform history of use. Revocation of these familiar trade names may be a disservice to consumers if they are mislead to believe that the products they have been purchasing have changed. Although these products contain tissues other than whole skeletal muscle tissue, FSIS does not believe that consumers will be mislead by trade names which only include the name of the kind of poultry from which the poultry ingredients are mechanically separated since any mechanically separated poultry ingredients will be clearly identified as "mechanically separated (kind)" in the ingredients statement. FSIS believes that the ingredients statement is the appropriate labeling feature to inform consumers of the ingredients used to formulate a product. However, FSIS welcomes comments on the names under which products containing mechanically separated poultry are marketed.

VI. *The Proposal*

FSIS is proposing to amend the Federal meat and poultry products inspection regulations to define and standardize, and establish other requirements for poultry products produced by mechanical separation, including provisions for the composition and use of such products, and requirements for manufacturing and labeling such products. The proposal would prescribe a definition and standard of identity for poultry products produced by mechanical separation with 1 percent or less bone solids content, that requires compliance with certain criteria; e.g., bone solids content (measured as calcium content) and bone particle size. The proposal also would provide recordkeeping and labeling requirements, and limitations on use of poultry products produced by mechanical separation. Poultry product produced by mechanical separation is hereafter referred to as "MS(K)."

A. *Product Definition and Standard*

FSIS is proposing to prescribe a definition and standard of identity and composition for the finely comminuted poultry product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle and other tissue of poultry carcasses and parts of carcasses which has a bone solids content of 1 percent or less. This product is commonly known in the poultry industry as mechanically deboned poultry or MDP. While whole carcasses sometimes are used, the starting materials for this type of processing frequently are parts of carcasses, such as frames, backs and necks, which contain relatively low proportions of skeletal muscle, or parts, such as breast frames, from which most of the skeletal muscle already has been removed by traditional deboning techniques. The starting materials, which may have undergone an initial bone breaking process, are pushed under high pressure through equipment with apertures that allow a small amount of powdered bone to pass through with the soft tissue. Such starting material is in natural proportion with regard to skin and attached fat; if skin and fat is in excess of proportions found naturally on a whole carcass, the product is labeled to reflect the presence of skin and fat according to 9 CFR 381.117(d).

MS(K) differs from poultry products produced by traditional deboning techniques (e.g., hand-deboning) in its highly comminuted and spread-like consistency and in its content of bone and associated tissue, as well as muscle, skin, and fat. In view of the differences between MS(K) and boneless poultry derived by traditional methods (e.g., hand-deboning), it appears inappropriate to continue to include MS(K) within the category of "boneless poultry products" (9 CFR 381.117(d)). Instead, FSIS is proposing to define it as a distinct poultry product ingredient and standardize its characteristics under subpart P of the poultry products inspection regulations (9 CFR 381, subpart P).

FSIS is proposing that the boneless poultry products regulation (9 CFR 381.117(d)) no longer apply to MS(K). Consequently, the current restriction on bone solids content in this regulation, as enforced by limiting calcium content, will be included with other compositional requirements in an MS(K) standard. Moreover, as a standardized product, MS(K) would be differentiated from other poultry product ingredients and it would be designated in the ingredients statements on finished product labels by the name specified in its definition and standard, in accordance with 9 CFR 317.2(c)(2) and (f)(1) and 381.118(a). Product failing to meet the bone solids content or bone particle size restrictions of the standard must be labeled as "Mechanically Separated (Kind) For Further Processing" and may only be used in producing poultry extractives, including fats, stocks, and broths because the manufacturing process completely removes the bone solids and bone particles.

1. *Product name.* FSIS is proposing to define the standardized product that is finely comminuted and results from the mechanical separation and removal of most of the bone from poultry carcasses and parts of carcasses by a distinctive name. FSIS is proposing that such product be called "Mechanically Separated (Kind) (MS(K))." It appears to accurately and concisely describe the product that materially differs in composition and consistency from traditional hand-deboned product, indicating the nature of the process by which and the kind of poultry from which it is made. The proposed name includes "(Kind)" rather than "poultry" to make it clear that the kind of poultry (9 CFR 381.1(b)(40)) from which the product is made is specified (e.g., "Mechanically Separated Chicken"). By including "(Kind)" in the proposed name, FSIS is acknowledging that skin and attached fat may be present such that the proportion is consistent with that which occurs naturally on a whole poultry carcass. If skin and attached fat are present at levels exceeding natural proportions, as defined for boneless poultry products (9 CFR 381.117(d)), it must be labeled.

As previously indicated, FSIS believes that MS(K) differs sufficiently from boneless poultry products produced by traditional hand-deboning techniques that it should be regulated as separate, standardized ingredients. FSIS is aware that other descriptions have been associated with poultry products produced by mechanically separation. In addition to the use of terminology such as "finely comminuted" poultry to specify the form of the product and "mechanically deboned" poultry, such product has been referred to as "mechanically separated' poultry within the meat and poultry industries. FSIS believes that where a distinguishing characteristic of a standardized product is, its bone solids content, it would be inappropriate to define it by a name that includes the term "deboned" and use of this term in labeling might mislead consumers by implying such product contains no bone. FSIS will, however, welcome comments on other names that accurately reflect the process from which this product is derived, as well as its form and consistency.

2. *Bone solids content.* FSIS is proposing that the definition and standard for MS(K) incorporate the existing restriction on the bone solids content of mechanically separated poultry products of not more than 1 percent (9 CFR 381.117(d)). Because this restriction is enforced by measuring calcium content, FSIS believes the definition and standard for MS(K) should include maximum calcium content levels of not more than 0.235 percent in product made from turkeys or

mature chickens or 0.175 percent in product made from other poultry, as a measure of bone solids content based on the weight of product that has not been heat treated.

As previously discussed, FSIS adopted the 1 percent bone solids restriction after appraising the operating results in a series of poultry establishments using mechanical deboning equipment, analyzing 485 samples of raw product, and concluding that existing equipment can be operated under commercial conditions to produce product which meets this limit (34 FR 13991). When processors applied the mechanical deboning technology to poultry products such as fowl frames that had been heat treated using various cooking methods, FSIS modified its procedures to take into account weight loss that can occur with cooking. Thus, the practice has been to permit an allowance for weight loss in order to reflect the bone solids content that would have been present if heat treatment had not occurred; and the adjusted level may not exceed 1 percent. The "Chemistry Laboratory Guidebook," U.S. Department of Agriculture (section 6.010F, page 6–33),[6] currently includes procedures for different degrees of adjustment depending on whether conventional cooking methods (i.e., open kettle) or other heat treatment (e.g., pressure cooking) are used.

After evaluating data on substances of potential concern that may tend to concentrate in bone, the 1979 report on health and safety aspects of the use of mechanically deboned poultry did not recommend any change in the existing bone solids limit. Because enforcement is based on calcium content analyses; however, rather than direct measurements of bone solids, FSIS believes that an amended poultry products inspection regulation should include the maximum amount of calcium permitted in determining whether mechanically separated poultry is in compliance.

FSIS has developed two different calcium content levels for this purpose. Both of these levels account for the fact that poultry tissues, other than bone, contain some calcium. The higher level—0.235 percent—reflects the greater proportion of calcium in the bones of mature chickens and turkeys as compared with young chickens (i.e., the lower ratio of bone solids to calcium). The lower level—0.175 percent—has been used by FSIS in enforcing the 1 percent restriction on product made from young chickens. Both of these calcium levels are equivalent to 1 percent bone solids using the conversion formulas for calculating bone solids from calcium on a weight basis.[7]

Since FSIS is proposing a definition and standard that includes potential types of mechanically separated product, FSIS would allow 0.175 percent calcium as the maximum for all MS(K) that is made from poultry other than turkeys or mature chickens.

The inclusion of these calcium content levels in the proposed definition and standard should not be misinterpreted as indicating a concern about the amount of the essential nutrient calcium that is provided by poultry and meat food products. FSIS agrees with the findings in the 1979 health and safety report that, even assuming all further processed poultry were made with mechanically deboned poultry (i.e., a far greater level of production and use than actually occurs), the projected calcium contribution of such products would represent only a negligible increase in per capita daily intakes and cannot be considered hazardous, particularly since the dietary intake of a large sector of the population may be below the recommended level of calcium consumption.

In addition, the "Chemistry Laboratory Guidebook" (section 6.010F, page 6–33) has been revised to include a procedure that could be applied to mechanically separated product made in part from mature chickens. That procedure involves a determination of the relative mature and young chicken proportions when product is made from a combination of young and mature chickens.

3. *Bone particle size.* FSIS is proposing that at least 98 percent of the bone particles present in MS(K) be restricted to a maximum size no greater than 1.5 millimeter (mm) in their greatest dimension and no bone particles shall be larger than 2.0 millimeter in their greatest dimension. The need to limit the size of bone particles in MS(K) has been acknowledged since the poultry industry began to use mechanical methods for manufacturing this product.

FSIS' objective is that the limitation imposed be adequate to prevent any digestibility problems while not restricting the operation of equipment in accordance with good manufacturing practices more than is necessary for this purpose or to protect finished product quality. In the 1979 health and safety report, it was recommended that bone particle size be controlled to ensure that equipment type or processing does not result in unacceptably large fragments. The report concluded that, provided this is done, the bone particles in the product will not present any health hazard because of size or hardness.

4. *Recordkeeping.* FSIS is also proposing that establishments that manufacture MS(K) maintain records of bone solids content and bone particle size as a measure of process control. These records must be made available to the inspector and any other duly authorized representative of the Secretary upon request.

B. *Limitations on Use*

FSIS is proposing certain limitations with respect to the use of MS(K) in the formulation of poultry and meat food products. FSIS is proposing such restrictions based on the potential fluoride contribution of MS(K) made from fowl (i.e., mature female chickens) and the characteristics of MS(K), including the kind of poultry from which it is made and its consistency. FSIS believes that such requirements are necessary to prevent potential health and safety problems, and to maintain the quality and integrity of the poultry and meat food product supply. FSIS is also proposing that MS(K) may be used, except in certain cases, in any product defined by regulatory standards or Agency policies whereby "(Kind)" or "(Kind) Meat" are being used, provided that it is identified as "Mechanically Separated (Kind)."

1. *Kind of product limitation.* FSIS is proposing that when a poultry product is required to be prepared from a particular Kind or Kinds of poultry (e.g., chickens), use of MS(K) of any other kind (e.g., mechanically separated turkey) would not be permitted. This provision would assure that MS(K) made from a different kind of poultry is not used in a poultry product represented as containing ingredients from a particular kind or kinds of poultry.

The proposed definition and standard for MS(K) covers MS(K) prepared from any kind of poultry. FSIS would not permit use of MS(K) as an ingredient in any given poultry product regardless of the kind of poultry from which it is made. Such action would be inconsistent with existing regulatory requirements and could, among other things, result in false or misleading labeling. For example, the definition and standard for "(Kind) patties" (9 CFR 381.160) requires that poultry product ingredients be "of the kind indicated"

[6] Document is available for public inspection at the FSIS Docket Clerk's office.

[7] The formula for calculating bone solids from calcium for poultry products is in the "Chemistry Laboratory Guidebook," U.S. Department of Agriculture (6.010F, page 6–33), and is available for public inspection at the FSIS Docket Clerk's office.

(e.g., turkey products in turkey patties). FSIS believes that proposing to provide for the use of MS(K) as a distinctive poultry product ingredient should not abrogate this requirement (e.g., to not permit use of mechanically separated chicken in turkey patties).

2. *Limitations on product made from fowl.* FSIS is proposing that the use of mechanically separated chicken made, in whole or in part, from fowl (i.e., mature female chickens, as defined in 9 CFR 381.170(a)(1)(vi)) not be permitted in baby, junior, or toddler foods. These restrictions are based on the potential fluoride contribution of product made from fowl to dietary intakes. The 1979 health and safety report found only slight differences between the fluoride content of MS(K) made from poultry other than fowl and that of poultry products produced by traditional deboning techniques, but considerably higher amounts in MS(K) made from fowl.

FSIS believes that conclusions reached in the 1979 health and safety report regarding fluoride content of MS(K) from fowl and MS(K) from all other poultry sources have not changed significantly. FSIS believes that the data reported in the 1979 health and safety report are currently the best available on this subject and the conclusions reached are valid. However, FSIS is aware that the benefits of fluoride in the diet continues to be studied by the scientific community and that more information is available today on the subject than in 1979 when the Agency published the health and safety report.

The 1993 National Academy of Sciences' Subcommittee on Health Effects of Ingested Fluoride report titled, "Health Effects of Ingested Fluoride" (NAS Fluoride Report),[8] commissioned by the Environmental Protection Agency (EPA) provides current information on the complexities of assessing effects of fluoride in the diet and makes recommendations for further research. The NAS Fluoride Report cites dental products containing fluoride (topical fluoride applications by dentists, fluoride supplementation, and ingestion of fluoride dentifrices), beverages made with water containing fluoride (tea and coffee, as well as manufactured drinks), and foods as being the major sources of ingested fluoride. The NAS Fluoride Report points out that, while ingestion of fluoride from some sources may have gone up, some food sources of fluoride have gone down. For example, ingestion of fluoride from infant formulas (a source of dietary fluoride considered in the 1979 health and safety report) has gone down because of the agreement among the producers of infant formulas to use only water low in fluoride for all their products. The changing sources of fluoride ingestion makes assessing intakes and effects on populations inherently difficult. In the modern U.S. environment, people are exposed to fluoride from food, beverages, toothpaste, and a variety of prescribed or over-the-counter dental products.

While the NAS Fluoride Report reiterates the positive effects of increased fluoride intake on reduction of dental caries in the 1990's as compared to the 1950's, it also cites the side effect of dental fluorosis, e.g., too much fluoride ingested in early childhood while teeth are forming. Dental fluorosis occurs when the enamel covering of the teeth fails to crystallize properly, leading to defects that range from barely discernible to severe brown stain, surface pitting, and brittleness. The report states that "the most effective approach to controlling the prevalence of severity of dental fluorosis, without jeopardizing the benefits of fluoride to oral health, is likely to come from more judicious control of fluoride in foods, processed beverages, and dental products, especially those items used by young children."

FSIS agrees with this conclusion and maintains its concern for the potential effect of fluorosis in the susceptible population of babies, infants, and toddlers. Therefore, FSIS believes that the tentative position set forth in its March 1994 ANPR previously discussed, to restrict the use of MS(K) made from fowl in baby (i.e., strained), junior, and toddler foods is prudent. However, FSIS is requesting that commenters provide to the Agency any information that would either reaffirm or contradict the conclusions reached in the 1979 health and safety report. FSIS intends to reassess and update the 1979 health and safety report regarding fluoride in light of information submitted in response to this proposal.

3. *Poultry product limitations.* FSIS believes that the use of MS(K) should be limited in certain poultry products. FSIS is proposing that MS(K) should not be allowed in poultry products that are composed of whole poultry muscle, and expected to be as such by consumers, except that it may be used for binding purposes at a level that is sufficient for purpose. However, FSIS will allow MS(K) in the sauce portion or any dressing of poultry products.

MS(K) is a highly comminuted ingredient with a spread-like consistency and FSIS considers its use to be inconsistent with the basic characteristics associated with poultry products that have been processed only to the extent of cutting or grinding or that are made from poultry products so processed, such as chicken breasts, turkey fillets, and shredded chicken. FSIS also considers their use to be inconsistent with the basic characteristics associated with poultry products that are processed, convenience versions of ready-to-cook poultry or cuts or solid pieces of poultry or poultry meat, such as roasted chicken, boned turkey with natural juices, chicken a la Kiev, and turkey ham. FSIS is proposing that the use of MS(K) not be permitted in these products. FSIS recognizes, however, that these types of products sometimes are prepared with components the characteristics of which are not inconsistent with those of MS(K).

It is poultry meat, particularly muscle(s), that characterizes parts and cuts of poultry. The characteristics associated with a cut can be retained when trimmings removed during processing are reincorporated; and the association with the cut remains when there is chunking, chopping, or grinding of the muscle as in versions of turkey ham product (9 CFR 381.171). FSIS regards these processes as different than using product made by the mechanical separation of bones with attached poultry tissue. MS(K) does not, in FSIS' view, retain the characteristics of the cuts themselves. It appears inconsistent with the basic characteristics expected of products represented as having been made from a particular part or cut of the poultry carcass, to include this finely comminuted ingredient, except as discussed above, especially when the muscle from that part is essentially intact or has been processed only to the extent of cutting or grinding.

FSIS is proposing no restrictions on the amount of MS(K) that can be used in poultry products, or meat food products, in which it is a permitted ingredient. However, prevailing standards for particular products may contain quantitative limits (e.g., the limit on the amount of poultry product ingredients permitted in cooked sausages such as frankfurters and bologna (9 CFR 319.180)) or other restrictions on the quantity of various poultry product ingredients.

C. *Labeling*

FSIS is proposing special provisions for the labels of MS(K). If adopted, these provisions would supplement other, more general requirements for such labels (see 9 CFR Parts 317 and 381,

[8] This report is available for public inspection in the FSIS Docket Clerk's office.

Subpart N). The provisions are discussed below.

1. *The product.* FSIS is proposing the following labeling provisions for MS(K): (1) the name of the product (e.g., "Mechanically Separated (Kind)" must be followed immediately by the phrase(s) "made from fowl" unless it is not made, in whole or part, from mature female chickens, and "with excess skin" unless it is made from poultry product that does not include skin in excess of the natural proportion present on the whole carcass; and (2) there must be appropriate descriptive terminology in the labeling of MS(K) if heat treatment has been used in the preparation of such product, e.g., "cooked." Because the characteristics described in (1) and (2) above are ones which would affect the use of MS(K), FSIS is proposing that, in order to assure compliance with regulatory requirements and thereby prevent the adulteration and misbranding of finished poultry products and meat food products, such characteristics must be clearly identified on the label when MS(K) leaves the establishment at which it is manufactured.

As indicated previously, the regulations already require that information on use, including deviations from the natural whole carcass proportion of skin as well as the fact of cooking, appear on the label of boneless poultry products produced by mechanical separation (9 CFR 381.117(d)). The presence of skin or its presence in excess of the natural whole carcass proportion would, as discussed previously, continue to affect product use if the regulations are amended. The use of heat treatment in the preparation of the product also would be of continuing relevance (9 CFR 381.157(a)). In addition, since the presence of poultry kidneys or sex glands can affect use (9 CFR 319.180(b)), a number of manufacturers of MS(K) not containing these parts currently choose to note this fact on the label. The other information that would be required is identification of product made from fowl.

2. *Finished poultry products and meat food products.* As indicated above in the discussion of FSIS' proposed definition and standard for MS(K), FSIS is proposing that in view of the differences between MS(K) and poultry products produced by traditional hand-deboning techniques, MS(K) should be regulated as a distinctive ingredient with standardized characteristics. Therefore, FSIS is proposing to define such product by its own name, e.g., "Mechanically Separated (Kind)," that would be declared in the ingredients statements on finished product labels by the name specified in its definition and standard.

FSIS recognizes the importance of the identification of the calcium and cholesterol content of MS(K) to consumers who, according to the comments received on the June 15, 1993, ANPR (58 FR 33040), indicated a desire to know of the presence of calcium and cholesterol. The nutrition labeling regulations, effective July 6, 1994, require mandatory declaration of calcium and cholesterol content on most processed meat and poultry products which addresses this particular labeling concern. FSIS believes that nutrition labeling is the most appropriate vehicle for conveying a product's nutrient content, which includes calcium and cholesterol, as well as other nutrient information.

Executive Order 12866

This proposed rule has been determined to be significant and has been reviewed by the Office of Management and Budget under Executive Order 12866.

Total federally inspected broiler and turkey meat production in the U.S. in 1993 was about 27 billion pounds on a ready to cook basis. (Broiler represents the majority of chickens grown and slaughtered in the U.S.) Broiler production was 22.2 billion pounds and turkey 4.8 billion pounds. Continued growth in poultry production has resulted in large increases in the volume of poultry meat going into further processed products, many of which use MS(K).

FSIS has estimated that 1 billion pounds of poultry product is processed annually into MS(K), with a yield of 70%, or 700 million pounds of MS(K) product for human use. (Industry sources suggest that a larger amount of MS(K) product is produced annually.) FSIS estimated that 400 million pounds is used in sausage products and 300 million pounds in patties and nuggets. The estimated size of the market does not directly affect the cost estimates below because these depend on the number of label changes.

The Broiler Council estimates that broiler meat is produced in around 200 establishments, of which 50 are further processing establishments. MS(K) is produced in around 108 establishments. About 25–30 of these establishments with MS(K) equipment produce hot dogs. The product from the other 75–80 establishments is sold to poultry further processors or to red meat processors. Industry sources indicate that some small firms specialize in MS(K) production, buying carcasses from poultry slaughter establishments for further processing.

Based on inspection task records, FSIS estimates that 108 establishments produced (or are capable of producing) poultry MS(K). MS(K) production by establishment size is not available from FSIS. However, *total* further processed product production by size of establishments shows 7 establishments with production less than 10,000 pounds of MS(K) annually. The average production of the 108 establishments is 51 million pounds of all further processed products.

Under the proposed rule, products containing mechanically separated poultry would require that it be labeled as "Mechanically Separated (Kind)" in the list of ingredients. There is no precise information on the total number of products that contain MS(K). FSIS indicated there are 602,000 approved labels for poultry and meat, not all of which are necessarily in use. These include 529 labels for specific MS(K). There is also an unknown number of labels for products containing MS(K) such as frankfurters, chili, bologna, poultry baby foods, chicken nuggets or patties. FSIS estimates that in a total about 5,000 products would require relabeling. There is no currently available data on the size breakdown of the establishments producing products containing MS(K).

Possible Economic Impacts From Proposed Rule

Possible sources of costs associated with the proposed rule:

A. Labeling

Under the proposed rule, final products containing mechanically separated poultry would require ingredient statement labeling of the mechanically separated poultry as "Mechanically Separated (Kind)." Estimates range from $200 to $3,000 per product for a simple product ingredient label change depending on the type of label. Comments in response to the March 1994 ANPR indicate that most labels would fall in the lower end of this range (about $600). Assuming an average cost of $1,000 per product, the cost of relabeling would be $5 million ($1,000 times 5,000 products). Doubling the average cost per product to $2,000 increases the labeling cost to $10 million.

Labeling costs could be reduced to the extent mandated MS(K) label changes can be coordinated with other label changes planned or required during the period of promulgation of the MS(K) rule and its enforcement. Many firms routinely make label changes for

existing products. For example, about 50% of the 180,000 labels submitted to FSIS each year for approval are for label changes on existing products. Also, a FSIS policy directive effective July 25, 1994 requires widespread changes in meat and poultry ingredient statement labeling by August 8, 1995. To the extent MS(K) label changes could be worked in with these changes, less additional cost would be incurred.

B. Label Inventory Costs

Some firms may discard non-compliant labels when the proposed rule goes into effect. A survey of meat and poultry companies for the nutritional labeling rule indicated that firms carry an average label inventory of 5 to 6 months. Thus, inventory losses would be minor under a 12 month or longer compliance period. Assuming an average inventory discard cost of $30 per product results in an estimated inventory transition cost of $150,000 ($30 times 5,000 products).

C. Bone Particle Size

A new requirement limits maximum bone particle size. FSIS believes bone particle size will not have a significant effect on actual production. For an establishment already performing bone content tests, FSIS believes an additional 5 minutes per test is sufficient to add the bone particle size test and record results. Good manufacturing practices would require that such tests be conducted at least once per day per shift.

Annual costs to perform and record test results for the 108 establishments are estimated at $74,000. This assumes an average of 1.75 shifts per day establishment, 260 operating days per year, 5 additional minutes per test, and a labor cost of $18 per hour.

D. Records Management and Maintenance

Information from industry indicates that many establishments currently maintain records for bone solids content so minimal additional burden is added by the proposed recordkeeping requirement. New recordkeeping requirements would apply to bone particle size testing. FSIS estimates that each establishment will average an additional 15 minutes per day on records maintenance. Annual costs of additional records maintenance for the 108 establishments are estimated at $84,000. This assumes 260 operating days per year and a labor cost of $12 per hour.

E. Benefits

Benefits derived from the proposed regulation arise from consumers being assured that labeling for products containing MS(K) would not be false or misleading. The description of ingredients will change, but the physical product itself will remain unchanged. The Agency does not expect any market-wide effects. No estimates exist regarding how consumers value such information. However, the Agency believes the value of avoiding false and misleading information exceeds the cost of labeling. The Agency is seeking additional information and data from commenters on the impact this proposal could have on markets and the value consumers place on this type of labeling information.

ANNUAL COST SUMMARY TABLE

	Million dollars
1. Cost of relabeling	5.000–10.000
2. Label inventory costs	.150
3. Bone particle tests	.074
4. Records maintenance	.084
5. Consumer reaction (no estimate)	
Total cost	5.308–10.308

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing with respect to the premises, facilities, and operations of federally inspected establishments any requirements that are in addition to, or different than, those imposed under the FMIA or PPIA. States and local jurisdictions may, however, impose recordkeeping and other requirements within the scope of section 202 of the FMIA and section 11 of the PPIA, if consistent therewith, with respect to any such federally inspected establishment. States and local jurisdictions are also preempted under the FMIA and the PPIA from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA and PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA and PPIA, States that maintain meat and poultry inspection programs must impose requirements that are at least equal to those required under the FMIA and PPIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

No retroactive effect will be given to this proposed rule. The administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge to the provisions of this proposed rule, if the challenge involves any decision of a program official. The administrative procedures specified in 9 CFR parts 335 and 381, subpart W, must be exhausted prior to any judicial challenge to the application of the provisions of this proposed rule with respect to labeling decisions.

Effect on Small Entities

The Administrator has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). It is likely that producers with smaller lot sizes would have higher compliance costs per pound of product because some costs such as testing and recordkeeping occur on a lot basis. Any relabeling costs also would be lower per pound for products with large annual production. No data is available which gives the establishment size breakdown for establishments producing products containing MS(K).

Paperwork Requirements

This proposed rule would require establishments to maintain records of bone solids content and bone particle size as a measure of process control, and to make such records available to any duly authorized representative of the Secretary. This proposed rule would also require labels of poultry products produced by mechanical separation (i.e. products currently termed mechanically deboned poultry or MDP) or products containing this ingredient to be revised to include in the ingredients statements the regulated term "Mechanically Separated (Kind)" and be submitted to FSIS for approval.

The paperwork requirements contained in this proposed rule have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Comments

Interested persons are invited to submit written comments concerning this notice. Submit comments in triplicate to Diane Moore, Docket Clerk, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 3171–S, Washington, DC 20250. Any person desiring an opportunity for an oral presentation of views should make such request to Mr. John W. McCutcheon so that arrangements can be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this notice will be available for public inspection in the Policy, Evaluation and Planning Office from 8:30 a.m. to 1:00 p.m., and from 2:00 p.m. to 4:30 p.m., Monday through Friday.

List of Subjects

9 CFR Part 318

Meat inspection.

9 CFR Part 381

Food labeling, Poultry and poultry products, Standards of identity.

Proposed Rule

For the reasons set forth in the preamble, FSIS is proposing to amend 9 CFR parts 318 and 381 of the Federal meat and poultry inspection regulations as follows:

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS: REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 would continue to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 318.6 would be amended by adding a new paragraph (b)(13) to read as follows:

§ 318.6 Requirements concerning ingredients and other articles used in preparation of products.

* * * * *

(b) * * *

(13) Use of "Mechanically Separated (Kind)," as defined in § 381.173 of this chapter, in the preparation of meat food products shall accord with § 381.174 and all other applicable provisions of this subchapter.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

3. The authority citation for part 381 would continue to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 450; 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

4. Section 381.15 would be amended by revising paragraphs (a)(1), (a)(2), (b)(2), and (c)(1) to read as follows:

§ 381.15 Exemption from definition of "poultry product" of certain human food products containing poultry.

(a) * * *

(1) It contains less than 2 percent cooked poultry meat (deboned white or dark poultry meat, or both) and/or "Mechanically Separated (Kind)" as defined in § 381.173;

(2) It contains less than 10 percent of cooked poultry skins, giblets, or fat, separately, and less than 10 percent of cooked poultry skins, giblets, fat, and meat (as meat is limited in paragraph (a)(1) of this section) or "Mechanically Separated (Kind)" as defined in § 381.173, in any combination;

* * * * *

(b) * * *

(2) It contains less than 15 percent cooked poultry meat (deboned white or dark poultry meat or both) and/or "Mechanically Separated (Kind)" as defined in § 381.173, computed on the basis of the moist deboned, cooked poultry meat and/or "Mechanically Separated (Kind)" in such product; and

(3) * * *

(c) * * *

(1) They contain poultry meat and/or "Mechanically Separated (Kind)" as defined in § 381.173 or poultry fat only in condimental quantities;

* * * * *

5. Section 381.117 would be amended by revising the section title and adding a new paragraph (e) to read as follows:

§ 381.117 Name of product and other labeling.

* * * * *

(e) On the label of any "Mechanically Separated (Kind)" described in § 381.173, the name of such product shall be followed immediately and in the following order by the phrase(s): "made from fowl" unless such product is not made, in whole or part, from mature female chickens as defined in § 381.170(a)(1)(vi), and "with excess skin" unless such product is made from poultry product that does not include skin in excess of the natural proportion of skin present on the whole carcass, as specified in paragraph (d) of this section. Appropriate terminology on the label shall indicate if heat treatment has been used in the preparation of the product. The labeling information described in this paragraph shall be identified on the label before the product leaves the establishment at which it is manufactured.

6. Subpart P would be amended by adding new §§ 381.173, and 381.174 to read as follows:

§ 381.173 Mechanically Separated (Kind).

(a) "Mechanically Separated (Kind)" is any finely comminuted product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle and other tissue of poultry carcasses and parts of carcasses that may or may not contain skin with attached fat and meeting the other provisions of this section. Examples of such product are "Mechanically Separated Chicken" and "Mechanically Separated Turkey."

(b) "Mechanically Separated (Kind)" shall not have a bone solids content of more than 1 percent. At least 98 percent of the bone particles present in "Mechanically Separated (Kind)" shall have a maximum size no greater than 1.5 mm (millimeter) in their greatest dimension and there shall be no bone particles larger than 2.0 mm in their greatest dimension.

(c) "Mechanically Separated (Kind)" shall not have a calcium content exceeding 0.235 percent when made from mature chickens or from turkeys as defined in § 381.170(a)(1) (vi) and (vii) and (a)(2), respectively, or 0.175 percent when made from other poultry, based on the weight of product that has not been heat treated, as a measure of a bone solids content of not more than 1 percent.

(d) "Mechanically Separated (Kind)" may be used in the formulation of poultry products in accordance with § 381.174 and meat food products in accordance with subchapter A of this chapter.

(e) Product resulting from the mechanical separating process that fails to meet the bone particle size or calcium content requirements for "Mechanically Separated (Kind)" shall be used only in producing poultry extractives, including fats, stocks, and broths and labeled as "Mechanically Separated (Kind) for Further Processing."

(f) The management of the establishment that produces "Mechanically Separated (Kind)" shall maintain records to support the validity of bone solids content and bone particle size of "Mechanically Separated (Kind)." Such records shall be made available to the inspector or any other duly authorized representative of the Secretary upon request.

§ 381.174 Limitations with respect to use of Mechanically Separated (Kind).

(a) A poultry product required to be prepared from a particular kind of poultry (e.g., chicken) shall not contain

"Mechanically Separated (Kind)" described in § 381.173, that is made from any other kind of poultry (e.g., Mechanically Separated Turkey).

(b) Mechanically Separated Chicken described in § 381.173, that is made, in whole or in part, from fowl as defined in § 381.170(a)(l)(vi), shall not be used in baby, junior, or toddler foods.

(c) "Mechanically Separated (Kind)" described in § 381.173 shall not be used in poultry products that are composed of whole or intact poultry muscle and expected to be as such by consumers (e.g., chicken steaks, chicken fillets, and cured turkey thighs), except that it may be used for binding purposes (i.e., to hold poultry muscle together) at a level that is sufficient for that purpose.

(d) "Mechanically Separated (Kind)" or "Mechanically Separated (Kind) Meat" described in § 381.173 shall not be used in the formulation of a poultry product or meat food product, unless such use conforms with any applicable requirements of the definitions and standards of identity or composition in this subchapter or part 319 of this chapter.

(e) Other than "Mechanically Separated (Kind)" made from fowl, Mechanically Separated (Kind)" may be used in any product defined by regulatory standards of identity and composition, except those products identified in paragraph (c) of this section, whereby "Kind" or "Kind Meat" is being used, provided that it is identified as "Mechanically Separated (Kind)."

7. Section 381.175 would be amended by adding a new paragraph (b)(6) to read as follows:

§ 381.175 Records required to be kept.

* * * * *

(b) * * *

(6) Records of bone solids content and bone particle size as required by § 381.173 of this subchapter.

Done at Washington, DC, on November 30, 1994.

Michael R. Taylor,

Acting Under Secretary for Food Safety.

[FR Doc. 94–29901 Filed 12–2–94; 8:45 am]

BILLING CODE 3410-DM-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. 1

[Docket No. 93N–0178]

RIN 0905–AD90

Regulation of Dietary Supplements; Withdrawal of Advance Notice of Proposed Rulemaking

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is withdrawing an advance notice of proposed rulemaking (ANPRM) on the regulation of dietary supplements that it published in the **Federal Register** of June 18, 1993 (58 FR 33690) (hereinafter referred to as the June 18, 1993, ANPRM). This action is necessary because of recently enacted legislation and terminates the rulemaking initiated by the ANPRM.

FOR FURTHER INFORMATION CONTACT: Judith S. Kraus, Center for Food Safety and Applied Nutrition (HFS–456), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5372.

SUPPLEMENTARY INFORMATION: In the June 18, 1993, ANPRM, FDA requested public comment on approaches, consistent with the requirements of the Federal Food, Drug, and Cosmetic Act, for assuring the safety of products offered for sale as dietary supplements. In particular, the ANPRM requested information on the safety and use of amino acids, or combinations of amino acids, as ingredients in dietary supplements. Additionally, FDA announced the availability of a report entitled "Task Force on Dietary Supplements Final Report" and requested comments on the recommendations made in the report. FDA received over 6,000 comments to the ANPRM. While some of these comments expressed concern about the safety of dietary supplement products, most strongly objected to many of the possible courses of action that the agency outlined in the ANPRM.

On October 25, 1994, President Clinton signed into law the Dietary Supplement Health and Education Act of 1994 (Pub. L. 103–417). Section 11 of this act declares the June 18, 1993, ANPRM to be null and void and of no force and effect. It also directs the Secretary (and by delegation, FDA) to publish notice to this effect in the **Federal Register**.

After consideration of the comments received, and in light of section 11 of the new law, FDA has decided to withdraw the June 18, 1993, ANPRM. Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301 *et seq*), the agency hereby withdraws the ANPRM that it published in the **Federal Register** of June 18,1993 (58 FR 33690), on the regulation of dietary supplements.

Dated: November 30, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–29988 Filed 12–5–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[EE–38–94]

RIN 1545–AS92

Nonbank Trustee Net Worth Requirements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to nonbank trustees and the adequacy of net worth requirements of § 1.401–12(n) (6) and (7) of the Income Tax Regulations. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments must be received by January 5, 1995.

ADDRESSES: Send submissions to: Internal Revenue Service, POB 7604, Ben Franklin Station, Attn: CC:DOM:CORP:T:R (EE–38–94), room 5228, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:T:R (EE–38–94), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Judith E. Alden, (202) 622–6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 401(d)(1). The temporary regulations contain rules relating to the net worth requirements for nonbank trustees.

The text of those temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Judith E. Alden, Office of the Associate Chief Counsel, (Employee Benefits and Exempt Organizations), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income Taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read, in part, as follows:

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

Par. 2. Section 1.401–12 is amended by revising paragraphs (n)(6)(ii) and (n)(7)(i) to read as follows:

§ 1.401–12 Requirements for qualification of trusts and plans benefiting owner-employees.

[The text of proposed paragraphs (n)(6)(ii) and (n)(7)(i) are the same as the text of § 1.401–12T published elsewhere in this issue of the **Federal Register**].

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 94–29703 Filed 12–5–94; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 950

Wyoming Regulatory Program

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

ACTION: Proposed rule, public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Wyoming regulatory program (hereinafter, the "Wyoming program") under the Surface Mining Control and Reclamation Act of 1977(SMCRA). The proposed amendment consists of revisions to the Land Quality Rules Appendix B, Wildlife Monitoring Requirements For Surface Coal Mining Operations. The amendment is intended to revise and Wyoming program to be consistent with the corresponding Federal regulations and SMCRA.

DATES: Written comments must be received by 4:00 p.m., m.s.t., January 5, 1994. If requested, a public hearing on the proposed amendment will be held on January 3, 1995. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.s.t., on December 21, 1994.

ADDRESSES: Written comments should be mailed or hand delivered to Guy V. Padgett, Casper Field Office Director at the address listed below.

Copies of the Wyoming program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy V. Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, Federal Building, Rm. 2128, 100 East "B" Street, Casper, Wyoming 82601–1918.

Dennis Hemmer, Director, Department of Environmental Quality Herschler Building—4th Floor West, 125 West 25th Street, Cheyenne, Wyoming 82002, Telephone: (307) 777–7938.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: 307–261–5824.

SUPPLEMENTARY INFORMATION:

I. Background on the Wyoming Program

On November 26, 1980, the Secretary of the Interior conditionally approved the Wyoming program. General background information on the Wyoming program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Wyoming program can be found in the November 26, 1980, **Federal Register** (45 FR 78637). Subsequent actions concerning Wyoming's program and program amendments can be found at 30 CFR 950.11, 950.12, 950.15 and 950.16.

II. Proposed Amendment

By letter dated November 8, 1994, Wyoming submitted a proposed amendment to its program pursuant to SMCRA (Wildlife Monitoring, administrative record No. WY–28–01). Wyoming submitted the proposed amendment in response to the required program amendments at 30 CFR 950.16(aa). The provisions of Land Quality Rules that Wyoming proposed to reside were: Appendix B, Wildlife Monitoring Requirements For Surface Coal Mining Operations.

Specifically, Wyoming proposes to revise section E, by removing the language "except migrating and wintering bald eagles or migrating peregrine falcons." After numerous meetings with the U.S. Fish and Wildlife Service, Wyoming Game and Fish Department, representatives of the mining industry, and Land Quality

Division biologist, the introductory sentence of section E is now acceptable to all participants.

Section C: Raptor Production, *Nest Status and Production Success* of Appendix B was modified to satisfy concerns expressed by the U.S. Fish and Wildlife Service, and Wyoming Game and Fish Department. These agencies recommended that the required dates for conducting raptor surveys be changed to: "on or before mid February."

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Wyoming program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under DATES or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under FOR FURTHER INFORMATION CONTACT by 4:00 p.m., m.s.t. on December 21, 1994. The location and time of the hearing will be arranged with those persons requesting the hearing. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under FOR FURTHER INFORMATION CONTACT. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under FOR FURTHER INFORMATION CONTACT. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under ADDRESSES. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 950

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 29, 1994.

Charles E. Sandberg,

Acting Assistant Director, Western Support Center.

[FR Doc. 94-29983 Filed 12-5-94; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Region II Docket No.137; NJ 18-1-6474, FRL-5116-9]

Approval and Promulgation of Implementation Plans; New Jersey Employee Commute Options Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve a State Implementation Plan (SIP) revision submitted by the State of New Jersey for the purpose of establishing an Employee Commute Options Program. This SIP revision was submitted by the State of New Jersey to satisfy the statutory mandate that an Employee Commute Options Program be established for employers with 100 or more employees. Under the New Jersey program, compliance plans must be developed by these employers. These plans are to be designed to convincingly demonstrate an increase in the average

passenger occupancy (APO) of their employees who commute to work during the peak period of no less than 25 percent above the average vehicle occupancy (AVO) of the nonattainment area. AVO is defined as the number of employees reporting to all worksites in the program area from 6 a.m. to 10 a.m., divided by the number of vehicles driven by these employees during a typical work week. APO is defined as the number of employees reporting to a specific site from 6 a.m. to 10 a.m., divided by the number of vehicles driven by these employees.

DATES: Comments must be received on or before January 5, 1995.

ADDRESSES: All comments should be addressed to: William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 26 Federal Plaza, New York, New York 10278.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 26 Federal Plaza, room 1034A, New York, New York 10278.

New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Jeffrey S. Butensky, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, room 1034A, New York, New York 10278, (212) 264–2517.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act as amended in 1990 requires employers with 100 or more employees in severe and extreme ozone nonattainment areas to participate in a trip reduction program. This includes 18 of the 21 counties in New Jersey, excluding the counties of Warren, Atlantic, and Cape May. EPA issued guidance on December 17, 1992 interpreting various aspects of the statutory requirements (Employee Commute Options Guidance, December 1992). Although the federal program has been named "Employee Commute Options," or "ECO", the State of New Jersey has opted for the name "Employer Trip Reduction," or "ETR". The program shall be referred to as "ETR" for the remainder of this document.

The concern that led to the inclusion of the ETR provision in the amended Clean Air Act is that people are driving more than ever before. In addition, the distances driven per trip have increased considerably. This has resulted in a rapid increase in the number of vehicle miles traveled (VMT) and has offset a large part of the emissions reductions achieved through the production and sale of vehicles that operate more cleanly.

It is widely accepted that within a decade, the increased emissions caused by increased VMT and congestion will outweigh the benefits derived from new less polluting vehicles. Unless this increase in VMT is mitigated, there will be an overall increase in emissions from motor vehicles. The ETR provision is designed to decrease the use of single occupancy vehicles and to reduce emissions—beyond what can be and will be obtained via stricter tailpipe and fuel standards.

Section 182(d)(1)(B) of the amended Clean Air Act requires that employers submit their compliance plans to a state within two years of the date the State submits its trip reduction plan to EPA. The compliance plans should be designed to "convincingly demonstrate" an increase in the APO for their employees who commute to work during the peak period by no less than 25 percent above the AVO of the area. New Jersey has established different zones within its nonattainment areas for the purpose of calculating the AVO. The compliance plans must "convincingly demonstrate" that the employers will meet the target within two years of submitting a compliance plan, or by November 15, 1996 for New Jersey.

In order to gain approval, a state's submittal must contain each of the following program elements: (1) The AVO for each zone if the area is divided into zones; (2) the target APO(s) which is(are) no less than 25 percent above the AVO(s); (3) an ETR program that includes a process for compliance demonstration; and (4) enforcement procedures to ensure submission and implementation of compliance plans by employers. The acceptability of these elements as submitted by New Jersey is discussed below.

State Submissions

The final State regulation, containing AVO zones, was due to be submitted to EPA on November 15, 1992. New Jersey submitted an incomplete program on this date. On January 15, 1993, EPA notified the Governor of New Jersey that the ETR program was incomplete and sanctions would be implemented under Clean Air Act section 179 if a complete program was not submitted within 18 months. On November 15, 1993, New Jersey submitted a SIP revision request containing the required aspects of the program, including APO/AVO zones and measures to enforce the program. EPA found the submittal complete on December 29, 1993, and thereby stopped the section 179(a)(1) sanction process.

II. Analysis

The following items are the basis for proposed approval of the SIP revision. The State has met the requirements of section 182(d)(1)(B) by submitting a SIP revision that implements all required program elements.

1. The Average Vehicle Occupancy

Section 182(d)(1)(B) requires that the State determine the AVO at the time the SIP revision is submitted. The State has met this requirement. In 1992, AVO was established by a telephone survey, and based on demographic characteristics, the State has been divided into two distinct AVO zones. The urban area zone includes the counties of Bergen, Essex, Hudson, Union, and part of Passaic (municipalities of Clifton, Paterson, and Passaic), and has an established AVO of 1.22. The AVO of the suburban zone is 1.10 and includes the counties of Burlington, Camden, Cumberland, Gloucester, Hunterdon, Mercer, Middlesex, Morris, Ocean, Somerset, Salem, Sussex, and the remainder of Passaic county.

2. The Target APO

Section 182(d)(1)(B) requires that the target APO must be not less than 25 percent above the AVO for the nonattainment area. An approvable SIP revision for this program must include the target APO. The State has fulfilled this requirement by computing target APOs that meet the 25 percent mandate. The suburban zone maintains a single area AVO and APO, but the single urbanized zone has been divided into three distinct target areas.

Urban area zones:

- Sub-area 1: Urban Core including the Newark central business district, Jersey City central business district, and Hoboken: Target APO = 1.97
- Sub-area 2: Remainder of Hudson County: Target APO = 1.73
- Sub-area 3: The counties of Bergen, Union, the remainder of Essex and the urbanized area of Passaic (municipalities of Clifton, Paterson, Passaic): Target APO = 1.46

These three target zones averaged together produce an increase of 25 percent of the AVO as required by the Clean Air Act.

Suburban area zone (area described above): Target APO = 1.38

3. ETR Program

Based on the requirements of the Clean Air Act, state or local law must establish ETR requirements for employers with 100 or more employees at a worksite within severe and extreme ozone nonattainment areas. In the ETR Guidance issued December 1992, EPA states that automatic coverage of employers of 100 or more should be included in the provision. In addition, states should develop procedures for notifying employers of the ETR requirements. The State of New Jersey has fulfilled these requirements.

EPA will allow New Jersey to provide additional time to employers that request an extension. The rule requires employers to comply by 1996 but allows an extension for the penalties for noncompliance until 1997. This is allowed because the Clean Air Act states that employers must comply within four years of program submittal by the State. Since the program was submitted on November 15, 1993, the State may allow employers until November 15, 1997 to comply with the program.

The rule specifies that a contract employee is defined as working at a location for a least six months over the course of a year. Employees that work less that six months are not incorporated into the program. The State believes that this is appropriate since an employee that works less than six months at one location is likely to work more than six months at another location. Although in concurrence, EPA is not comfortable with a six month period and would prefer a period of shorter duration.

State and/or local laws must require that initial compliance plans "convincingly demonstrate" prospective compliance. Approval of the SIP revision depends on the ability of the regulations to ensure that the Clean Air Act requirement to "convincingly demonstrate" compliance will be met. This demonstration can take on any of four forms or any combination of these.

One option is for a state to include in the SIP evidence that agency resources are available for a plan-by-plan review of employer selected measures to ensure the high quality of compliance plans.

A second option is for the regulations in the SIP to contain a convincing minimum set of measures that all employers must implement. These measures will be subject to review and approval by EPA as adequate when the SIP is processed.

A third option is for the regulations in the SIP to provide that failure of the employer to meet the target APO will result in implementation of a regulation-specified, multi-measure contingency plan. This plan will be reviewed by EPA for adequacy when the SIP is processed.

A fourth option is for the regulations in the SIP to include financial penalties and/or compliance incentives for non-compliant employers that are effective enough to result in a significant incentive for the employer to design and implement an effective compliance plan.

The New Jersey program is essentially a combination of options 1 and 4, or plan review and penalty assessment. New Jersey has instituted a certification procedure that utilizes a list of several State approved outside certification organizations. This list of outside certifiers consists of several private firms and self-employed certifiers, and employers may choose from this list. The certifiers will review employer plans to assure that they "convincingly demonstrate" compliance. Certifiers will look for completeness and other program attributes, but the New Jersey Department of Transportation will ultimately have the rights to final approval of an employer plan. An employer plan is automatically approved after 180 days if the certification process has not been completed.

In addition, a detailed schedule of financial penalties will be enforced on employers that do not register or comply. Although the rule provides a means to assess fines which EPA believes are sufficient to deter non-compliance, waivers are available if an employer shows a good faith effort towards compliance.

4. Enforcement Procedures

States and local jurisdictions must include enforcement provisions in their ETR regulations such as penalties and/or compliance incentives for an employer who fails to submit a compliance plan or an employer who fails to meet the APO targets. Penalties should be severe enough to provide an adequate incentive for employers to comply and be no less than the expected cost of compliance. A state may meet this requirement by developing a procedure for tracking and fining non-complying employers. New Jersey's penalties for noncompliance are as follows:

1—Maximum of $250 for the first two months and $500 for each month thereafter for each work location that fails to submit a registration form.

2—Maximum of $1000 per month for each work location that fails to file a plan or report.

3—Maximum of $5000 per month for each work location that fails to achieve the APO target (actual assessment of this penalty for an employer may be waived if a good faith effort is shown).

The rule allows for extensions but does not limit the time period for which they could be granted. The State has indicated that it has and will continue to limit extensions to six months in duration. EPA is proposing to approve the plan contingent on the State limiting extensions in this manner. Should EPA find that New Jersey is issuing extension for longer periods, the agency proposes to initiate the process to disapprove the SIP.

The rule allows hardship waivers but does not limit the duration of the waiver. However, good faith waivers are limited to one year. In addition, the rule indicates that hardship waivers are to be assessed through the procedures for assessing good faith waivers. The State has indicated that it interprets the rule as requiring through this provision a one year limit on hardship waivers also. EPA proposes to approve the program based on this understanding.

III. Other Issues

1. Shifting Commuters Out of the Peak Period

New Jersey rule allows for shifting commuters out of the peak period while continuing to count the commuters (people but not their vehicles) as if they arrived during the 6:00 a.m. to 10:00 a.m. peak period, which is the most critical time for emissions which lead to ground level ozone formation. This raises the vehicle occupancy rate because the number of employees remains stable while the number of vehicles arriving at the workplace is decreased by the number which arrive outside of the peak period. EPA's policy has been to require employers to calculate their vehicle occupancy rate by reducing both the number of employees and the number of vehicles so that only those arriving during the peak period are included in the calculation.

EPA believes that most employers will not be able to take advantage of this to any significant degree because most will not be able to have employees start outside of the peak period. For those that do take advantage of this provision, the trips will have at least been shifted out of the most congested periods of the day and the emissions from these trips will have been shifted out of the key 6:00 a.m. to 9:00 a.m. period. Therefore, EPA proposes to accept this approach by New Jersey.

2. Trading Credits Between Nonattainment Areas

New Jersey's rule allows trading of credits between employers in the two different severe nonattainment areas in the State. However, EPA's ECO guidance only allows for trades within the same nonattainment area. EPA's guidance is based on ECO applying specifically to discrete nonattainment areas; therefore, the trading of APO credits across nonattainment area boundaries should not be accepted based on an interpretation that the term, "area," in section 182(d)(1)(B) should only be construed to mean "nonattainment area."

Under this interpretation, facilities located within two miles from one another, but in different contiguous nonattainment areas, could not trade credits with one another, but could trade credits with a facility located 100 miles away in the same nonattainment area. This is not consistent with the policy relating to stationary sources, which can trade offsets between one nonattainment area and another in the northeast ozone transport region. This policy was established in a March 31, 1993 letter from John Seitz, the Director of the Office of Air Quality Planning and Standards to Bruce S. Carhart, the Executive Director of the Ozone Transport Commission. Furthermore, EPA has no reason to believe that trading would not be equitable across the two nonattainment areas. Therefore, the Region's position is that since the New Jersey program exists in two contiguous severe nonattainment areas within the State, trading should be allowed across the nonattainment area boundaries in the New Jersey program, and EPA proposes to accept this provision of the New Jersey rule.

3. Giving Full Credit for Alternative Fuel Vehicles

The State's rule allows for not including alternatively fueled vehicles as a vehicle in the calculation of occupancy rates. EPA's policy has been that alternatively fueled vehicles may be exempted from counting as a full vehicle.

EPA believes that this provision of the New Jersey rule will have a minor impact on the program's effectiveness since it is unlikely that many employees will have access to alternative fueled passenger cars. It is more likely that some multi-passenger vans or buses will be alternatively fueled and these will be excluded from the count of vehicles because of their capacity even without the exclusion for alternative fuels. Therefore, EPA proposes to accept this provision of the New Jersey Rule.

4. Giving Full Credit for Seven and Eight Passenger Vehicles

The State's rule counts vanpools arriving at the worksite with seven or eight employees as "zero vehicles arriving." EPA's policy allows only nine passenger and greater vehicles not to be counted as a vehicle arriving at a worksite.

EPA believes that although this provision in the rule will allow some smaller vans and larger station wagons carrying seven or eight employees to be excluded from the count of vehicles arriving at a worksite, that this will not be a significant number of vehicles beyond those already excluded by EPA's policy and will allow employers the flexibility to arrange for vehicles of a size which best fits their needs. Therefore, EPA proposes to accept this provision of the New Jersey Rule.

IV. Conclusion

In this proposal, EPA is proposing to approve the SIP revision submitted by the State of New Jersey which contains the ETR program. This submittal addresses and implements each of the program elements required by section 182(d)(1)(B) of the Clean Air Act. As a result, EPA is proposing to approve this submittal.

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

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the Clean Air Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v *US EPA*, 427 US 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The Office of Management and Budget has exempted this action from review under Executive Order 12866.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C 7401–7671q.

Dated: November 17, 1994.

William J. Muszynski, P.E.,

Deputy Regional Administrator.

[FR Doc. 94–29974 Filed 12–5–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR PART 52

[IL98–1–6589; FRL–5117–5]

Approval and Promulgation of an Implementation Plan for Vehicle Miles Traveled; Illinois

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (USEPA) proposes to approve a request for a State Implementation Plan (SIP) revision, addressing the Chicago, Illinois ozone nonattainment area, submitted by the State of Illinois for the purpose of offsetting any growth in emissions from growth in vehicle miles traveled (VMT) or number of vehicle trips, and to attain reduction in motor vehicle emissions, in combination with other emission reduction requirements, as necessary to comply with Reasonable Further Progress (RFP) milestone requirements of the Clean Air Act (Act). The rationale for this proposed approval is set forth below; additional information is available at the address indicated below.

DATES: Comments on this proposed rule must be received on or before January 5, 1995.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), USEPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency,

Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Please contact Patricia Morris at (312) 353–8656 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656.

SUPPLEMENTAL INFORMATION:

I. Background

Section 182(d)(1)(A) of the Act, as amended in 1990 (Act), requires States containing ozone nonattainment areas classified as "severe" pursuant to section 181(a) of the Act to adopt transportation control measures (TCMs) and transportation control strategies to offset any growth in emissions from growth in VMT or number of vehicle trips, and to attain reductions in motor vehicle emissions (in combination with other emission reduction requirements) as necessary to comply with the Act's RFP milestones and attainment requirements. The requirements for establishing a VMT Offset program are discussed in the April 16, 1992, General Preamble to Title I of the Act (57 FR 13498), in addition to section 182(d)(1)(A) of the Act.

For certain programs required under the Act (including VMT-Offset), USEPA had earlier adopted a policy pursuant to section 110(k)(4) of the Act to conditionally approve SIPs that committed to provide the USEPA with specific enforceable measures by a date certain. That interpretation was challenged in *Natural Resources Defense Council* v. *Browner*, consolidated lawsuits brought in the United States Court of Appeals for the District of Columbia Circuit. In a full opinion, dated May 6, 1994 (and in a March 8, 1994 Order and April 22, 1994 Amended Order issued earlier) the Court found that USEPA's conditional approval interpretation exceeded USEPA's statutory authority. While the court did not specifically address the VMT Offset program in it's orders or opinions, USEPA believes that the court's general conclusion that the Agency's construction of the conditional approval provision was unlawful precludes USEPA from taking action to approve any submitted VMT Offset committal SIPs.

On November 26, 1993, the USEPA published a proposed rule (58 FR 62309) to conditionally approve Illinois's commitment for the VMT-Offset requirement.

In light of the decision reached in *Natural Resources Defense Council* v. *Browner*, USEPA has decided not to go forward with conditional approvals of VMT committal SIPs, but that it would be appropriate to interpret the VMT Offset provision of the Act to account for how States can practicably comply with each of the provision's elements. The VMT Offset provision requires that States submit by November 15, 1992, specific enforceable TCMs and strategies to offset any growth in emissions from growth in VMT or number of vehicle trips, sufficient to allow total area emissions to comply with the RFP and attainment requirements of the Act.

The USEPA has observed that these three elements (i.e., offsetting growth in mobile source emissions, attainment of the RFP reduction, and attainment of the ozone National Ambient Air Quality Standards (NAAQS) create a timing problem of which Congress was perhaps not fully aware. As discussed in USEPA's April 16, 1992, General Preamble to Title I (57 FR 13498), ozone nonattainment areas affected by this provision were not otherwise required to submit SIPs that show attainment of the 1996 15% RFP milestone until November 15, 1993, and likewise are not required to demonstrate post-1996 RFP and attainment of the NAAQS until November 15, 1994. The SIP demonstrations due on November 15, 1993, and on November 15, 1994, are broader in scope than growth in VMT or trips in that they necessarily address emission trends and control measures for non motor vehicle emission sources and, in the case of attainment demonstrations, complex photochemical modeling studies.

The USEPA does not believe that Congress intended the VMT Offset provision to advance the dates for these broader submissions. Further, USEPA believes that the November 15, 1992, date would not allow sufficient time for States to have fully developed specific sets of measures that would comply with all of the elements of the VMT Offset requirements of Section 182(d)(1)(A) over the long term. Consequently, USEPA believes it would be appropriate to interpret the Act to provide the following alternative set of staged deadlines for submittal of elements of the VMT Offset SIP.

Under this interpretation, the three required elements of Section 182(d)(1)(A) are separable, and can be divided into three separate submissions that could be submitted on different dates. Section 179(a) of the Act, in establishing how USEPA would be required to apply mandatory sanctions if a State fails to submit a full SIP also provides that the sanctions clock starts if a State fails to submit one or more SIP elements, as determined by the Administrator. The USEPA believes that this language provides the Agency the authority to determine that the different elements of a SIP submission are separable. Moreover, given the continued timing problems addressed above, USEPA believes it is appropriate to allow states to separate the VMT Offset SIP into three elements, each to be submitted at different times: (1) The initial requirement to submit TCMs that offset growth in emissions; (2) the requirement to comply with the 15% periodic reduction requirement of the Act; and, (3) the requirement to comply with the post-1996 periodic reduction and attainment requirements of the Act.

Under this approach, the first element, the emissions offset element, was due on November 15, 1992. The USEPA believes this element is not necessarily dependent on the development of the other elements. The State could submit the emissions growth offset element independent of an analysis of that element's consistency with the periodic reduction and attainment requirements of the Act. Emissions trends from other sources need not be considered to show compliance with this offset requirement. As submitting this element in isolation does not implicate the timing problem of advancing deadlines for RFP and attainment demonstrations, USEPA does not believe it is necessary to extend the statutory deadline for submittal of the emissions growth offset element.

The second element, which requires the VMT Offset SIP to comply with the 15% RFP requirement of the Act, was due on November 15, 1993, which is the same date on which the 15% RFP SIP itself was due under section 182(b)(1) of the Act. The USEPA believes it is reasonable to extend the deadline for this element to the date on which the entire 15% SIP was due, as this allows States to develop the comprehensive strategy to address the 15% reduction requirement and assure that the TCM elements required under section 182(d)(1)(A) are consistent with the remainder of the 15% demonstration. Indeed, USEPA believes that only upon submittal of the broader 15% plan can a State have had the necessary opportunity to coordinate it's VMT strategy with it's 15% plan.

The third element, which requires the VMT Offset SIP to comply with the post-1996 RFP and attainment requirements of the Act, will be due on November 15, 1994, the statutory deadline for those broader submissions. The USEPA believes it is reasonable to

extend the deadline for this element to the date on which the post-1996 RFP and attainment SIPs are due for the same reasons it is reasonable to extend the deadline for the second element. First, it is arguably impossible for a State to make the showing required by Section 182(d)(1)(A) for the third element until the broader demonstrations have been developed by the State. Moreover, allowing States to develop the comprehensive strategy to address post-1996 RFP and attainment by providing a fuller opportunity to assure that the TCM elements comply with the broader RFP and attainment demonstrations, will result in a better program for reducing emissions in the long term.

On July 14, 1994, Illinois submitted to USEPA a SIP submittal to fulfill the first portion of the VMT-Offset SIP. A public hearing had been held on the submittal on June 22, 1994. The SIP submittal was found to be complete in a letter dated August 4, 1994.

Illinois submitted a 15 percent plan SIP on November 15, 1993. In the 15 percent plan Illinois uses TCMs amounting to 2 tons per day for credit toward the 15 percent reduction. The Illinois 15 percent plan SIP revision request is not yet complete. The USEPA is proposing to approve the second portion of the VMT Offset submittal after final TCM commitments are submitted and USEPA makes a favorable finding of completeness on the Illinois 15 percent plan.

Illinois will submit TCMs as necessary to meet post-1996 RFP and attainment at the same time as the post-1996 RFP and attainment demonstration SIPs.

Evaluation of the State Submittal

Section 182(d)(1)(A) of the Act requires the State to offset any growth in emissions from growth in VMT. As discussed in the General Preamble, the purpose is to prevent growth in motor vehicle emissions from canceling out the emission reduction benefits of the federally mandated programs in the Act. The USEPA interprets this provision to require that sufficient measures be adopted so that projected motor vehicle volatile organic compound (VOC) emissions will never be higher during the ozone season in one year than during the ozone season in the year before. When growth in VMT and vehicle trips would otherwise cause a motor vehicle emissions upturn, this upturn must be prevented. The emissions level at the point of upturn becomes a ceiling on motor vehicle emissions. This requirement applies to projected emissions in the years between the submission of the SIP revision and the attainment deadline and is above and beyond the separate requirements for the RFP and the attainment demonstrations. The ceiling level is defined therefore, up to the point of upturn, as motor vehicle emissions that would occur in the ozone season of that year, with VMT growth, if all measures for that area in that year were implemented as required by the Act. When this curve begins to turn up due to growth in VMT or vehicle trips, the ceiling becomes a fixed value. The ceiling line would include the effects of Federal measures such as new motor vehicle standards, phase II RVP controls, and reformulated gasoline, as well as the Act mandated SIP requirements.

The State of Illinois has demonstrated in its submittal of July 14, 1994, that the predicted growth in VMT in the Chicago, Illinois nonattainment area is not expected to result in a growth in motor vehicle emissions that will negate the effects of the reductions mandated by the Act. Further, Illinois has projected motor vehicle emissions to the year 2007 and has not predicted an upturn in motor vehicle emissions. The nonattainment area includes the counties of Cook, DuPage, Kane, Lake, McHenry, Will and the townships of Aux Sable and Goose Lake in Grundy County and Oswego in Kendall County. The MOBILE5a model was used to calculate fleetwide on-highway motor vehicle emission factors for future years. The average summer weekday VMT for 1990 has been estimated to be 140.35 million miles for the baseline inventory.

For the years 1990 to 1996, Illinois used a VMT growth rate of 2.7 percent per year for the Chicago nonattainment area. There are indications that VMT growth may be slowing. Since the future VMT growth can be difficult to predict, Illinois used three different possible VMT growth rates to project mobile source emissions and demonstrate compliance. Illinois estimated mobile source emissions at a VMT growth rate of 1 percent, 2 percent and 2.7 percent per year for 1996 to 2007. The July 14, 1994, submittal lists the predicted average summer weekday VMT for the years 1990, 1996, 1999, 2004 and 2007 at each of the three VMT growth rates.

The MOBILE5a model was used to estimate motor vehicle emission rates for the specified years as mandatory control measures become effective. The control measures whose effects were modeled were: The Federal motor vehicle control program; volatility controls for gasoline and reformulated gasoline; and the inspection and maintenance program (both the current program to 1996 and the enhanced program from 1996 to 2007). There were no benefits taken for the employee commute options program.

Even at the 2.7 percent per year VMT growth rate, no upturn in mobile source emissions is predicted. The July 14, 1994, submittal demonstrates that emissions will continue to decline through the year 2010. This demonstration meets the first requirement of the 3 part submittal.

On November 15, 1993, Illinois submitted the 15 percent reasonable further progress plan. This submittal relies on a 2 ton per day credit from transportation control measures (TCMs) to meet the 15 percent reduction. A listing of TCMs was submitted with the SIP submittal. On December 9, 1993, the Chicago Area Transportation Study's policy committee officially adopted this package of TCMs as a component of the Illinois 15 percent plan. Many of the TCMs have already been implemented and all of the TCMs have been included in the Chicago area's transportation improvement program. The USEPA requires further documentation on these TCMs before the second element can be fully approved. The further requirements for Illinois' TCM package are discussed in a May 20, 1994, letter from the USEPA Regional Administrator to the Director of the Illinois Environmental Protection Agency. At this time, Illinois has met the VMT Offset requirement by using TCMs as necessary in the 15 percent plan. The USEPA is proposing to approve the second element when a favorable finding of completeness on the 15 percent plan is made.

The attainment demonstration and the post-1996 RFP SIPs are due on November 15, 1994. Illinois will address any necessary TCMs to reach attainment and meet the post-1996 RFP in those SIP submittals.

Summary of Findings

In the requested SIP revision submittal, Illinois has projected motor vehicle emissions until the statutory attainment year of 2007 using the most recent population and economic growth projections. These projections went through public hearing and comment on June 22, 1994. Using a VMT forecast of 2.7 percent per year, these projections show that motor vehicle emissions are not expected to rise above the ceiling level through the year 2010.

In addition, Illinois has identified and evaluated a number of specific TCMs to reduce single occupancy vehicle usage. Several of these identified TCMs are currently being implemented.

Illinois has met the first requirement of the VMT offset plan. Illinois has demonstrated in the July 14, 1994, submittal that projected growth in VMT is not expected to result in an increase in emissions from motor vehicles and is not expected to negate the progress in emissions reductions required to meet attainment of the standard by 2007. In addition, Illinois has used TCMs as necessary to meet the 15% RFP requirements by 1996. The third requirement is for Illinois to use TCMs as necessary to meet the post - 1996 RFP and attainment of the standard. This third requirement will be submitted with the post - 1996 RFP and attainment demonstration SIPs and will be addressed in a future rule.

III. Proposed Rulemaking Action

Based on the submittal accompanying the State's SIP revision request, USEPA is proposing to approve the SIP revision submitted by the State of Illinois as satisfying the first and second elements of the three VMT offset plan requirements.

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for 2 years. The USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993. The OMB has exempted this regulatory action from Executive Order 12866 review.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., USEPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, USEPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids USEPA to base its actions concerning SIPs on such grounds. See *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 22, 1994.

Michelle D. Jordan,

Deputy Regional Administrator.

[FR Doc. 94–29986 Filed 12–5–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 63

[AD–FRL–5114–3]

RIN 2860–AD57

National Emission Standards for Hazardous Air Pollutants; Proposed Standards for Hazardous Air Pollutant Emissions From Wood Furniture Manufacturing Operations

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 existing and new wood furniture manufacturing operations located at major sources. The proposed standards implement section 112(d) of the Clean Air Act as amended, which require the Administrator to regulate emissions of HAP listed in section 112(b) of the Act. The intent of the standards is to protect the public by requiring new and existing major sources to control emissions to the level attainable by implementing the maximum achievable control technology (MACT), taking into consideration the cost of achieving such emission reductions, any nonair quality and other air quality-related health and environmental impacts, and energy requirements.

The EPA is also proposing Method 311 with the standards. Method 311 will be used to assist in demonstrating compliance with the proposed emission limitations.

DATES: *Comments.* Comments must be received on or before February 21, 1995.

Public Hearing. A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standards for wood furniture manufacturing operations. If anyone contacts the EPA requesting to speak at a public hearing by January 4, 1995, a public hearing will be held on January 19, 1995, beginning at 9:30 a.m. Persons interested in attending the hearing should notify Ms. Kim Teal, (919) 541–5580, to verify that a hearing will occur.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact the EPA by January 4, 1995, by contacting Ms. Kim Teal, Coatings and Consumer Products Group (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5580.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), (LE–131), Attention, Docket No. A–93–10, U. S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

Docket. Docket No. A–93–10, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8:30 a.m. and 5:00 p.m., Monday through Friday, at the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, 1st Floor, 401 M Street, SW, Washington, DC 20460. Telephone (202) 260–7548, FAX (202) 260–4400. The proposed regulatory text and other materials related to this rulemaking are available for review in the docket. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed standards, contact Dr. Madeleine Strum at (919) 541–2383, Coatings and Consumer Products Group, 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
A. Regulatory Background
B. Regulatory Negotiation Approach
II. Description of the Source Category
III. Summary of the Standards
A. Applicability of the Standards
B. Actual Standards and Format of the Standards
C. Compliance and Monitoring Requirements
D. Reporting and Recordkeeping Requirements
IV. Summary of Impacts
A. Environmental Impacts
B. Energy Impacts
C. Economic Impacts
D. Cost Impacts
V. Decision Process for NESHAP Development
A. Source of Authority for NESHAP Development
B. Criteria for Development of NESHAP
VI. Rationale
A. Selection of Pollutants and Source Category
B. Selection of Emission Points
C. Selection of Proposed Emission Limits
D. Selection of Format of Proposed Emission Limits
E. Selection of Work Practice Standards
F. Pollution Prevention Considerations
G. Selection of Compliance and Monitoring Requirements
H. Selection of Reporting and Recordkeeping Requirements
I. Small Business Considerations
J. Selection of Definition of Source
K. Relationship Between General Provisions and Proposed Rule
L. Relationship Between Operating Permit Program and Proposed Rule
M. Solicitation of Comments
VII. Other Considerations
VIII. Administrative Requirements
A. Public Hearing
B. Docket
C. Executive Order 12866
D. Paperwork Reduction Act
E. Regulatory Flexibility Act
F. Miscellaneous
G. Statutory Analysis

The proposed regulatory text is not included in this **Federal Register** notice but is available in Docket No. A-93-10 (see **ADDRESSES**). 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

A. Regulatory Background

The proposed rule represents the EPA's first comprehensive regulation of the wood furniture (surface coating) category. No Federal rules, such as new source performance standards (NSPS), have previously been promulgated for this industry. In 1990, the Clean Air Act was amended; two titles of the 1990 Amendments affect wood furniture manufacturers, prompting regulation of this industry.

Title III of the Clean Air Act Amendments of 1990 was enacted to help reduce the increasing levels of nationwide air toxics emissions. Under Title III, section 112 of the Act was amended to give the EPA the authority to establish national standards to reduce air toxics from sources that emit such pollutants. Section 112(b) contains a list of the HAP that are the specific air toxics to be regulated by national emission standards for hazardous air pollutants (NESHAP). Section 112(c) directs the EPA to use this pollutant list to develop and publish a list of source categories (industries) for which NESHAP will be developed. This list of source categories was published in the **Federal Register** on July 16, 1992 (57 FR 31576) and includes a category for major sources entitled wood furniture (surface coating). Therefore, the proposed standards regulate emissions of HAP from new and existing wood furniture (surface coating) operations located at major sources. A major source of HAP emissions is one that emits or has the potential to emit, considering controls, greater than 9.1 megagrams per year (Mg/yr) (10 tons per year [tons/yr]) of any one HAP or 22.7 Mg/yr (25 tons/yr) of multiple HAP.

The control of HAP is to be achieved through promulgation of emission standards under sections 112(d) and 112(f) and design, equipment, work practice, or operational standards under section 112(h) for categories of sources that emit HAP. The EPA began the wood furniture NESHAP development process (described in section V of this preamble) in November 1990. During the information gathering stage, the EPA surveyed more than 850 facilities in the wood furniture industry in order to assess the many differences in operations and potential control techniques across the industry.

Another section of the amended Act that affects wood furniture manufacturers is section 183 of Title I. Section 183(a) requires the EPA to issue control techniques guidelines (CTG's) for 11 categories of stationary sources of volatile organic compound (VOC) emissions. The EPA is developing a CTG for the wood furniture manufacturing industry as part of the requirements of section 183(a). The intent of the CTG is to provide guidance to States for regulating VOC emissions from wood furniture finishing, cleaning, and washoff operations at wood furniture manufacturing facilities located in areas of ozone nonattainment. The CTG identifies reasonably available control technology (RACT), which is generally the minimum stringency that States apply to such sources. The Agency began developing the CTG in the Fall 1989, prior to initiating the NESHAP. The status of the CTG and the basis for selecting the regulatory alternatives were presented to the National Air Pollution Control Techniques Advisory Committee (NAPCTAC) in November 1991 at a public meeting attended by industry and regulatory agency representatives.

The CTG and the proposed NESHAP are concerned with two different situations. The CTG provides guidance on regulating emissions of VOC from wood furniture finishing, cleaning, and washoff operations and will likely affect only facilities located in ozone nonattainment areas only, while the proposed NESHAP will regulate emissions of HAP from all wood furniture (surface coating) operations nationwide. Although the two situations are different, a source may well be affected by both. For example, if a wood furniture manufacturer is: (1) Located in an ozone nonattainment area; (2) uses VOC's that are on the HAP list; and (3) is a major source of HAP emissions and the source's VOC emissions are greater than the applicability level for the CTG, the source would be subject to both the standards proposed herein and to the RACT requirements for VOC's imposed by the State regulatory agency.

Due to the potential overlap of this rule and the RACT requirements for VOC's, the EPA developed them concurrently so that the requirements of the two would be consistent. After the bulk of the information gathering phase of the CTG and the NESHAP was complete, both the proposed rule and the CTG were developed within the framework of a regulatory negotiation, described below. Today's rulemaking proposes the NESHAP and identifies the rationale the regulatory negotiation Committee followed in developing it. The EPA plans to subsequently publish the CTG, including the recommended RACT, in a guidance document that will be available to all interested parties.

B. Regulatory Negotiation Approach

The EPA recognizes that there are many issues and challenges in developing, proposing, and promulgating a NESHAP for this source category. During the winter of 1992/1993, the EPA met with representatives of the industry (including small and large manufacturers), trade associations, finishing material suppliers, resin suppliers, States, and environmental groups at public meetings to discuss issues, share information, and assess whether a regulatory negotiation would be appropriate for this industry. Two exploratory meetings were held for these purposes. After the exploratory meetings, three public meetings were held in spring and early summer of 1993 to continue to discuss issues associated with regulatory development. After publishing in the **Federal Register** on June 23, 1993, a notice of establishment of the regulatory negotiation committee (58 FR 34011), the first official regulatory negotiation meeting was held in July 1993. Formal meetings and informal workshops were held over the next several months to identify and resolve the many issues associated with the regulation of HAP emissions from wood furniture manufacturing operations. The Committee members are listed in Table 1.

TABLE 1.—WOOD FURNITURE NESHAP REGULATORY NEGOTIATION COMMITTEE MEMBERSHIP

Members	Affiliations
Freeman Allen	Sierra Club.
Terry Black*	PA Department of Environmental Resources.
Jack Burgess	Pridgen Cabinet Works (Small Business).
Gerry Currier	AKZO Coatings.
William Deal	Bernhardt Furniture Company (Office Furniture).
John DeVido	Aqualon (Resins).
William Dorris	Lilly Industries (Coatings).
Jack Edwardson	U.S. Environmental Protection Agency.
Paul Eisele	MASCO Corporation (Kitchen Cabinets).
Jon Heinrich	WI Department of Natural Resources.
Gary Hunt	NC Office of Waste Reduction.
Alan Klimek	NC Department of Environment, Health, and Natural Resources.
John Lingelbach	Facilitator.
Brian Morton	NC Environmental Defense Fund.
Peter Nicholson	Rohm and Haas (Resins).
Susan Perry	Business and Institutional Furniture Manufacturers Association.
Andy Riedell	PPG Industries (Coatings)
David Rothermel	Stylecraft Corporation (Small Business).
William Sale	Broyhill Furniture (Residential Furniture).
Mike Soots	Kincaid Furniture (Residential Furniture).
Richard Titus	Kitchen Cabinet Manufacturers Association.
Janet Vail	West MI Environmental Action Council.
Stephen Willcox	American Lung Association of NC.
Susan Wildau	Facilitator.
John Zeltsman	Architectural Woodwork Institute (Small Business).

*Left the State of Pennsylvania in December 1993 and is now with Rettew Associates in Lancaster, Pennsylvania.

Using various forums, the Committee discussed many challenging issues such as subcategorizing the source category, the emission data to be used to select the standards, potential regulatory formats, emission limits, work practice standards, compliance determination techniques, enforcement, and reporting and recordkeeping. Other issues such as the impacts of the rule on small businesses, the relationship between the proposed rule and the Title V operating permit program, and the effects of foreign competition were also considered. Given the potential for compliance with the rule by substituting non-HAP compounds for HAP contained in the coatings (e.g., ethanol for methanol), the issue of substitution of non-HAP VOC's for HAP was discussed at great length. Another major concern was the possibility of substituting a more toxic HAP for another HAP. This concern prompted a discussion on the relative toxicity of compounds used in wood furniture manufacturing.

At the final negotiating session of the full Committee, many of the major issues were resolved conceptually. Thereafter, the Committee reviewed drafts of the regulatory language and the preamble and held conference calls and informal working group meetings to resolve the remaining issues. Some Committee members feel that because the proposed standards were developed solely for this source category and many of the provisions were developed through a regulatory negotiation process, which often requires concessions from some parties in exchange for concessions from other parties in other areas, these proposed standards should not be used as a basis for the development of standards for other source categories.

The emission limitations for adhesives were developed by the EPA outside of the regulatory negotiation process, because adhesive suppliers were not represented on the Committee. While a Glue Work Group was formed to address gluing operations, the Committee members decided to suspend the work so they could focus their efforts on finishing, cleaning, and washoff operations.

II. Description of the Source Category

The following paragraphs briefly describe the operations covered by the proposed standards for the wood furniture (surface coating) source category. The EPA has produced a draft of Chapters 1 through 4 of the CTG. These chapters provide a detailed process description for the many types of wood furniture operations in this source category. Interested parties can refer to the draft chapters, which may be found in the docket of materials supporting this proposed rule, for a more detailed description than that provided here.

The wood furniture industry encompasses the manufacture of many diverse products. For the purposes of the proposed rule, the wood furniture (surface coating) category includes production of the following products and their components:

1. Wood kitchen cabinets;
2. Wood residential furniture;
3. Upholstered residential and office furniture;
4. Wood television, radio, phonograph, and sewing machine cabinets;
5. Wood office furniture and fixtures;
6. Partitions, shelving, and lockers; and
7. Other wood furniture not described by one of the above categories.

Despite the broad range of products manufactured by this source category, some manufacturing operations are common. There are four basic wood furniture manufacturing operations that are included in the affected emission source subject to the proposed rule. These are finishing, gluing, cleaning, and washoff.

Wood furniture finishing operations include those operations in which a finishing material is applied to a substrate. Finishing processes differ within the industry, but typically they consist of application of finishing materials, evaporation of volatiles, and curing of the piece in an oven. Facilities may finish the furniture in components

and then assemble it, but more commonly, the piece of furniture is assembled and then finished. The furniture or furniture components may be moved manually from one finishing application station to the next, or may be on tow lines that automatically move through the finishing lines.

The types of finishing materials include stains, basecoats, washcoats, glazes, fillers, sealers, highlights, enamels, and topcoats that all serve different functions. The number, sequence, and type of finishing materials varies by the type and quality of the furniture being finished. All of the finishing materials may contain HAP that are emitted during application.

After the finishing material is applied, the wood substrate typically enters a flashoff area where the more volatile solvents evaporate and the finishing material begins to cure, and then enters an oven where curing of the finishing material and evaporation of the volatile solvents continues. The evaporation of volatile compounds that are HAP are the source of HAP emissions from the drying operation. In this preamble, the process of finishing and drying a piece of furniture or furniture component is referred to as the finishing operation.

Gluing operations occur at most, but not all, wood furniture facilities. Gluing operations vary from plant to plant and include the manufacture of composite pressed wood products such as hardwood plywood, and applying laminates to wood products, veneers to solid wood (or composite wood products), edges to tables or desks, and foam to fabric. Four major types of adhesives are used in the industry: hot melts, polyvinyl acetates (PVA), urea-formaldehyde (UF) resins, and contact adhesives. Hot melts are not a source of HAP emissions. Polyvinyl acetate adhesives contain very small amounts (less than 0.3 percent) of vinyl acetate monomer (a HAP). The UF resins are used primarily in the kitchen cabinet and residential furniture segments. These resins are a source of formaldehyde (a HAP) emissions, both from the free formaldehyde in the adhesive and as a reaction byproduct during the cure. Formaldehyde emissions in furniture manufacturing occur during the use of these resins in the plant and also during storage, use, and cutting of composite pressed wood products that are used in furniture manufacturing and that contain these resins. (For reasons that are discussed later, the proposed rule does not address formaldehyde emissions associated with formaldehyde-based adhesive resins or composite wood products containing these resins.) Contact adhesives contain varying quantities of HAP as solvent. These adhesives are used for laminating countertops and office furniture and for upholstery operations such as gluing foam to fabric and fabric to wood. Contact adhesives used for upholstery operations are also known as foam adhesives.

Cleaning activities are also common throughout the wood furniture industry. The resins typical of wood furniture coatings require a high-solvency-rated solvent to dissolve them into the coating mix. Similarly, dried coatings that must be removed in cleaning operations require such solvents. These industrial solvents sometimes contain HAP that evaporate when the solvent is exposed to the air and is subsequently discharged to the atmosphere via ventilation air. Equipment that must be cleaned within a wood furniture plant is typically that which comes in close contact with the coating material; e.g., application equipment and spray booths.

Finished furniture that does not meet specification may need to be refinished; the cured coating is removed by washing off the old coating using solvent. This process is called washoff.

III. Summary of the Standards

The proposed standards are summarized below. The rationale for the regulatory decisions made in their development is provided in section VI.

A. Applicability of the Standards

The provisions of the proposed rule apply to new and existing wood furniture manufacturing operations that are located at plant sites that are major sources of HAP. A major source is defined in the General Provisions to part 63 as "any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons/yr of any hazardous air pollutant or 25 tons/yr or more of any combination of hazardous air pollutants. * * *"

As noted in § 63.800(a) of the proposed rule, the proposed wood furniture rule would apply only to facilities that are major sources as defined in 40 CFR part 63.2. An important consideration in the definition of "major source" is a given plant site's "potential to emit." The "potential to emit" is defined in 40 CFR part 63.2 as follows: "'Potential to emit' means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is Federally enforceable."

A key aspect of the potential to emit definition is that restrictions must be Federally enforceable. Examples of restrictions that would be considered Federally enforceable are listed in a definition in 40 CFR 63.2.

The EPA believes that there are a substantial number of wood furniture facilities whose actual emissions of HAP are substantially less than "major" amounts (i.e., more than 10 tons per year of any single HAP, or more than 25 tons per year from the sum of all HAP emitted). Many of these facilities, however, would be considered "major sources" that are subject to the proposed rule because there is no Federally enforceable restriction in place that limits their potential to emit HAP. The EPA believes that the wood furniture rule should provide a mechanism for such facilities to accept and document such restrictions.

The EPA proposes, in § 63.800(b) of the proposed rule, that if owners or operators commit to using no more than 250 gallons per month, or 3,000 gallons per rolling 12-month period, of coating, gluing, cleaning, and washoff materials at the plant site, and if the plant site does not contain other sources of HAP emissions, then the plant site can be considered an area source to which the rule does not apply.

The 250 gallon level was selected based upon worst-case assumptions regarding the levels of HAP in the various materials. The proposed rule would require a commitment to this level, accompanied by monthly records of materials. The EPA requests comment on: (1) whether an alternative to the 250/3,000 gallon level would be appropriate, (2) the level and type of reporting needed to document the owner's commitment, and (3) the frequency and nature of the recordkeeping requirement.

The EPA believes that there are sources using more than 250 gallons per month that may emit less than "major" amounts, and for which the owner or operator may be willing to accept case-by-case operating restrictions that would ensure that the potential to emit does not exceed the major source threshold. The EPA is considering adding language to the final rule that would provide a mechanism for such

sources. The EPA requests comment on (1) whether such language should be added, (2) the type of reporting and process required to establish the case-by-case commitment, (in particular, how to establish throughput and content limitations that could ensure area source status), and (3) the types of records that should be maintained to document compliance with the restrictions. In addition, the EPA requests comment on whether the level of recordkeeping and reporting should vary, depending on the level of emissions (as reflected by the throughput and content of the materials used).

The EPA requests comment on the appropriate timing of a wood furniture facility's applicability determination, and on whether all facilities, regardless of their past emissions or HAP usage, should be eligible to qualify as area sources under the HAP usage limits. The Agency also seeks comment on whether a facility that is initially determined to be subject to the rule should be able subsequently to escape applicability, and if so, under what circumstances.

As stated in section II, the wood furniture manufacturing industry encompasses the manufacture of many different products including cabinets, office furniture, store fixtures, and residential furniture. The specific operations to which the proposed rule would apply include those that fall under the standard industrial classification (SIC) codes listed in Table 2.

For the purposes of the proposed rule, the affected emission source includes the finishing, gluing, cleaning, and washoff operations at each wood furniture plant.

TABLE 2.—WOOD FURNITURE SIC CATEGORIES

SIC code	Description
2434	Wood kitchen cabinets.
2511	Wood household furniture, except upholstered.
2512	Wood household furniture, upholstered.
2517	Wood television, radios, phonograph, and sewing machine cabinets.
2519	Household furniture, not elsewhere classified.
2521	Wood office furniture.
2531	Public building and related furniture.
2541	Wood office and store fixtures, partitions, shelving, and lockers.
2599	Furniture and fixtures, not elsewhere classified.

B. Actual Standards and Format of the Standards

The proposed rule includes emission limits and work practice standards; the emission limits are summarized in Table 3. As indicated in this table, the proposed rule would limit HAP emissions from finishing operations at existing sources to 1.0 kilogram of volatile HAP (VHAP) per kilogram of solids used (1.0 pound of VHAP/pound of solids).

TABLE 3.—SUMMARY OF PROPOSED EMISSION LIMITS

Emission point	Existing source	New source
Finishing Operations:		
(a) Achieve a weighted average HAP content across all coatings (maximum kg VHAP/kg solids [lb VHAP/lb solids], as applied)	[a] 1.0	[a] 0.8
(b) Use compliant finishing materials (maximum kg VHAP/kg solids [lb VHAP/lb solids], as applied)		
Stains	[a] 1.0	[a] 1.0
Washcoats	[a, b] 1.0	[a, b] 0.8
Sealers	[a] 1.0	[a] 0.8
Topcoats	[a] 1.0	[a] 0.8
Basecoats	[a, b] 1.0	[a, b] 0.8
Enamels	[a, b] 1.0	[a, b] 0.8
Thinners (maximum % HAP allowable); or	10.0	10.0
(c) As an alternative, use control device; or	[c] 1.0	[c] 0.8
(d) Use a combination of (b) and (c)	1.0	0.8
Cleaning Operations:		
Strippable spray booth material (maximum VOC content, kg VOC/kg solids [lb VOC/lb solids])	0.8	0.8
Gluing Operations:		
Contact adhesives:		
(a) Use compliant contact adhesives (maximum kg VHAP/kg solids [lb VHAP/lb solids], as applied) based on following criteria		
i. For foam adhesives used in product subject to flammability testing	1.8	0.2
ii. For all other contact adhesives (including foam adhesives used in products not subject to flammability testing); or	1.0	0.2
(b) Use a control device	[d] 1.0	[d] 0.2

[a] The limits refer to the HAP content of the coating, as applied.

[b] Compliant washcoats, basecoats, and enamels and thinners containing no more than 10 percent HAP by weight must be used if they are purchased premade, that is, if they are not formulated onsite by thinning other finishing materials. If they are formulated onsite, they must be formulated using compliant finishing materials (i.e., those that meet the limits specified in this table) and thinners containing no more than 3.0 percent HAP by weight.

[c] The control device must operate at an efficiency that is equivalent to no greater than 1.0 kilogram (or 0.8 kilogram) of HAP being emitted from the affected emission source per kilogram of solids used.

[d] The control device must operate at an efficiency that is equivalent to no greater than 1.0 kilogram (or 0.2 kilogram) of HAP being emitted from the affected emission source per kilogram of solids used.

An owner or operator of an existing affected source can comply with this limit by:

1. Limiting the average HAP content across all finishing operations to 1.0 kilogram of volatile HAP per kilogram of solids (kg VHAP/kg solids) (1.0 lb VHAP/lb solids), as applied;

2. Limiting the HAP content of (i) each stain, each sealer, and each topcoat, to 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids), as applied; (ii) limiting the HAP content of thinners used for stains, sealers, and topcoats to no more than 10.0 percent HAP by weight; and (iii) using washcoats, basecoats, and enamels that are formulated at the facility with coatings containing no more than 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids) and thinners containing no more than 3.0 percent HAP by weight or using washcoats, basecoats, and enamels that have a HAP content of no more than 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids), as applied, and thinners that have a HAP content of no more than 10.0 percent by weight;

3. Using a control device to limit emissions from finishing operations to 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids); or

4. A combination of (2) and (3).

As indicated in Table 3, the proposed standards would limit HAP emissions from finishing operations at new sources to 0.8 kg VHAP/kg solids (0.8 lb VHAP/lb solids), as applied. Owners or operators of new sources can comply with the proposed standards by:

1. Limiting the average HAP content across all finishing operations to no more than 0.8 kg VHAP/kg solids (0.8 lb VHAP/lb solids), as applied; or

2. Limiting the HAP content of (1) each stain to no more than 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids), as applied; (2) each sealer and topcoat to no more than 0.8 kg VHAP/kg solids (0.8 lb VHAP/lb solids), as applied; (3) each thinner used for stains, sealers, and topcoats to no more than 10.0 percent HAP by weight; and (4) using washcoats, basecoats, and enamels that are formulated at the facility with coatings containing no more than 0.8 kg VHAP/kg solids (0.8 lb VHAP/lb solids) and thinners containing no more than 3.0 percent HAP by weight or using washcoats, basecoats, and enamels that have a HAP content of no more than 0.8 kg VHAP/kg solids (0.8 lb VHAP/lb solids), as applied, and thinners that have a HAP content of no more than 10.0 percent by weight;

3. Using a control device to limit emissions from finishing operations to 0.8 kg VHAP/kg solids (0.8 lb VHAP/lb solids); or

4. A combination of (2) and (3).

If owners or operators comply with the proposed standards through the use of a control device, the overall control efficiency that is equivalent to the proposed standards for existing sources is that which results in 1.0 kilogram of VHAP being emitted per kilogram of solids used. For new sources, the control efficiency that is equivalent to the proposed standards is that which results in 0.8 kilogram of VHAP being emitted per kilogram of solids used. This control efficiency will be source-specific, depending on the HAP content and percent solids of the finishing materials used at baseline conditions. Baseline conditions are those conditions that exist at a plant prior to installing and operating the control device.

The HAP emissions from cleaning operations are controlled by limiting the VOC content of the strippable booth coating that is applied to spray booths; this material is used to reduce the need to clean spray booth walls with organic solvent. Gluing operations are controlled through the proposed rule by limiting the HAP content of contact adhesives to the levels identified in Table 3. The HAP emissions from contact adhesives can also be controlled through the use of a control device.

In addition to numerical emission limits, the proposed rule limits HAP emissions from existing and new sources through the work practices identified in Table 4. These work practices cover finishing, gluing, cleaning, and washoff operations. The owner or operator subject to this rule is also required to develop a Work Practice Implementation Plan that demonstrates how the work practice standards will be executed.

TABLE 4.—SUMMARY OF PROPOSED WORK PRACTICE STANDARD[a]

Emission source	Work practice
Finishing Operations	
Transfer equipment leaks	Develop written inspection and maintenance plan to address and prevent leaks. The plan must identify a minimum inspection frequency of 1/month.
Storage containers, including mixing equipment.	When such containers are used for HAP or HAP-containing materials, keep covered when not in use.
Application equipment	Discontinue use of air spray guns.[b]
Finishing materials	Demonstrate that usage of HAP of potential concern have not increased except as allowed by proposed standards; document in the formulation assessment plan.
Cleaning Operations	
Gun/line cleaning	Collect cleaning solvent into a closed container.
	Cover all containers associated with cleaning when not in use.
Spray booth cleaning	Do not use solvents except as allowed by the proposed rule.
Washoff/general cleaning	Do not use chemicals that are known or probable human carcinogens in cleaning solvents in concentrations subject to MSDS reporting, as required by OSHA.
	Keep washoff tank covered when not in use.
	Minimize dripping by tilting and/or rotating part to drain as much solvent as possible and allowing sufficient dry time.
	Maintain a log of the quantity and type of solvent used for washoff and cleaning, as well as the quantity of waste solvent shipped offsite, and the fate of this waste (recycling or disposal).
	Maintain a log of the number of pieces washed off, and the reason for the wash off.
Miscellaneous	
Operator training	All operators shall be trained on proper application, cleanup, and equipment use. The training program shall be written and retained onsite.

TABLE 4.—SUMMARY OF PROPOSED WORK PRACTICE STANDARD [a]—Continued

Emission source	Work practice
Implementation plan	Develop a plan to implement these work practice standards and maintain onsite.

[a] The proposed work practice standards apply to both existing and new major sources.
[b] Air guns will be allowed only in the following instances:
—When they are used in conjunction with coatings that emit less than 1.0 kg VOC per kg of solids used;
—Touchup and repair under limited conditions;
—When spray is automated;
—When add-on controls are employed;
—If the cumulative application is less than 5 percent of the total gallons of coating applied; or
—If the permitting agency determines that it is economically or technically infeasible to use other application technologies.

At a minimum, the Work Practice Implementation Plan should specifically identify procedures (e.g., checklists) for confirming:

1. That all storage containers are normally closed, that is, closed unless an operator is actively engaged in activities such as emptying or filling the container;
2. That organic solvents are not used for spray booth cleaning, except as allowed by the proposed rule;
3. That conventional air spray guns are not in use at any finishing application station, except as allowed by the proposed rule;
4. That cleaning solvent from gun cleaning and line flushing is collected in a normally closed container;
5. That the washoff tank is normally closed; and
6. That dripping from the washoff tank is minimized by tilting and rotating the part to drain as much solvent as possible.

Other programs to be incorporated into the Work Practice Implementation Plan include:

1. An inspection and maintenance (I&M) plan to address equipment leaks from transfer operations;
2. An operator training program;
3. An accounting system for washoff and cleaning solvents; and
4. A formulation assessment plan.

The I&M plan for equipment leaks must require, at a minimum, inspection of all equipment (e.g., pumps, valves, and flanges) used to transfer or apply finishing materials, adhesives, and solvents. The inspection may be a visual inspection only, but must be conducted at a minimum frequency of once per month, with repairs to leaking equipment made within 15 calendar days.

The operator training program must require that all new and existing personnel involved in finishing, gluing, cleaning, and washoff operations be trained. All new personnel, those hired after the effective date of the standard, shall be trained upon hiring. All existing personnel, those hired before the effective date of the standard, shall be trained within 6 months of the effective date of the standard. All personnel shall be given refresher training annually. The training must include, at a minimum, appropriate application techniques, appropriate cleaning and washoff procedures, appropriate equipment setup, and appropriate management of cleaning wastes.

The solvent accounting system must require, at a minimum, that the facility record the quantity and type of solvent used for washoff and cleaning, the number of pieces washed off and the reasons why, and the quantity of spent solvent generated from each site.

The work practice standards also must require the owner or operator of the affected source to develop a formulation assessment plan (FAP). The plan requires the facility to track usage of those volatile HAP that are listed in the proposed rulemaking pursuant to section 112(g) as "nonthreshold," "high concern," or "unrankable" (collectively these are called "VHAP of potential concern").

Under the FAP, each facility would identify a baseline level of usage for each VHAP of potential concern presented in Table 4 of the proposed rule. The baseline usage level would be the highest annual usage from 1994, 1995, or 1996. If, after November 1998, the annual usage of the VHAP exceeds its baseline level, the owner or operator of the affected source must provide a written notification to the permitting authority that describes the amount of increase and explains the reasons for exceedance of the baseline level. The following explanation would relieve the owner or operator from further action, unless the affected source is not in compliance with any State regulations or requirements for that VHAP.

1. The increase is de minimis (no more than 15.0 percent above the established baseline);
2. The facility complies with any State air toxics regulations or guidelines for that VHAP;
3. It results from the adoption of low VOC coatings, that is, coatings with a VOC content of no more than 1.0 lb VOC/lb solids, as applied (the potential increase in HAP being deemed acceptable because it is offset by a decrease in VOC); or
4. The usage is below the de minimis values presented in Table 4 of § 63.803 of the proposed rule.

If the exceedance cannot be attributed to any of the above explanations, the owner or operator must confer with the permitting authority to discuss the reasons for the increase in usage and to determine if there are practical and reasonable technology-based solutions for reducing the usage. If there are solutions, the owner or operator shall develop a plan to reduce usage of the pollutant to the extent feasible. If it is determined that there are no practical and reasonable solutions, the facility would take no further action.

If, after November 1998, a facility uses a VHAP of potential concern for which a baseline level of usage has not been previously established, than the baseline level would be equivalent to the de minimus level, based on 70 year exposure levels and data provided in the proposed rulemaking pursuant to section 112(g) of the Clean Air Act, for that pollutant.

As described in Table 4, the Work Practice Implementation Plan, including the I&M program, operator training program, solvent accounting system, and formulation assessment plan, must be written by the owner or operator and maintained onsite.

C. Compliance and Monitoring Requirements

1. Compliance Dates

The compliance date for existing sources subject to this rule that emit 45.4 Mg (50 tons) or more of HAP per year is November 21, 1997. The compliance date for existing sources subject to this rule that emit less than 45.4 Mg (50 tons) of HAP per year is 3 years after the effective date of the rule. Existing area sources that become major sources are required to comply within 1 year after becoming a major source. Once an area source becomes a major

source and thus subject to the regulation, a subsequent decrease in emissions does not allow the source to be exempt from the standards (even if emissions are decreased to below the major source criteria cutoff). New area sources that become major sources are subject to new source MACT immediately upon becoming a major source.

Owners or operators of new sources that commence construction after the standards are proposed but before the standards are promulgated will have to comply immediately upon startup, unless the promulgated regulation is more stringent than the proposed regulation. In accordance with section 112(i)(2) of the Act, if the promulgated standards are more stringent than the proposed standards, the compliance date for sources that commence construction after proposal but before promulgation will be 3 years after the promulgation date, provided the owner or operator complies with the standards as proposed until the compliance date. All other new sources will have to comply with the proposed standards immediately upon startup.

2. Compliance Methods

Sources must demonstrate compliance with the emission limits identified in Table 3 and the work practice standards in Table 4. A source must first demonstrate initial compliance and then continuous compliance with the standards. A summary of both the initial and continuous compliance methods is provided in Table 5. Compliance provisions are specified for the emission limits and for the work practice standards. For all sources, the results of the initial compliance are reported with the initial compliance report required by § 63.9(h) and § 63.807(b). Sources using compliant materials to comply with the proposed rule document their continuous compliance status through semiannual reports required by § 63.807(c). Sources using control devices to comply with the proposed rule document their continuous compliance status through semiannual reports required by § 63.10(e). Other reporting and recordkeeping requirements are summarized in section III.D.

Section 114(a)(3) of the amended CAA requires enhanced monitoring and compliance certifications of all major stationary sources. The annual compliance certifications certify whether compliance has been continuous or intermittent. Enhanced monitoring shall be capable of detecting deviations from each applicable emission limitation or standard with sufficient representativeness, accuracy, precision, reliability, frequency and timeliness to determine if compliance is continuous during a reporting period. The monitoring in this regulation satisfies the requirements of enhanced monitoring.

TABLE 5.—COMPLIANCE AND MONITORING REQUIREMENTS

Proposed requirement	Initial compliance method	Continuous compliance method
1. Emission limits for finishing materials:		
(a) Achieve a weighted average HAP limit across all finishing materials; or.	(a) Submit the results of the averaging calculation for the first month after the compliance date; submit information with compliance status information report required by § 63.9(h).	(a) For each finishing material, maintain copies of the CPDS and the monthly usage quantities, and calculate the weighted average emission limit across all finishing materials and solvents for each monthly period. Submit calculation results and compliance certification 2x/yr.
(b) Use compliant stains, washcoats, sealers, topcoats, basecoats, enamels, and thinners; or.	(b) Submit the compliance status information report required by § 63.9(h).	(b) Maintain copies of the CPDS for each finishing material and thinner and records of the VHAP content, in kg VHAP/kg solids (lb VHAP/lb solids), as applied, for each finishing method. Submit compliance certification 2x/yr.
(c) Use a control device; or.	(c) Conduct performance testing in accordance with § 63.804(e)(3) of the proposed rule and with the General Provisions to subpart A of part 63.	(c) Conduct continuous parameter monitoring in accordance with § 63.804(f)(3) of the proposed rule and with the General Provisions to subpart A of part 63.
(d) A combination of (b) and (c).	(d) Meet the requirements of (b), and (c), as applicable.	(d) Meet the requirements of (b) and (c), as applicable.
2. Emission limits for adhesives:		
(a) Use compliant contact adhesives; or.	(a) Submit the compliance status information report required by § 63.9(h).	(a) Maintain copies of the CPDS for each glue used and records of the VHAP content, in kg VHAP/kg solids (lb VHAP/lb solids), as applied, for each contact adhesive. Submit compliance certification 2x/yr.
(b) Use a control device	(b) Conduct performance testing in accordance with 63.804(e)(6) of the proposed rule and with the General Provisions to subpart A of part 63. § 63.9(h).	(b) Conduct continuous parameter monitoring in accordance with 63.804(f)(6) of the proposed rule and with the General Provisions to subpart A to part 63.
3. Emission limits for cleaning:		
Use compliant spray booth material.	Submit the compliance status information report required by § 63.9(h).	Maintain copies of CPDS for each spray booth material. Submit compliance certification 2x/yr.
4. Work practice standards:		
All work practices	Prepare and maintain work practice standards implementation plan.	Follow work practice standards implementation plan. Submit compliance certification 2x/yr.

a. *Emission Limits for Finishing Operations.* There are four methods of complying with the finishing material emission limits in the proposed rule as outlined in Tables 3 and 5. These include an averaging approach, the use of specific compliant materials, the use of a control device, or some combination of compliant materials and a control device. There are also special compliance provisions for sources using a compliant coatings approach that apply coatings using continuous coaters.

An owner or operator that chooses the averaging approach can demonstrate initial compliance by recording the HAP and solids content, as reported on the certified product data sheet (CPDS), for each finishing material and solvent used by the facility in finishing operations

and the quantity of each solvent and finishing material that is used. A CPDS is documentation furnished by coating suppliers or an outside laboratory that provides the HAP and solids content of the finishing material (or adhesives or solvent), as determined using the EPA Methods 311 and 24, respectively. The EPA Method 311, which is used to determine the HAP content of a coating or solvent, is being proposed with this rule. Currently, the method is only applicable for volatile HAP's. A modified version of the test method is being developed for determining the HAP content of coatings in which the HAP is used as a reactive diluent or the HAP is formed and emitted during the curing process. After it is completed, the modified version of the method should be used for these coatings. The owner or operator must then calculate the average kg VHAP/kg solids (lb VHAP/lb solids) for all finishing materials, as applied, used at the facility using Equation 1 of § 63.804(a)(1) of the proposed rule. Initial compliance is demonstrated if, over the first month after the compliance date, E (the average emission limitation achieved by the emission points participating in the averaging approach) is less than or equal to 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids) for existing sources or 0.8 kg VHAP/kg solids (0.8 lb VHAP/lb solids) for new sources. Continuous compliance is demonstrated by performing the same averaging calculation over each and every subsequent monthly period. A violation of the monthly average would be considered a violation for each operating day of the month, unless the affected source can demonstrate that the violation of the monthly average can be attributed to a particular day or days during the month.

An owner or operator that uses compliant finishing materials can demonstrate initial and on-going compliance with the limits for affected stains, washcoats, sealers, topcoats, basecoats, and enamels by recording the HAP and solids content, as reported in the CPDS, for each affected stain, washcoat, sealer, topcoat, basecoat, and enamel used by the facility. The owner or operator must then calculate the kg VHAP/kg solids (lb VHAP/lb solids), as applied, for each of these materials.

If a finishing material is thinned with solvent after purchase, the HAP and solids content reported on the CPDS must be adjusted to account for HAP from the thinner and the lower solids content of the thinned material. The HAP content of the thinner must be no more than 10.0 percent by weight. Washcoats, basecoats, and enamels will be deemed compliant if they are formulated at the wood furniture facility with a compliant coating and thinners containing no more than 3.0 percent HAP by weight.

The owner or operator of an existing source is in initial and continuous compliance with the proposed standards if the HAP content of each affected stain, sealer, and topcoat is no greater than 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids), as applied; each thinner used for stains, sealers, topcoats, and premade washcoats, basecoats, and enamels is less than or equal to 10.0 percent HAP by weight; and each washcoat, basecoat, and enamel that is formulated at the facility is formulated with a coating containing no more than 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids) and a thinner containing no more than 3.0 percent HAP by weight, or each washcoat, basecoat, and enamel that is purchased premade has a HAP content of no more than 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids), as applied.

The owner or operator of a new source is in initial and continuous compliance with the proposed standards if the HAP content of each stain is no greater than 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids), as applied; the HAP content of each sealer and topcoat is no greater than 0.8 kg VHAP/kg solids (0.8 lb VHAP/lb solids), as applied, each thinner used for stains, sealers, and topcoats, and washcoats, basecoats, and enamels that are purchased premade is less than or equal to 10.0 percent HAP by weight; and each washcoat, basecoat, and enamel that is formulated at the facility is formulated with a coating containing no more than 0.8 kg VHAP/kg solids (0.8 lb VHAP/lb solids) and a thinner containing no more than 3.0 percent HAP by weight, or each one that is purchased premade has a HAP content of no more than 0.8 kg VHAP/kg solids (0.8 lb VHAP/lb solids), as applied. The use of any finishing material or thinner that does not meet the HAP limits specified in the proposed rule during any day constitutes a separate violation of the proposed rule for that day.

The proposed standards include special compliance provisions for sources using a compliant coatings approach for meeting the proposed standards and that are applying those coatings using continuous coaters. With continuous coaters, any coating that is not applied to the parts to be finished is recycled to the coating reservoir. Solvent is added to the coating reservoir to ensure the proper mixture of solids and solvent is maintained. In this case, the records may show that the VHAP content of the coating in the reservoir is above the emission limit and a sample of the coating in the reservoir may indicate the coating is compliant. While the records are the more accurate measure of the VHAP content of the coating, they do not reflect that there will be some evaporation of the VHAP from the coating being recycled to the reservoir. In order to account for this evaporation, the EPA examined special compliance provisions for facilities using continuous coaters. Affected sources that are applying coatings using continuous coaters have two options for demonstrating compliance. These are:

1. Using compliant coatings, as determined by the VHAP content of the coating in the reservoir and the VHAP content of the coating as calculated from records; or

2. Using compliant coatings, as determined by the VHAP content of the coating in the reservoir, and maintaining a viscosity of the coating in the reservoir that is no less than the viscosity of the initial coating.

The Agency recognizes that records may show the VHAP content of a coating is higher than the emission limitation when the coating is applied with a continuous coater. However, the Agency also recognizes that continuous coaters are potentially more efficient than spray application systems. In order to use option (2), the affected source must demonstrate that there is a relationship between the viscosity of the material and the HAP content of the material. Affected sources may monitor the viscosity of the coating with a viscosity meter or they may measure the viscosity each time solvent is added to the reservoir. If an affected source does not wish to monitor the viscosity then records must demonstrate that the coating is compliant.

In determining compliance, sources using compliant materials (finishing materials, thinners, adhesives) should include periods of startup and shutdown because startups and shutdowns should not affect compliance with the rule.

Owners or operators can also comply with the proposed rule by using a control device. Initial compliance is demonstrated by conducting performance testing in accordance with § 63.805 of the proposed standards and the General Provisions to subpart A of part 63. The overall control efficiency (R) that is required by the standards is that which corresponds to E_{ac} in Equation 2 of § 63.804(a)(3) being less than or equal to 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids) for existing sources or 0.8 kg VHAP/kg solids (0.8 lb VHAP/lb solids) for new sources.

Owners or operators using this approach can demonstrate continuous compliance with the regulation by continuously measuring and recording 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, independently, or in combination with one or more other operating parameter values, determines that an owner or operator is complying with the applicable emission limitation or standards. The parameters that would be monitored under the control system scenarios expected in this industry are discussed in section VI.G.

Owners or operators that choose to use a combination of techniques to demonstrate compliance must follow each applicable compliance technique. For example, if a source uses a control device to control emissions from one emission point (e.g., one finishing step) and compliant finishing materials for the other finishing steps, the compliance provisions associated with both control devices and compliant finishing materials apply. To determine the overall control efficiency (R) that is required to comply at the affected emission points, Equation 2 must be used. However, E_{bc} will only include those finishing materials and solvents being directed to the control device rather than all finishing materials and solvents as shown in Equation 1.

b. *Emission limits for Gluing Operations.* The proposed rule also identifies emission limits for gluing operations. The proposed rule would limit the HAP content of contact adhesives.

There are two methods of complying with the emission limits for contact adhesives in the proposed rule as outlined in Tables 3 and 5. These are the use of compliant materials or the use of a control device.

An owner or operator that uses compliant contact adhesives can demonstrate initial and on-going compliance with the contact adhesive limits (kg VHAP/kg solids) by recording the HAP and solids content, as reported on the CPDS, for each contact adhesive used by the facility. The owner or operator must then calculate the kg VHAP/kg solids (lb VHAP/lb solids), as applied, for each of the contact adhesives. If a contact adhesive is thinned with solvent after purchase, the HAP and solids content reported on the CPDS must be adjusted accordingly to show compliance with the standards. The owner or operator is in initial and continuous compliance with the proposed standards if the HAP content of each contact adhesive is no greater than 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids), as applied, for existing sources or 0.2 kg VHAP/kg solids (0.2 lb VHAP/lb solids), as applied, for new sources.

The owner or operator of an affected source using foam adhesives (contact adhesives used for upholstery operations), to manufacture products that meet the upholstered seating flammability testing requirements of California Technical Bulletin 116, 117, or 133, the Business and Institutional Furniture Manufacturers Association's (BIFMA)×5.7, UFAC Flammability Testing, or any similar requirements from local, State, or Federal fire regulatory agencies is in initial and continuous compliance with the proposed standards if the HAP content of each foam adhesive is no greater than 1.8 kg VHAP/kg solids (1.8 lb VHAP/lb solids), as applied, for existing sources or 0.2 kg VHAP/kg solids (0.2 lb VHAP/lb solids), as applied, for new sources. The use of any contact adhesive that does not meet the HAP limits specified in the proposed rule during any day is a violation of the proposed rule for that day.

Owners or operators may also comply with the proposed rule for contact adhesives by using a control device. Initial compliance is demonstrated by conducting performance testing in accordance with § 63.805 of the proposed standards and the General Provisions to subpart A of part 63. The overall control efficiency (R) that is required by the standards is that which corresponds to G_{ac} in Equation 3 of § 63.804(c)(2) being less than or equal to 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids) for existing sources or 0.2 kg VHAP/kg solids (0.2 lb VHAP/lb solids) for new sources. Owners or operators using this approach can demonstrate continuous compliance with the regulation by continuously measuring and recording 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 maximum or minimum value established for a control device or process parameter, that independently, or in combination with one or more other parameter values, determines that an owner or operator is complying with the applicable emission limitation or standards. The parameters that would be monitored under the control system scenarios expected in this industry are discussed in section VI.G.

c. *Emission Limits for Cleaning Operations.* Compliance with the emission limits for the strippable spray booth material can be demonstrated through a CPDS. Owners or operators would demonstrate on-going compliance by submitting a compliance certification with the semiannual reports required by § 63.807(c) of the proposed rule stating that compliant spray booth coatings continue to be used. The owner or operator is in initial and continuous compliance with the proposed rule if the VOC content of each strippable spray booth coating is no greater than 0.8 kg VOC/kg solids (0.8 lb VOC/lb solids), as applied. The application of any strippable spray booth coating that does not meet the VOC limit specified in the proposed rule during any day is a violation of the proposed rule for that day.

d. *Work Practice Standards.* Compliance with the work practice standards is demonstrated if the Work Practice Implementation Plan is developed and followed. Owners or operators would demonstrate on-going compliance by submitting a compliance certification with the semiannual reports required by § 63.807(c) of the proposed rule stating that the Work Practice Implementation Plan was being followed. Failure to implement any of the provisions of the Work Practice Implementation Plan during any day is a violation of the proposed rule for that day.

D. Reporting and Recordkeeping Requirements

Most of the reporting and recordkeeping provisions of the General Provisions to this subpart apply to all sources subject to the proposed standards. A summary of these requirements and the additional reporting and recordkeeping requirements that are specific to this source category is presented in Table 6. The General Provisions are applicable to all sources subject to the proposed rule that are using control devices for compliance. However, as indicated in Table 6, some requirements of the General Provisions apply only to control devices, continuous monitors, etc. and are not pertinent to sources complying through the use of compliant materials (finishing materials, adhesives, strippable spray booth coatings). Table 1 of the proposed rule specifically cites which sections of the General Provisions do not apply to sources using compliant materials.

TABLE 6.—REPORTING AND RECORDKEEPING REQUIREMENTS OF THE PROPOSED RULE

Requirement	Due date[a]	Applicability
General Provisions[b]		
§63.6(e): Operation and maintenance requirements (including preparation of startup, shutdown, malfunction plan).	By the compliance date	Sources using add-on controls.
§63.7(b): Notification of performance test	60 days prior to test	Sources using add-on controls.
(c): Site-specific test plan	60 days prior to test	Sources using add-on controls.
(g): Report of performance test results	60 days after test	Sources using add-on controls.
§63.8(d): Continuous monitoring system (CMS) quality control program.	N/A	Sources using add-on controls.
(e): Notification of performance evaluation for CMS and site-specific test plan for CMS.	With performance test notification or 60 days prior to test.	Sources using VOC CMS.
(e): Report of CMS performance results	60 days after test	Sources using VOC CMS.
§63.9(b): Initial notification requirements	120 days after effective date[c]	All affected sources.
(b): Notification of anticipated startup	30–60 days prior	All affected sources.
(b): Notification of actual startup	15 days after	All affected sources.
(h): Notification of compliance status	60 days after compliance demonstration[d].	All affected sources.
§63.10(b): Maintain all required information for 5 years	N/A	All affected sources.
(c): Additional recordkeeping for CMS	N/A	Sources using add-on controls.
(d): Startup, shutdown, and malfunction reports	2x/yr	Sources using add-on controls.
(e): Excess emissions and CMS performance report, and summary report.	2x/yr[e]	Sources using add-on controls.
Requirements Specific to This Rule		
1. Provide a list of the types and quantities of each regulated finishing material, adhesive, and cleaning material used, and the VHAP and solids content of each.	Recordkeeping	All affected sources.
2. To demonstrate initial compliance with the standard, provide: Calculations to demonstrate compliance with emission limits Work practice implementation plan, including: Inspection and maintenance plan to address equipment leaks; Operator training program; Description of cleaning/wash-off solvent tracking system; Formulation assessment plan.	Submit with compliance status report required by §63.9(h).	Sources using average approach or compliant coatings. All affected sources.
3. To demonstrate ongoing compliance, submit semiannual report of:. Calculations to demonstrate compliance with emission limits, if averaging approach is used; or. Compliance certification, if compliant finishing materials are used; and. Compliance certification associated with thinners, adhesives, and spray booth materials; and. Certification that work practice standards are being followed; and The quantity of cleaning and wash off solvent that is used monthly in cases of noncompliance, a description of methods used to attain compliance	2x/yr (overrides §63.10(e); no exemptions for no episodes of noncompliance).	Sources using average approach or compliant coatings. All affected sources.

[a] Due dates are identified only for those items that must be submitted to the Administrator (or the permitting authority).
[b] The requirements of the General Provisions apply to all sources subject to this standard. Each source should review the General Provisions in detail; this table is just a brief summary.
[c] The effective date is the date of promulgation of the standard in the **Federal Register**.
[d] The compliance date is the date by which affected sources must comply with the standard. The compliance status report would be due 60 days after the compliance date for sources using compliant materials. The report would be due 60 days after the performance test for sources using add-on controls.
[e] If the affected source experiences excess emissions, the source must follow a quarterly reporting format for at least 1 year after the excess emissions occurred and until a request to reduce reporting frequency is approved.

In general, existing affected sources will be required to submit the following reports:

(1) The initial notification required by §63.9(b);

(2) The compliance status information report required by §63.9(h) that should include calculations or performance test results demonstrating compliance with the emission limits;

(3) Semiannual reports certifying compliance with the Work Practice Implementation Plan;

(4) If compliant finishing materials, thinners, or adhesives, or an averaging approach is being used, semiannual reports demonstrating on-going compliance with the emission limits; and

(5) If a control device is being used, reports as required by §§63.6 through 63.10 of the General Provisions to subpart A of part 63.

IV. Summary of Impacts

A. Environmental Impacts

This section will discuss the incremental increase or decrease in air pollution, water pollution and solid waste generation that would result from implementing the proposed standards.

Nationwide impacts are provided for existing sources.

1. Air Pollution Impacts

The HAP emissions from finishing and gluing operations are controlled through emission limits on the finishing materials and contact adhesives used by the industry and through work practice standards. Emissions from cleaning operations will be reduced through work practice standards and an emission limit for strippable spray booth coatings. Emissions of VOC that are both HAP and non-HAP may be controlled in the process of meeting the requirements for HAP reduction. The quantity of those non-HAP VOC's that will be removed, however, has not been quantified. The estimated primary and secondary air pollution impacts that would result from implementing the proposed standards are summarized below.

a. *Primary Air Pollution Impacts.* The immediate air pollution impacts resulting from the proposed standards would be a reduction in the emission of HAP by the source category. At baseline conditions (i.e., the conditions that exist in the absence of NESHAP), total estimated HAP emissions from existing sources are 50,584 Mg/yr (55,744 tons/yr). If the proposed standards were enacted, these emissions would drop to approximately 20,825 Mg/yr (22,949 tons/yr). This is a total estimated HAP emission reduction of 29,759 Mg/yr (32,795 tons/yr).

The actual reduction in emissions may be larger than that estimated here because the estimate did not account for the reduction of HAP from a number of the work practice standards. While most of the work practice standards are expected to reduce emissions, it is difficult to quantify the actual reduction. Emission reductions resulting from the restrictions on the use of conventional air spray guns and the operator training program were estimated, but no emission reduction was assigned to the other work practice standards. Therefore, the emission reduction presented here does not reflect the total reductions that may be achieved through the work practice standards.

The proposed standards could also potentially result in a decline in VOC emissions and a reduction in ozone or photochemical smog. While the HAP limits do not require the use of lower-VOC materials, the work practice standards should reduce the use of VOC containing materials and, therefore, VOC emissions.

b. *Secondary Air Pollution Impacts.* The proposed standards are not expected to result in any secondary air pollution impacts. Secondary emissions of air pollutants typically result from generation of the energy needed to operate control devices. If some facilities choose to meet the proposed standards through the use of control devices there could be some secondary air pollution impacts resulting from the use of these devices. These have not been quantified here because it is anticipated that most facilities will meet the limits through the use of reformulated materials.

2. Water Pollution Impacts

The proposed standards are expected to have no impact on water pollution because waterborne coatings are not required to meet the proposed emission limitations. However, the Agency requests comment on whether this assessment is correct and whether or not an expansion of the use of waterborne finishes and associated cleanup operations, in response to the NESHAP, would impact water discharge from wood furniture manufacturing plants.

3. Solid Waste Impacts

The only impact of the proposed standards on solid waste is a potential decrease resulting from the limitation on conventional air spray guns. Conventional air spray guns have a lower transfer efficiency, resulting in more overspray than other types of spray application equipment. With the use of more efficient application equipment, overspray, and the amount of waste solids generated from this overspray, is reduced. Due to the uncertainties in trying to quantify this reduction, no estimate of the reduction in solid waste has been made.

B. Energy Impacts

The proposed standards are not expected to impact energy usage by the industry. As with the secondary air pollution impacts, there may be some impact on energy usage if some facilities choose to use control devices to meet the proposed standards. However, these impacts have not been estimated because facilities are likely to meet the proposed standards through the use of reformulated material.

C. Economic Impacts

The EPA performed an economic impact analysis of the requirements imposed on the wood furniture industry by this proposed rule. Since the economic impact analysis was completed, the proposed standards have changed. The cost impacts presented in IV.D reflect the changes in the proposed standards, but the economic impacts presented here are based on different cost impacts. The economic impact analysis is based on a total industry-wide capital investment of $13,335,900, an annual cost of $16,801,200, and a cost effectiveness of $578/Mg ($525/ton). Because the cost impact of the proposed standards is lower than those used for the economic impact analysis, the economic impacts presented here are expected to be greater than the actual economic impact. In performing the economic impact analysis potential price, output, employment, closure, and secondary effects on affected segments of the wood furniture industry were assessed using a market model of supply and demand for this industry. Potential small business impacts were also examined.

The economic impact analysis assessed the economic impacts of the proposed rule on the household, cabinet, and commercial segments of the wood furniture industry. Estimated market price increases from the proposed rule are small, 0.07 percent or less in each of the three segments. Estimated reductions in market output are also relatively small ranging from 0.03 percent in the commercial segment to 0.20 percent in the household segment. Total employment losses were estimated at 720 or approximately 0.22 percent of total industry employment. Most of these estimated losses (570) occur in the household furniture sector. Of the more than 700 operations expected to be directly impacted, three were predicted to close due to implementation of this rule. The dollar value of total wood furniture imports was estimated to increase by 0.43 percent, reflecting both increased volume and higher prices.

Potential small business impacts were predicted to be minimal. Results from the economic impact and regulatory flexibility analyses indicate that smaller plants will not be systematically impacted more severely than larger operations. Moreover, the vast majority of small operations, which will not be subject to the requirements of the proposed rule, may benefit, to some extent, from slightly increased wood furniture prices.

D. Cost Impacts

For existing major sources, the proposed standards are estimated to result in a total industry-wide capital investment of $7,046,600. This cost includes the capital cost of equipment required to achieve compliance with the proposed standards. The annual cost associated with the proposed standards is $15,279,600. This cost includes the capital cost of control (annualized,

assuming a 7-percent interest rate and a 10-year equipment life), annual operating cost including the additional cost of using reformulated materials, worker training, increased labor, and annual compliance, recordkeeping, and reporting costs. The annual control cost is approximately $10,779,600 and the annual compliance, recordkeeping and reporting cost is approximately $4,500,000. The associated cost effectiveness of the proposed standards is $513/Mg ($466/ton).

V. Decision Process for NESHAP Development

A. Source of Authority for NESHAP Development

Section 112 of the Clean Air Act gives the Environmental Protection Agency the authority to establish national standards to reduce air emissions from sources that emit one or more HAP. Section 112(b) contains a list of HAP to be regulated by NESHAP. Section 112(c) directs the Agency to use this pollutant list to develop and publish a list of source categories for which NESHAP will be developed; this list was published in the **Federal Register** on July 16, 1992 (57 FR 31576). The Agency must list all known categories and subcategories of "major sources" that emit one or more of the listed HAP. A major source is defined in section 112(a) as any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit in the aggregate, considering controls, 10 tons/yr or more of any one HAP or 25 tons/yr or more of any combination of HAP.

B. Criteria for Development of NESHAP

The NESHAP are to be developed to control HAP emissions from both new and existing sources according to the statutory directives set out in section 112(d) of the Act. The statute requires the standards to reflect the maximum degree of reduction in emissions of HAP that is achievable for new and existing sources. This control level is referred to as the "maximum achievable control technology" (MACT). The selection of MACT must reflect consideration of the cost of achieving the emission reduction, any nonair quality health and environmental impacts, and energy requirements for control levels more stringent than the MACT floors.

The MACT floor is the least stringent level for MACT standards. 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" [section 112(d)(3)]. Existing source standards should be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources for categories and subcategories with 30 or more sources or the best performing 5 sources for categories or subcategories with fewer than 30 sources [section 112(d)(3)].

Although NESHAP are normally structured in terms of numerical emission limits, alternative approaches are sometimes necessary. In some cases, physically measuring emissions from a source may be impossible or at least impracticable because of technological and economic limitations. Section 112(h) authorizes the Administrator to promulgate a design, equipment, work practice, or operational standard, or combination thereof, in those cases where it is not feasible to prescribe or enforce an emissions standard.

VI. Rationale

The following sections explain the rationale used in selecting the proposed standards.

A. Selection of Pollutants and Source Category

1. Selection of Pollutants

The specific pollutants regulated by the proposed standards are those compounds that are listed as HAP in section 112(b) of the Act. In the wood furniture (surface coating) source category, HAP are emitted from finishing, gluing, cleaning, and washoff operations.

The HAP most commonly used by the wood furniture industry are VOC's used as solvents in the finishing materials and include toluene, xylenes, methanol, methyl ethyl ketone (MEK), and methyl isobutyl ketone (MIBK). Another material used in finishing operations in this industry is thinner, which is used to dilute finishing materials purchased from an outside source. Thinners contain one or several of the HAP previously noted and, therefore, are a source of HAP emissions. Nonvolatile HAP that are contained in the finishing materials used by wood furniture manufacturers are typically in the pigments and include chromium, cobalt, and manganese.

Gluing operations are also sources of HAP emissions. Formaldehyde is contained in urea-formaldehyde resins and is emitted during gluing operations, as well as during the storage, use, and cutting of composite wood products that contain these cured resins. Contact adhesives contain volatile solvents such as 1,1,1-trichloroethane, methylene chloride, toluene, and n-hexane that are HAP.

The solvents contained in cleaning and washoff materials are typically the same solvents that are found in the coating formulations. Those that are HAP (identified above) are regulated by the proposed standards.

2. Selection of the Source Category

The source category regulated by the proposed standards is wood furniture (surface coating). Specifically, major sources of HAP emissions are covered by the proposed rule; i.e., sources that have the potential to emit, considering controls, 9.1 Mg/yr (10 tons/yr) of any one HAP or 22.7 Mg/yr (25 tons/yr) of multiple HAP. Table 2 lists the many products that are manufactured by the source category and illustrates the diversity of the industry. As indicated in Table 2, the proposed rule applies to facilities included in at least nine SIC codes because some or all of the facilities that are included in these SIC codes produce wood furniture. The SIC codes listed in Table 2 are estimated to include greater than 11,000 facilities. Of these, it is estimated that 750 sources are major. This estimate is based on data collected from EPA's survey of the industry. The remaining sources are thought to be area sources, or synthetic area sources, and as such would not be subject to the proposed rule (see related discussion in section VI.A.2.b).

a. *Subcategorization.* Section 112(d) of the Clean Air Act gives the Environmental Protection Agency the authority to distinguish among classes, types, and sizes of sources within a source category in establishing standards. There are many reasons for subcategorizing a source category. A primary reason for subcategorizing a source category is that different types of control techniques may be appropriate depending on the type of product manufactured, the manufacturing process, and the size of the plant. Due to the diversity of this source category, the Committee considered subcategorizing the source category by industry market segment (e.g., kitchen cabinet manufacturers, residential furniture, upholstered furniture, etc.) and by manufacturing process (e.g., finishing a piece before it is assembled, finishing a piece after assembly).

Discussions of subcategorization occurred through several regulatory negotiation meetings. A recurring issue during the discussions was the difficulty in assigning a facility to one subcategory. Some wood furniture facilities manufacture products for

different market segments and some use multiple manufacturing processes.

As the data were evaluated and the recommended format of the standards was developed, it became apparent that the proposed standards were most likely going to be a limit on the pounds of HAP emitted per pound of solids used at a source (see section VI.D). The Committee's review of the data revealed that the HAP limit of facilities in the source category did not vary significantly according to the industry market segment, the size of the facility, or the manufacturing process. In addition, subcategorization by market segment could not address the diversity of the industry as there was as much variation in the types of control techniques used within each market segment as between the market segments.

Another aspect that the Committee discussed was the potential for subcategorization to limit the flexibility of sources in complying with the standards. One compliance method under consideration (and ultimately included in the proposal) was one that allowed averaging across various finishing steps within a facility. In this industry, however, the finishing steps could be within different subcategories and the EPA interprets the Act as not allowing averaging across subcategories for compliance determinations. This made subcategorization less attractive to the Committee.

The Committee decided that the disadvantages of subcategorizing this industry outweighed any benefits to either the affected sources or to regulators. Instead, the Committee worked to allow multiple compliance techniques that could address the operational differences among the various segments within the source category.

b. *Area Source Evaluation.* Of the estimated 11,000 sources in this source category, over 10,000 are thought to be area sources. The Agency also expects that some sources (known as "synthetic area" sources) will apply for a Federally enforceable limit on their potential to emit through the Title V permitting program or some other Federally enforceable program so that they are no longer considered major. A "synthetic area" source is a source that has obtained a Federally enforceable limit that will preclude the source's HAP emissions from exceeding 10 tons per year of any one HAP or 25 tons per year of any combination of HAP; without this limit the source is considered major. The proposed standards do not apply to area sources (including synthetic area sources).

B. Selection of Emission Points

The specific emission points regulated by the proposed standards are finishing, gluing, cleaning, and washoff operations, all of which are described in section II. At some wood furniture facilities, only finishing and cleaning operations will occur. At others, all four operations will take place. Finishing operations may be a small part of some plant operations (e.g., upholstered furniture), or may comprise the majority of plant operations (e.g., residential furniture). Nonetheless, finishing, gluing, cleaning, and washoff operations are the primary HAP emission sources at wood furniture facilities.

The proposed standards for finishing and cleaning operations were developed within the framework of the regulatory negotiation described in section I.B. The proposed standards for gluing operations were developed by the Agency because adhesive suppliers were not represented on the Committee. However, the Agency did consult with adhesive suppliers and operators that perform gluing operations in developing the proposed standards. The EPA survey of the industry also included questions concerning gluing operations.

The EPA analysis indicates that there are four primary types of adhesives used by the wood furniture industry: hot melts, polyvinyl acetate (PVA) adhesives, urea-formaldehyde (UF) resins, and contact adhesives. The proposed standards do not regulate UF resins, hot melts, or PVA adhesives.

The EPA has explored the issue of UF resins in developing the NESHAP and has decided not to control formaldehyde emissions from UF resins in the proposed standards. Urea-formaldehyde resins were removed from consideration during the regulatory negotiation because the Committee members did not represent parties that would be significantly affected by these provisions. The EPA investigated UF resins outside of the negotiation using survey data, studies, and in meetings with the manufacturers and users.

The major use of UF resins in the furniture industry is the manufacture of plywood. A furniture facility may make plywood for later use or glue decorative wood veneers to a wood substrate as part of the manufacturing process. Both of these processes, however, are considered to be plywood manufacturing. Thus, it makes sense to control formaldehyde emissions from UF resins in a broader, more comprehensive format through the NESHAP for Plywood and Particleboard Manufacturing that is scheduled to be promulgated in 2000. Accordingly, the EPA has decided to defer controlling emissions from UF resins in the proposed standards. In the interim, some members of the UF resins industry have expressed a willingness to work together with the EPA to explore scientific approaches to measure emissions and evaluate control technologies that limit emissions from UF resins and wood products containing these resins.

Hot melts are also not covered by the proposed standards because they are not sources of HAP emissions. Hot melts are solid, ethylene vinyl acetate-based products that are used primarily for edgebanding, which is the process of applying a laminate to the edge of a countertop, desktop, table, or other piece of furniture.

The PVA adhesives are waterbased emulsions that have the potential to emit small amounts of vinyl acetate monomer, a HAP. Typically, PVA adhesives contain less than 0.3 percent vinyl acetate monomer and are among the lowest emitting adhesives used by the industry. The EPA is not aware of lower emitting alternatives that can be used for all applications for which PVA adhesives are used. For this reason, the EPA is proposing that the use of PVA adhesives not be regulated by the proposed standards.

C. Selection of Proposed Emission Limits

The proposed emission limits include a HAP emission limit for finishing operations, a limit on the HAP content of contact adhesives, and a limit on the VOC content of strippable spray booth materials. For a description of the rationale for selecting the proposed format for these emission limits, refer to section VI.D.

1. Determination of the MACT Floor

Section 112 requires the EPA to set standards for existing and new sources of HAP emissions that represent the maximum degree of reduction achievable, taking into consideration the cost of achieving such emission reductions, any nonair quality health and environmental impacts, and energy requirements. For determining the proposed emission limits for finishing and gluing operations, a MACT floor approach was used. As was discussed in section V.B, for existing sources in source categories with 30 or more sources, the MACT floor is the average level of control that is achieved in practice by the best performing 12 percent of sources in the source category.

Work practice standards are also proposed to limit HAP emissions from

finishing, gluing, cleaning, and washoff operations. The selection of the work practice standards is discussed in section VI.E.

In order to determine the MACT floor for the wood furniture industry, the EPA surveyed more than 850 wood furniture manufacturing operations. Facilities of all sizes operating under each of the SIC codes of interest were surveyed in order to get a representative sampling of the industry. Responses were received from more than 300 sources, 91 of which were determined to be major sources. Information provided by plants included the material safety data sheet (MSDS) for each finishing material, cleaning material, and adhesive containing HAP that was used at the plant, as well as information on HAP usage, HAP emissions, finishing material usage, cleaning solvent usage, adhesive usage, and control techniques used (if any).

a. *MACT Floor for Finishing Operations.*

i. *Existing sources.* As discussed in section VI.D., in evaluating the data collected from industry on finishing operations, the format that seemed technically feasible and most flexible for the entire source category was an emission limit expressed in terms of pounds of volatile HAP (VHAP) emitted per pound of solids used (lb VHAP/lb solids [kg VHAP/kg solids]). Thus, the MACT floor for finishing operations at existing sources was calculated as the average HAP emission level (lb HAP/lb solids) achieved by the best performing 12 percent of sources, that is, those sources with the lowest HAP emission level. The HAP emission level for each facility was calculated by dividing the facility's total HAP usage by the total quantity of solids in the finishing materials.

The Agency had collected sufficient data on the HAP usage at major sources from the survey of the industry, but did not have data on the solids content of each finishing material used by a facility. Therefore, the coating supplier for each major source calculated the emission level for that source. The Committee agreed that data provided by coating suppliers were more accurate than an emission level calculated using only the EPA's data base; because of the lack of data on the solids content, the Agency would have needed to make assumptions to calculate the emission level for each major source.

Because information was available on 91 major sources, the MACT floor was calculated as the average emission limitation achieved by the best performing 11 existing sources (i.e., the best performing 12 percent). The Committee agreed that the 11 sources should comprise every type of wood furniture operation covered by the proposed rule. If the MACT floor was calculated by looking only at the emission limit of the top 11 sources, without regard to industry segment, one industry segment could be "over-represented." The Committee was especially concerned that one of the smaller industry segments could comprise the majority of sources in the MACT floor. Therefore, each industry segment was represented in the MACT floor proportional to its representation in the industry. The Committee agreed that the quantity of finishing material used was a reasonable method for assessing the percentage of the entire industry represented by each industry segment. Based on the finishing material usage data collected by the EPA through its survey of the industry, it was determined that the total finishing material usage by the source category was approximately distributed as follows:

—kitchen cabinets (SIC 2434): 34 percent
—residential furniture (2511): 44 percent
—office furniture (2521): 7 percent
—radio/TV cabinets (2517): 6 percent
—upholstered furniture (2512): 3.5 percent
—public building furniture (2531): 3 percent
—store fixtures (2541): 2 percent
—other (2519): 0.5 percent

Based on the above distribution, the Committee agreed that the 11 plants comprising the MACT floor should include the best performing 4 kitchen cabinet plants (34 percent of 11), 5 residential furniture plants (44 percent), 1 office furniture plant (7 percent), and 1 plant manufacturing radio/TV cabinets (6 percent). The other industry segments comprised such a small percentage of the source category, the Committee believed that it was not necessary to represent them in the MACT floor analysis. The Committee also believed that the industry segments not included in the MACT floor were similar in many respects to those that were included and would therefore be able to achieve the same MACT floor emission limit.

In reviewing the data collected by the EPA from industry, industry representatives expressed concern that control devices were "over-represented" in the EPA's data base, which indicated approximately 5 percent of major sources were equipped with control devices. Industry felt that they knew of each control device used by the industry and based on their knowledge, they believed no more than 1 percent of major sources were equipped with control devices. The Committee agreed that approximately 1 percent of the major sources are equipped with control devices. While the Act states that the MACT floor analysis shall be based on sources for which the Administrator has emissions information, this does not mean EPA should not use the information it has appropriately. Given that the Committee believed that control devices were over-represented in EPA's data base, the EPA concluded that the MACT floor should be calculated from a population of facilities that includes only 1 (instead of 4) control device (equivalent to 1 percent of the major sources in the data base).

The Agency specifically requests comments on this decision. Any supporting data that would justify additional sources or fewer sources with control devices being included in the MACT floor analysis would be welcomed.

Using the approaches described above, the average HAP emission level achieved by the best performing 12 percent of existing sources was determined to be 1.0 lb HAP/lb solids (1.0 kg HAP/kg solids), as applied. As discussed in IV.D, the format of the emission limitation was later changed to kilograms of volatile HAP per kilogram of solids, as applied, (kg VHAP/kg solids [lb VHAP/lb solids] as applied). Therefore, the MACT floor for existing sources is 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids), as applied.

The EPA is considering two possible meanings for the word "average" as the term is used above in relation to determining the MACT floor. First, "average" could be interpreted as the arithmetic mean. The arithmetic mean of a set of measurements is the sum of the measurements divided by the number of measurements in the set. The EPA has determined that the arithmetic mean of the emissions limitations achieved by the best performing 12 percent of existing sources would yield, in some cases, an emission limitation that fails to correspond to the limitation achieved by any particular technology. In such cases, the EPA would not select this approach. The word "average" could also be interpreted as the median emission limitation value. The median is the value in a set of measurements arranged in order of magnitude below and above which there are an equal number of values (i.e., it is the middle value). This approach identifies the emission limitation achieved by those sources within the top 12 percent, arranges those emission limitations by

magnitude, and takes the control level achieved by the median source. This is mathematically equivalent to identifying the emission limitation achieved by the source at the 94th percentile level of emission control. Either of these two approaches could be used in developing standards for different source categories.

In determining the MACT floor for this source category, the Committee used the approach that interprets the average as the arithmetic mean. The median approach is not feasible for the proposed standards because it would defeat the purpose of having proportional representation of each industry segment. The median approach would select the level of control achieved by one facility, the one at the 94th percentile, and would only represent one industry segment. In addition, the arithmetic mean represents a technically achievable emission limitation for this industry. Of the 11 facilities in the floor, two have an emission limit of 1.0 lb VHAP/lb solids. A range of options can be used to meet the 1.0 lb VHAP/lb solids limit; the limit does not require the use of either a specific technology or a limited set of technologies. The EPA specifically solicits comments on its interpretation of average in general, and the use of an arithmetic mean for this rule specifically.

ii. New sources. Section 112 of the Act specifies that the MACT floor for new sources shall be no less stringent than the level of control that is achieved in practice by the best controlled similar source. The Committee determined the MACT floor for new sources using an approach similar to that for existing sources; that is, one that represents the multiple industry segments within the source category. For new sources, the MACT floor was calculated by determining the HAP limit of the best performing source in each industry segment that comprised the existing source MACT floor (kitchen cabinets, residential furniture, radio/TV cabinets, office furniture). Then, a weighted average (weighted by the relative coating usage of each industry segment) was calculated to determine the HAP limit for new sources. This HAP limit was calculated to be 0.8 lb VHAP/lb solids (0.8 kg VHAP/kg solids), as applied, and is the MACT floor for new sources for all industry segments.

b. *MACT Floor for Gluing Operations.* The proposed standards would only regulate the HAP content of contact adhesives. Hot melts are not sources of HAP emissions, there are no lower emitting alternatives for PVA adhesives, and regulation of formaldehyde based adhesives is being deferred to later rulemaking. As discussed in section II, contact adhesives are used primarily for laminating and for upholstery operations. Contact adhesives used for upholstery operations are also referred to as foam adhesives. The emission limit for contact adhesives is expressed as a HAP limit, in pounds of VHAP per pound of solids, as applied. The MACT floor for contact adhesives was determined as an average (equivalent to the mean) of the HAP limit achieved by the best performing 12 percent of contact adhesives used by major sources in quantities greater than 200 gallons per year; this limit was calculated as 1.0 lb VHAP/lb solids (1.0 kg VHAP/kg solids), as applied. The HAP limit for each contact adhesive was determined from data provided by the adhesive supplier for each major source in the EPA's data base using contact adhesives. The HAP limit for the lowest emitting contact adhesive is 0.2 lb VHAP/lb solids, as applied. Thus, the MACT floor for contact adhesives used by new sources is a HAP content of no more than 0.2 lb HAP/lb solids (0.2 kg VHAP/kg solids), as applied.

2. Selection of MACT

The Committee proposed that MACT for finishing operations should be set at the same level as the MACT floor. This proposal was supported by review of the data on which the MACT floor is based. The Committee determined that HAP emission limits substantially lower than the MACT floor were not being met, nor could they be met by most facilities in the industry segments comprising the MACT floor.

It is expected that most sources will comply with the proposed standards by reformulating existing coatings. Control devices are not widely used by sources covered by the proposed rule to control emissions from finishing operations. In addition, State rules do not require this level of control, and the Committee did not favor a proposal that would mandate the use of control devices. Thus, more stringent control could only be achieved in most cases by the exclusive use of coatings with a very low- or zero-HAP content. Currently, finishing materials with a very low or zero-HAP content have not been demonstrated to be feasible for all industry segments.

Another factor that the Committee evaluated in selecting MACT was the impact of the proposed rule when the work practice standards are considered. These standards will result in additional reduction in HAP emissions. Because numerical limits are not assigned to all work practice standards, the total reduction in emissions that results from implementing such standards is not quantified. Given that an emission limit more stringent than the MACT floor could not be achieved by all segments of the industry and the fact that work practices will further reduce HAP emissions, the Committee favored setting the finishing material emission limits based on the MACT floor.

In selecting MACT, the industry members of the Committee raised the possibility that EPA might, at some future time, conduct rulemaking activities to expand or reduce the current HAP list. The emission limits calculated for the wood furniture NESHAP were based on the list of 189 hazardous air pollutants published in the 1990 Clean Air Act and were not intended to apply to any changes that may be made to the list in the future. In the event the list is changed, either by the addition or deletion of VHAP, the Committee recommended that EPA re-examine the wood furniture emission limits and determine whether it should be adjusted to account for the change.

The Agency proposes that MACT for contact adhesives should also be set at the same level as the MACT floor. (The Committee was not involved in selecting MACT for gluing operations.) Based upon discussions with industry, the Agency decided that an emission limitation more stringent than the MACT floor was not feasible for contact adhesives.

The Agency proposes that MACT for contact adhesives used for upholstery operations (referred to here as foam adhesives) be set at a different level if the product manufactured with the foam adhesive meets flammability testing requirements of California Technical Bulletin 116, 117, or 133, BIFMA X 5.7, UFAC Flammability Testing, or any similar requirements from local, State, or Federal fire regulatory agencies. The limit of 1.0 lb VHAP/lb solids may require the use of waterborne foam adhesives. Many of the products manufactured with foam adhesives must meet standards for flammability. However, industry, including furniture manufacturers and adhesive suppliers, have stated that products manufactured with waterborne foam adhesives may fail these flammability tests. Therefore, the EPA has decided that foam adhesives used in products manufactured by existing sources that meet the flammability standards do not have to meet the limit of 1.0 lb VHAP/lb solids. For foam adhesives used in products manufactured by existing sources that do not meet the flammability standards, the EPA is proposing that MACT for existing sources be set at the MACT floor, that

is, 1.0 lb VHAP/lb solids (1.0 kg VHAP/kg solids), as applied.

The Agency believes that HAP emissions from foam adhesives used in products manufactured by existing sources can be reduced. In order to establish a limit for these adhesives, the EPA elected to set a limit equivalent to that of the lowest emitting solventborne foam adhesive used in quantities greater than 200 gallons per year. This adhesive has a HAP content of 1.8 lb VHAP/lb solids (1.8 kg VHAP/kg solids), as applied. Therefore, the EPA is proposing that MACT for existing sources for foam adhesives used in products that meet flammability standards be set at 1.8 lb VHAP/lb solids (1.8 kg VHAP/kg solids), as applied.

Some manufacturers of contact adhesives have requested an exemption from the emission limitation for existing and new sources (1.0 kg VHAP/kg solids and 0.2 kg VHAP/kg solids, respectively), for problem applications involving nonporous substrates such as rigid plastic, metal, and rubber. According to the manufacturers, these operations require solvent-dispersed adhesives. Low VOC and HAP alternatives are not expected to be available for several more years.

Manufacturers have also requested an exemption for aerosol adhesives. These adhesives are typically used by small businesses and by larger businesses for touch-up and repair. According to manufacturers, they are highly specialized systems and reformulation involves complex problems that affect not only the adhesive but the delivery system as well.

Rather than allow the exemptions at this time, the Agency has decided to request comment on whether the exemptions should be allowed and any data that would support or refute the need for these exemptions. Additionally, the Agency specifically requests comments on the approach used for establishing MACT for contact adhesives for existing sources including comment on the following issues:

1. The appropriateness of excluding adhesives used in amounts less than 200 gallons per year, which the industry felt represented a de minimis usage, from calculation of the MACT floor;

2. Calculating the MACT floor based on the average of the best performing 12 percent of adhesives for a data set that is limited, 22 data points, but which the EPA believes is representative of the industry; and

3. The appropriateness of setting MACT for foam adhesives for existing sources based on a special quality required for the product (i.e., flammability).

D. Selection of Format of Proposed Emission Limits

1. Finishing Operations

For finishing operations, the VHAP content, expressed as pounds of VHAP emitted per pound of solids used (kg VHAP/kg solids), was determined to be the most appropriate format for the proposed standards. In selecting the format of the proposed standards, the following factors were considered:

1. The format must accommodate multiple compliance techniques for the various industry segments;

2. Given the large number of small businesses in this source category, the format must ensure that the cost of compliance is not excessive;

3. The format must ensure that an equivalent level of control is achieved by all affected sources; and

4. The format must facilitate enforcement by regulatory agencies.

During the negotiation meetings, the Committee considered several formats for the finishing operations standards in addition to the selected format of pounds of VHAP emitted per pound of solids used. These included: (1) a percent efficiency format, (2) a limit on emissions of HAP per gallon of coating, and (3) a limit on emissions of HAP per gallon of solids. For all HAP-limit formats, including the one selected for the proposed standards, the quantity of HAP used annually is calculated as applied (the total emissions from a coating after any thinning by the furniture manufacturer). Therefore, if prepurchased coatings were diluted with thinner at a facility, this dilution was accounted for. A Measurement Work Group comprised of some of the Committee members was established by the Committee to investigate these potential regulatory formats.

The Measurement Work Group determined that a percent reduction format was not appropriate for this source category. In debating a percent reduction format, the Measurement Work Group considered the fact that conventional control devices were not likely to be the compliance method of choice for this source category. Therefore, a straightforward measurement of capture and control device efficiency would not be sufficient to demonstrate compliance with a specific percent reduction. Instead, to implement a percent reduction format, baseline conditions at each affected source would have to be assessed. At an uncontrolled facility this would not be a problem; baseline conditions would be the current HAP emission rate. The percent reduction would be applied to this uncontrolled rate to calculate the controlled HAP emission rate required by the standards. Problems with the percent reduction format arise, however, if a facility has implemented control strategies prior to proposal of the MACT standards. If the same baseline year is selected for both the uncontrolled and controlled facility, the controlled facility would be required to control a greater quantity of HAP emissions than the uncontrolled facility. Thus, a percent reduction format was perceived as penalizing sources that initiated control strategies prior to proposal of the MACT standards. The Committee agreed with the Measurement Work Group's recommendation that a percent reduction format not be selected for this source category.

Initially, the Measurement Work Group considered a limit on the pounds of HAP contained in a gallon of finishing material (lb HAP/gal), either for each finishing material or as an average across all finishing materials. In analyzing the data, however, the Measurement Work Group discovered that the pounds of HAP per gallon of finishing material format would not credit sources that switch to lower-emitting, higher-solids finishing materials. For example, a facility using a finishing material with a solids content of 40 percent and a HAP content of 3 lb/gal will emit fewer pounds of HAP than a facility using a finishing material with a solids content of 20 percent and a HAP content of 2 lb/gal because the first facility will use 50 percent less finishing material than the second. Because the HAP content of a finishing material is not directly related to the solids content, a comparison of the emission potential of two finishing materials using a lb/gal format cannot be made.

As an alternative to the lb HAP/gal format, the Measurement Work Group considered a format of lb HAP/gal of solids. It was believed that this format would adequately credit sources that converted some or all of their conventional finishing materials to higher-solids coatings. A problem with the lb HAP/gal solids format, however, is that no EPA test method is currently available for accurately measuring the volume of solids in a finishing material.

In an effort to develop standards that did not require measuring the volume of solids, the Measurement Work Group decided to explore a format based on the weight of solids used, rather than the volume of finishing material or volume of solids. In evaluating a format of lb

HAP emitted per lb solids used, the Measurement Work Group first concluded that this format predicted actual emission reductions better than any other format when extremes in finishing materials were tested. For example, if a source were to increase the solids content of its finishing material and decrease its usage of finishing materials, the format of lb HAP/lb solids properly credited the source's emission reduction.

Three potential drawbacks to the format of lb HAP/lb solids were identified by the Measurement Work Group. The first drawback concerned higher solids stains. Unlike the film building finishing materials, stain usage is not directly related to the solids content. A source could use a higher solids stain to reduce its lb HAP/lb solids level without decreasing stain usage or HAP emissions. The second drawback was that a source could double its film thickness to reduce the lb HAP/lb solids value while increasing emissions. The third drawback with using a lb HAP/lb solids format is related to pigmented finishing materials such as basecoats and enamels. Some of the pigments used in these finishing materials have a higher density than the solids used in conventional finishing materials. While these finishing materials typically have a lower HAP content than the conventional finishing materials used by the industry, the lb HAP/lb solids format for these finishing materials will overestimate the actual decrease in emissions because of the higher density of the solids.

The Work Group presented its findings to the Committee along with a recommendation that, despite the drawbacks, the lb HAP/lb solids format was the most reasonable. Regarding the first drawback (the problem with higher solids stains), the Work Group agreed that this issue did not pose a significant problem with the lb HAP/lb solids format. An analysis of an extreme case, that is, a stain with a solids content at the upper end of the normal range, indicated that the error would be less than 5 percent, which the Committee agreed was an acceptable margin of error.

However, another issue associated with the relationship between a lb HAP/lb solids format and stains was raised by industry when the Committee was developing the compliant coatings approach for meeting the emission limitation. As discussed, stains are low-solids finishing materials so formulating a stain to meet a limitation based on solids is difficult. The industry indicated that a compliant stain could be formulated, but only if the emission limitation applied only to the volatile HAP in the coating. Stains may contain small amounts of nonvolatile HAP such as chromium and manganese compounds for which there are no readily acceptable non-HAP substitutions. The industry pointed out that a significant percentage of these nonvolatile HAP are captured and controlled by filters in the spray booths. A small percentage may be emitted from overspray that is not captured by the filters, but industry indicated that these emissions will be reduced by the equipment requirements of the proposed standards, which will reduce finishing material usage and overspray (see discussion of work practices in section VI.E.). The Committee agreed that these nonvolatile HAP will be reduced both by filters and by the application equipment requirements so that the emission limitation for the finishing materials would apply only to the volatile HAP.

Regarding the second drawback (the coating thickness issue), industry pointed out that economics would preclude a source from meeting standards expressed as a lb HAP/lb solids by doubling the coating thickness. According to industry representatives, finishing lines are designed to run at a certain speed. To increase coating thickness, the line would have to be slowed down to apply more finishing material. This practice would lower the overall production rate. The cost of the additional finishing material and the lost production would deter a source from this approach. Industry representatives also pointed out that, in most situations, the product quality would suffer if the coating thickness were doubled. Given the unlikely situation of a source doubling its coating thickness, the Committee agreed that this was not a significant drawback to the lb HAP/lb solids format.

Regarding the third drawback cited above (fully pigmented finishing materials), although the lb HAP/lb solids format overestimates the actual emissions reductions from pigmented finishing materials, the Work Group agreed that this was not a significant problem because these materials represent a small amount of total finishing material usage. Industry estimated that these finishing materials account for less than 5 percent of total usage, and data collected by the EPA support this estimate.

As a result of the above discussions, the format of today's proposed rule for coating operations is a lb VHAP/lb solids emission limit (kg VHAP/kg solids). While this format has been evaluated and is considered appropriate for this source category due to the similarities in the densities of the solids used in the coatings, the Agency recommends that before using this format for setting emission limits for other source categories a thorough evaluation of its appropriateness for that source category be conducted.

2. Gluing Operations

The Agency and the Glue Work Group, which was involved in the initial discussions concerning the development of emission standards for adhesives, considered several formats in developing the proposed standards for gluing operations. The potential formats for contact adhesives evaluated by the EPA included a limit on the HAP content of the adhesive expressed as a pound of HAP per gal and a HAP content based on a lb HAP/lb solids. For the reasons cited for finishing operations, a format expressed as a lb HAP/gal is not adequate for determining emission reduction. Likewise, for the same reasons discussed for finishing, a HAP limit in terms of lb VHAP/lb solids (kg VHAP/kg solids) was selected as the format for the proposed standards. This format was agreed upon by the Agency and the Glue Work Group.

E. Selection of Work Practice Standards

The proposed rule contains many work practices that the Committee believed are pollution prevention approaches that limit emissions from finishing, gluing, cleaning, and washoff operations. Section 112(h) of the Act gives the EPA the authority to promulgate design, equipment, work practice, or operational standards, or a combination thereof. Such standards are necessary in cases where physically measuring emissions from a source is impossible or at least impracticable. The work practices that were selected as part of the proposed standards are practices that the Committee agreed are feasible but for which emission limits could not be assigned.

For this source category, work practices were also considered necessary for another reason. Whereas the emission limits required by the standards will control only HAP emissions from wood furniture manufacturing operations, the work practices will limit both HAP and VOC emissions. Several Committee members were concerned that to comply with the proposed rule, sources would replace HAP compounds in finishing materials with equally hazardous non-HAP VOC's. By implementing work practices, all pollutants will be controlled to some extent.

1. Work Practices Selected for the Proposed Standards

a. *Finishing, Gluing, Cleaning, and Washoff Operations.* The Committee recognized that by implementing work practice standards, HAP emissions from finishing and gluing operations could be further reduced. To determine the work practices that would be technically feasible for the source category, the Committee established a Work Practice Work Group. The Work Practice Work Group comprised the EPA and State regulators, a State office involved with waste reduction, finishing material suppliers, manufacturers, and an environmental group representative.

The Work Practice Work Group identified two areas in which HAP emissions from finishing, gluing, cleaning, and washoff operations could be reduced through work practices: HAP storage and HAP transfer; and two more areas in which HAP emissions could be reduced from finishing operations: finishing material application and selection of finishing materials. The work practices proposed by the Work Practice Work Group were discussed with the Committee, and a consensus was reached that the recommended work practices should be included in the proposed rule.

i. *HAP storage.* Materials containing HAP are often stored in containers that are left open, allowing the volatile HAP to evaporate and be emitted through room ventilation to the atmosphere. The Work Practice Work Group agreed that a straightforward, inexpensive method of reducing emissions from HAP storage would be to cover all containers storing finishing, gluing, cleaning, and washoff materials when not in use. In addition to reducing HAP emissions to the atmosphere, this work practice has the added benefit of reducing worker exposure to volatile HAP.

ii. *HAP transfer.* In wood furniture finishing, gluing, and cleaning operations, solvent, finishing material, and adhesives are pumped from storage containers to the spray gun through piping. In wood furniture operations, leaks can occur in equipment used to transfer or apply finishing materials, solvents, and adhesives. Therefore, the Work Group agreed that requiring sources to check this equipment for leaks was reasonable. To implement the leak inspection program, sources will be required to develop an I&M plan that requires the inspection of each piece of equipment used to transfer or apply finishing materials, solvents, and adhesives; a schedule for inspection; reporting of the results of the inspection, any repairs that were made to the equipment, and the timeframe between identifying the leak and performing repairs.

The Work Practice Work Group agreed upon the concept of an I&M plan, but never discussed whether the proposed rule should require a specific inspection frequency and, if so, what the frequency should be. In establishing the regulatory framework for the negotiated rule, the Agency decided that a monthly inspection frequency is appropriate to accomplish the goal of reducing leaks from transfer and application equipment. More frequent monitoring was considered burdensome because smaller shops would not have the personnel to perform the inspections.

To ensure that action would be taken if leaks were detected, the proposed rule requires that repairs be made within 15 calendar days, with a first attempt at repair made within 5 calendar days. The Agency's decision is supported by previous regulatory action; the hazardous organic NESHAP (HON) and the NESHAP for coke oven batteries both require this same repair timeframe. As stated above, the Agency used the Committee's conceptual agreement for an I&M plan to address equipment leaks as a foundation for the more specific provisions in the proposed rule. The Agency requests comment on the specific requirements of the proposed rule, and data to suggest that more or less frequent monitoring or shorter or longer repair times may be appropriate.

iii. *Finishing material application.* Another aspect of wood furniture finishing operations that the Committee evaluated was the type of finishing material application equipment used. There have been numerous studies comparing the transfer efficiency of one type of application equipment with that of another type. Transfer efficiency is the ratio of the amount of coating solids deposited onto the surface of the coated part to the total amount of coating solids used. The higher the transfer efficiency, the less finishing material that is used and the less that is lost as overspray (sprayed finishing materials that miss the piece). Overspray eventually dries, releasing volatile HAP, and becomes a solid waste source for the facility. Thus, by increasing transfer efficiency, both air emissions and solid waste are reduced.

The Committee agreed that highly efficient transfer methods are desirable. Traditionally, however, the Agency's position on transfer efficiency has been one that advocates the use of more efficient transfer methods, but contends that emission reductions resulting from these methods can not be quantified. For the purposes of the proposed rule, the Committee reached a consensus that an equipment standard rather than a standard that identified transfer efficiencies for specific application methods would be most appropriate. The Committee also agreed that data supporting one type of application equipment over another were conflicting except in one instance; almost all data suggest that conventional air guns are the least efficient transfer method. Therefore, the Committee proposed that the rule prohibit the use of conventional air spray guns.

Several Committee members believed that in certain instances the use of conventional air guns should be allowed. For example, if a source is using low-VOC coatings (less than 1.0 lb VOC/lb solids) or a control device, transfer efficiency is not as critical. Also, some Committee members pointed out that limited use of air guns for specialty operations would have minimal environmental impact as long as more efficient application methods were used for the majority of finishing. The Committee believed that these were valid claims and therefore proposes that conventional air spray guns only be used to apply finishing materials under the following circumstances:

1. To apply finishing materials that have a VOC content no greater than 1.0 kg VOC/kg solids (1.0 lb VOC/lb solids), as applied;

2. For touchup and repair under the following conditions;

(a) The touchup and repair occurs after completion of the finishing operation; or

(b) The touchup and repair occurs after the application of stain and before the application of any other type of finishing material, and the materials used for touchup and repair are applied from a container that has a volume of no more than 2.0 gallons.

3. If spray is automated, that is, the spray gun is aimed and triggered automatically, not manually;

4. If emissions from the finishing application station are directed to a control device;

5. The conventional air gun is used to apply finishing materials and the cumulative total of that finishing material is less than 5 percent of the total gallons of finishing material applied during that semiannual period; or

6. The conventional air gun is used to apply stain on a part for which it is technically or economically infeasible to use any other spray application technology.

The proposed rule provides guidance on factors to be considered in making

the determination of technical or economic infeasibility required for (6). These factors include: (1) The production speed is too high or the part shape is too complex for one operator to coat the part and the application station is not large enough to accommodate an additional operator; or (2) the excessively large vertical spray area of the part makes it difficult to avoid sagging or runs in the stain. To demonstrate technical or economic infeasibility, the facility must submit a videotape, technical report, or other documentation supporting the claim of economic or technical infeasibility.

The Agency specifically solicits comments on this approach including: (1) Does the proposed rule provide sufficient guidance for the permitting agency to make a determination of economic or technical infeasibility; and (2) are the options for documenting the claim of economic or technical infeasibility reasonable and sufficient?

iv. *Selection of finishing materials.* As previously stated, several Committee members were concerned that the emission limits proposed for the finishing operations did not prohibit the use of those VHAP of potential concern. These are VHAP that have been classified as high concern, unrankable, and nonthreshold under the proposed rulemaking pursuant to section 112(g). The emission limit for finishing materials allows sources to continue using these materials as long as the overall HAP limit does not exceed 1.0 kg VHAP/kg solids (1.0 lb VHAP/lb solids), as applied (existing sources) or 0.8 kg VHAP/kg solids (0.8 lb VHAP/lb solids), as applied (new sources).

The Committee discussed prohibiting the use of certain HAP, but ultimately they agreed that to determine which HAP were necessary for which finishing materials would be difficult because it would depend on the specific application and/or product. The Committee also discussed capping the emissions of certain HAP. Industry argued that a cap could limit their production by limiting their use of some finishing materials.

After much discussion, the Committee agreed upon an approach that satisfied all members. Under this approach, all affected sources must prepare a Formulation Assessment Plan. The Formulation Assessment Plan will help ensure that the averaging approach allowed under the proposed rule does not circumvent the goals of State air toxics programs.

The plan must identify all VHAP of potential concern being used by the affected source for finishing operations that are on the list of 10 compounds identified by industry. The list, presented in Table 4, § 63.803(1), of the proposed standards, includes those VHAP of potential concern that industry indicated were currently in use by the wood furniture manufacturing industry. The plan must establish a baseline level of usage, based on the highest annual usage from 1994, 1995, or 1996, for each VHAP of potential concern used by the affected source.

For sources using formaldehyde, the baseline level of usage would be based on the free formaldehyde content of the finishing material. For styrene, the baseline level of usage would be based on an estimate of unreacted styrene, which would be calculated by multiplying the amount of styrene monomer in the coating by a factor of 0.16. The free formaldehyde content of the finishing material was chosen as a method for tracking formaldehyde usage because it is a readily available quantity based on known and agreed upon industry test procedures. However, there is no data available that directly links the free formaldehyde content of a coating to formaldehyde emissions. Therefore, the Committee recommended that if data become available that indicated that formaldehyde emissions were either more or less than those estimated using the free formaldehyde content, the calculation procedure in the formulation assessment plan should be re-examined.

Both ultraviolet (UV) and polyester coatings used by the wood furniture industry contain styrene monomer. During curing, styrene monomer reacts to form the dried coating. However, some of the styrene monomer is emitted during the application of the coating and as the coating cures. While EPA has not developed an emission factor for styrene for these coatings, they have developed emission factors for the fabrication of products from polyester resins. These emission factors are presented in Chapter 4 of EPA's "Compilation of Air Pollutant Emission Factors." The industry felt that the emission factors developed for vapor-suppressed gelcoats were appropriate for use in estimating unreacted styrene monomer emissions from UV and polyester coatings. The emission factor for vapor-suppressed gelcoats ranges from 8 to 25. The industry and EPA agreed to use a midpoint value of 16. While a constant emission factor may not be a true measure of actual emissions, it would not adversely affect the facility using these coatings because both baseline emissions and emissions from later years would be estimated on the same basis.

The source must track usage of each VHAP of potential concern. If, after November 1998, usage of the VHAP of potential concern exceeds the established baseline levels then the source must provide a written notification to the permitting authority that describes the amount of increase and explains the reasons for exceedance of the baseline level. As long as the source is complying with its State Air Toxics Program or any other State rules or requirements affecting that VHAP of potential concern, any of the following explanations would relieve the facility from further action: (1) The usage level is below the de minimis level, based on 70 year exposure levels, that is specified through EPA's rulemaking pursuant to section 112(g) of the Clean Air Act for that VHAP (for sources using control devices to reduce emissions the usage level can be adjusted to account for the overall control efficiency of the control system); (2) the increase is no more than 15.0 percent above the baseline level; (3) the source is in compliance with its State air toxics regulations or guidelines for that VHAP of potential concern; or (4) the VHAP is used in a finishing material that has a VOC content of no more than 1.0 kg VOC/kg solids (1.0 lb VOC/lb solids), as applied.

If the explanation for the exceedance of the baseline level is not one of the four discussed above, the owner or operator must confer with the permitting authority to discuss the reasons for the increase and to determine if these are practical and reasonable technology-based solutions for reducing usage of the VHAP. The evaluation of whether a technology is reasonable and practical would be based on cost, quality, and marketability of the product; the successful use of the technology by other wood furniture manufacturing operations, or other criteria agreed upon by the permitting authority and owner or operator. If the permitting authority and owner or operator agree there are no practical and reasonable solutions, the facility would take no further action.

If the permitting authority and owner or operator agree that there are solutions, the owner or operator must develop a plan to reduce usage of the pollutant to the extent feasible. The plan must address the approach to be used to reduce usage, provide a timetable for implementing the plan, and include a schedule for submitting notifications of progress.

If, after November 1998, the affected source uses a VHAP of potential concern for which a baseline level has not been established, then the baseline level will be equivalent to the de

minimis level, based on 70 year exposure levels and data provided in the proposed rulemaking pursuant to section 112(g), for that pollutant. Table 5 of the proposed rule, § 63.803(d), includes a list of all VHAP of potential concern. If the affected source's use of the VHAP of potential concern exceeds the de minimis level, then the affected source must record the reasons for the exceedance and follow the same procedures as those used when an exceedance of the baseline level occurs for those VHAP listed in Table 4.

The de minimis rates for the HAP of potential concern are based on the principles involved and some of the supporting data used for the proposed rule pursuant to section 112(g). These principles are given in detail in Documentation of De Minimis Emission Rates—Proposed 40 CFR Part 63, Subpart B Background Document, EPA-453/R-93-035 (this document is available on EPA's Technology Transfer Network) and are briefly described here.

For the proposed section 112(g) rulemaking, the basis for the de minimis levels is the use of information that is available to determine (1) an exposure level which results in a one-per-million cancer risk level, or (2) an exposure level which constitutes an "ample margin of safety" level for noncancer effects. The risk management decisions to use these two criteria to determine de minimis emission rates are fundamental assumptions in the determination of de minimis levels for the section 112(g) rulemaking. Note that the de minimis levels do not take into account any additive effects which may result from exposure to multiple pollutants.

For pollutants where insufficient dose-response information is available to determine the exposure level associated with either a one-per-million cancer risk or an "ample margin of safety" for noncancer effects, the proposed rule contains default values which reflect risk management decisions for establishing the de minimis rates.

An important risk management decision for establishing de minimis levels under section 112(g) was to "cap" de minimis emission rates at 10.0 tons per year. For example, if an exposure level associated with a one-per-million cancer risk results in a de minimis level greater than 10.0 tons, the de minimis level, by virtue of the cap, is 10.0 tons. The EPA believes that it would be difficult to support the designation of a "trivial" level of emissions of an air pollutant that is considered "major" by the guiding legislation.

The risk management process for establishing de minimis values for the proposed rule for section 112(g) gave consideration to the interim nature of section 112(g) requirements. For carcinogens with available unit risk estimates, the duration of exposure used to set de minimis emission rates of such pollutants is the same as the estimated period the section 112(g) rulemaking will be in effect before those provisions are augmented by the section 112(j) provision. At that time, sources will be subject to case-by-case MACT determinations or the national MACT standards will have been promulgated for those sources.

Because the wood furniture MACT standard was not intended to be interim in nature, it is important to note that the specific de minimis rates listed in section 112(g) are not intended to be used directly by the wood furniture MACT standard. Consequently, the rates need to be adjusted to take into account a lifetime duration of exposure. This adjustment would affect the de minimis levels for pollutants identified as nonthreshold for which unit risk estimates are available.

Some industry members of the committee recommended that EPA request comments on the adjustment of the proposed section 112(g) de minimis values from 7-year exposure to 70-year exposure values. Therefore, the EPA is requesting comment on this issue.

Because the rule pursuant to section 112(g) is still in the proposal stage, any changes made to the proposed rule upon its becoming final that affect the wood furniture NESHAP will be made before the wood furniture NESHAP is promulgated. For example, if any VHAP of potential concern changes in its hazard ranking categorization (e.g., a VHAP is recategorized from the high concern list to the threshold list) or if information used to determine the exposure level associated with either a one-per-million cancer risk or an "ample margin of safety" for noncancer effects changes the de minimis value, these changes will also be made to the formulation assessment plan in the wood furniture NESHAP.

The formulation assessment plan is beneficial to the industry in that its inclusion in the MACT standard and potential impact on emissions of VHAP of potential concern may reduce health risk to the extent that it would alleviate the need for additional risk-based Federal air toxics standards to be promulgated for this industry. Section 112(f) of the Clean Air Act specifies that additional standards may be required for a source category even after a MACT standard is promulgated. In particular, under section 112(f), EPA is required to promulgate an additional emission standard for a source category within 8 years after promulgation of the MACT standard depending on the risk remaining to the most exposed individual or to prevent an adverse environmental effect. An additional standard would be required if the MACT standard for a source category that emits a pollutant classified as a known, probable, or possible human carcinogen does not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category to less than one-in-a-million. Because the formulation assessment plan of the MACT standard deals with the volatile HAP which likely cause such a risk or other adverse environmental effects upfront and in the MACT standard, it provides a possibility that the industry would not be subject to future Federal risk-based standards under section 112(f).

b. *Cleaning and Washoff Operations.* As discussed in section II, cleaning operations that occur at wood furniture manufacturing operations include cleaning of spray guns, lines conveying solvent, finishing materials and adhesives from storage to the spray guns, and spray booths. In evaluating work practices that could be implemented to reduce emissions from cleaning and washoff operations, the Committee considered work practices already in use by some facilities in the source category. In addition, the Work Practice Work Group explored options used by other industries, in particular, the use of alternate cleaning materials with lower vapor pressure or HAP content. This option was rejected because it limited the source's ability to reuse the cleaning materials elsewhere, such as for thinning finishing materials.

The Work Practice Work Group explored the methods currently being used by facilities in the source category to control HAP emissions from cleaning and washoff. They used the survey responses collected by the EPA and the industry group, the experience of personnel from a State Office of Waste Reduction on the Work Group that had worked with wood furniture manufacturers, and the experience of those involved in the manufacture of products in one or more of the industry segments.

The Work Practice Work Group concluded (and the Committee concurred) that there were work practices in use by existing facilities in the source category to limit emissions from washoff operations and each major cleaning activity: gun/line cleaning, spray booth cleaning, and general cleaning activities.

i. *Gun/line cleaning.* The cleaning of spray guns and of lines that carry finishing material, solvent, and adhesives from storage to the spray guns is a common practice in wood furniture operations. Cleaning is necessary so that dried resins or other materials do not build up in the lines or spray equipment. The frequency of cleaning varies by plant depending on the different types of material sprayed with a given gun, the extent to which a gun is used, and other plant-specific factors. Typically, a gun is cleaned each time it is used to spray a different material. If a gun is dedicated to one type of finishing material (e.g., topcoat), cleaning frequency may be reduced. The practice of dedicating a gun to a particular coating type is not common, however, especially at smaller shops that have fewer spray stations.

One work practice that the Work Practice Work Group agreed could be universally applied was the collection of solvent used for cleaning in a container that can be closed. For example, if a line is flushed, the cleaning solvent could be collected into a normally closed container. Another work practice that the Work Practice Work Group agreed could be easily implemented is the covering of cleaning solvent containers when not in use. As discussed for storage containers associated with finishing and gluing operations, such a practice is straightforward and inexpensive.

ii. *Spray booth cleaning.* In addition to the emission limits identified for strippable spray booth coatings in Table 3, the Work Practice Work Group believed that the proposed rule should prohibit the use of organic solvents for spray booth cleaning except in limited circumstances. Sources subject to this rule could comply by using strippable spray booth coatings that meet the VOC limits identified in Table 3, thereby reducing the use of organic solvents for this purpose. The Work Practice Work Group acknowledged that there were instances in which solvent was necessary. Specifically, it was agreed that conveyors carrying furniture or furniture components through the spray booth and continuous coaters and their enclosures could continue to be cleaned with solvent. Likewise, organic solvent can continue to be used to clean the metal filters located in the spray booth. Neither the Work Practice Work Group members nor the rest of the Committee members were aware of substitute materials that could be used for cleaning this equipment, or of any strippable coating such as the coating that is available for the spray booth walls. Additionally, industry representatives pointed out that small tears and holes may be generated in the strippable booth coating during the manufacturing process. In these cases, some staining of the spray booth walls may occur. The Committee agreed that sources could use small quantities of solvent, no more than 1.0 gallon per booth, to clean these areas when the strippable booth coating was being replaced.

iii. *Furniture washoff.* Another area of concern that the Work Practice Work Group focused on was a practice known in the industry as washoff. Washoff is the practice of removing coating from a piece of furniture or a furniture component. The main reason for washoff is that the finish does not meet company specifications. By washing off the coatings, the substrate can be refinished. Washoff is typically accomplished by dipping the furniture into a tank containing organic solvent; the same solvents used for cleaning are usually used for washoff. The Work Practice Work Group agreed that there were some measures that sources could implement at almost no cost that could limit emissions from washoff. As with finishing and other cleaning operations, the Work Practice Work Group agreed that covering washoff tanks when they are not in use would limit emissions. Also, sources could minimize dripping by tilting and/or rotating the piece to drain as much solvent as possible back into the tank.

iv. *General cleaning/washoff activities.* During the Work Practice Work Group discussions, it was apparent that cleaning and washoff practices are not well documented by sources. For example, most sources do not know the quantity of solvent used for cleaning and washoff operations, how many pieces are washed off, and the fate of spent solvent from cleaning and washoff operations. The Work Practice Work Group agreed that one of the first steps in reducing emissions is to know the quantity of solvent used for the various operations onsite. Only then can a source identify operations that are wasteful or inefficient. Therefore, the Work Practice Work Group proposed that the work practices in the proposed rule require a cleaning and washoff solvent accounting system. Under this system, sources would have to:

1. Maintain a log of the quantity and type of solvent used for washoff and cleaning, the number of pieces washed off, and the reason for the washoff;

2. Record the quantity of spent solvent generated from each activity, and its ultimate fate either onsite or offsite;

3. Document that chemicals that are known or probable human carcinogens, the EPA type A and type B_1/B_2, are not present in cleaning or washoff solvents in concentrations subject to MSDS reporting as required by OSHA.

The net cleaning and washoff solvent usage quantities, accounting for disposal and recycling of spent solvent, shall be calculated monthly. Actual copies of the logs should be made available to the Administrator or permitting authority upon request.

The Committee agreed with the Work Practice Work Group's recommendation that an accounting system be implemented by affected sources. The Committee believed that once the accounting system was in place, the burden of maintaining it would not be too great. The Committee also believed that the accounting system would be an important first step for facilities to develop a broad-based, multimedia pollution prevention plan.

Some Agency officials have expressed concern that the proposed rule only restricts the use of EPA type A and type B_1/B_2 carcinogens in cleaning and washoff solvents. They are concerned that restricting the use of only these chemicals implies that they are worse than other HAP. They are also concerned that the rule draws a clear line between type B and C carcinogens, although the scientific evidence does not suggest such a clear distinction. For example, some pollutants on the HAP list are designated type B/C because the data cannot clearly support a designation of type B or C. The proposed rule does not address these pollutants. Finally, the Agency is planning to update their risk assessment guidelines. Under these revised guidelines, the terms type A and type B carcinogens are likely to be meaningless.

The Committee agreed to restrict the use of type A and type B_1/B_2 carcinogens only, so the EPA is proposing the rule using this approach. However, to address the concerns of some Agency officials, the EPA is specifically requesting comment on this issue including:

1. Should additional HAP, for example, all VHAP of potential concern, be restricted from use in cleaning and washoff solvents;

2. If the approach proposed in the rule is used, how should chemicals designated as type B/C carcinogens be addressed; and

3. If the approach proposed in the rule is used and the risk assessment guidelines are revised so that the terms type A and type B become obsolete, how could the rule be revised to maintain the intent of the proposed rule?

c. *General Work Practice Requirements.* After reviewing the work practices to be included, the Committee concluded that in order for the proposed work practices to be successfully implemented, employees that would actually have to carry them out should be involved in their implementation. Therefore, an operator training program is included as a proposed work practice. The Committee believed that operator training was especially important for new employees and therefore proposed that new employees be trained upon hiring. The Committee agreed that the proposed rule should be flexible and allow sources to develop programs that work best for their facility or that could be coordinated with existing training programs. The proposed rule does require that, at a minimum, the employee training program address coating application, cleaning, and washoff techniques that minimize emissions; appropriate equipment operation; methods to reduce solvent usage; and proper management of cleanup wastes. The Committee also proposed that the rule require retraining of all employees on an annual basis.

Members of the Work Practice Work Group proposed to the Committee that the standards should require affected sources to develop an Implementation Plan that describes how sources plan to comply with the work practice requirements on an on-going basis. Based on the proposed work practices, the Committee believed that any Implementation Plan should include, at a minimum, the following:

1. Checklists to document that:
—all storage containers are covered when not in use;
—solvents are not being used for spray booth cleaning except as allowed by the proposed rule;
—conventional air spray guns are not in use except as allowed by the proposed rule;
—cleaning solvent from gun/line cleaning has been collected into a normally closed container; and
—the washoff tank is covered when not in use;

2. An I&M plan as discussed in section VI.E.1.a.ii;

3. A formulation assessment plan as discussed in section VI.E.1.a.iv;

4. An accounting system for washoff and cleaning solvents as discussed in section VI.E.1.b.iv; and

5. The operator training program discussed in section VI.E.1.c.

The Work Practice Implementation Plan would be followed and maintained onsite to demonstrate on-going compliance, and made available at the request of the Administrator or permitting authority at any time.

2. Other Work Practices Considered

In developing the work practices for the proposed rule, the Work Practices Work Group as well as other Committee members identified additional measures that were considered for inclusion in the proposed rule. This section identifies those other measures and discusses why the Committee did not include these measures in the proposed rule. Individual sources and regulators are encouraged to consider this list to determine if some measures may be appropriate, or at least applicable to some sources within the source category.

The following measures were identified as possible work practices but were not included in the proposed rule:

1. Facilities should develop a multimedia pollution prevention plan that addresses hazardous waste generation, solid waste generation, water pollution releases, air emissions, and worker exposure;

2. Position workpiece to minimize overspray, and position the piece to facilitate good spraying techniques by operators;

3. Whenever practical, use heat instead of solvent to reduce coating viscosity;

4. Optimize spray pattern and technique to the work piece size, shape, and orientation;

5. Use self-contained recycling gun washers;

6. Whenever practical, schedule colors light to dark to minimize extent of cleaning needed, and try to schedule long runs to minimize material changeover and associated cleaning;

7. Reduce the need for cleaning by using dedicated equipment for high-volume coatings;

8. Use the shortest possible lines to reduce solvent needed for line cleaning;

9. Drain lines prior to solvent cleaning and use air pressure, pigs/squeegees, or solvent pulse cleaning;

10. Reuse dirty cleaning and washoff solvents for noncritical uses wherever possible, and recycle the solvents once they are too contaminated for reuse;

11. Review the EPA's Alternative Control Techniques Document—Industrial Cleaning Solvents (EPA No. 453/R–94–015) and incorporate reduction techniques identified therein.

Several of the above practices were not proposed by the Committee because the Committee believed that by requiring them, the proposed rule would be dictating specific manufacturing techniques that may not be appropriate for all situations. Specifically, the Committee believed that this eliminated options 2, 4, 6, 7, 8, 9, and 10. Also, options such as 2, 4, 8, 9, and 10 are cost savings techniques that would likely be implemented by a facility if they were technically feasible. The Committee decided that, for the most part, options 6 and 7 were not feasible for this industry because the manufacturing schedule is highly dependent on the furniture order that is received in a given week, month, etc. Manufacturers that consistently produce the same item are most likely using these more efficient techniques.

Options 1 and 11 would require sources to develop more broad-based plans and accounting systems to track not only cleaning solvent usage but, specifically in the case of option 1, a plan to address wastes from other media. The Committee considered that the proposed rule required tracking finishing material usage (to demonstrate compliance with the emission limits), cleaning solvent usage, and washoff solvent usage; the Committee believed that these requirements were good foundations to any multimedia, pollution prevention plan. Therefore, the Committee did not recommend that additional plans be required.

Option 3 was not considered necessary by the Committee because the emission limits address the addition of thinner to coatings. Finally, option 5, the use of recycling gun washers, was not proposed because the Work Practice Work Group did not have data on these systems that indicated they were more efficient than other methods of spray gun cleaning. Because there are no data on the effectiveness of these units, the Committee concluded that industry should not be required to purchase them, especially because the proposed work practices already require flushing solvent used for gun cleaning into normally closed containers.

The Committee recognized that many work practices are proposed for this rule and implementation and compliance could become complicated. However, looking at other control techniques feasible for this industry, the Committee concluded that work practices would be the most technically feasible and least costly. The EPA specifically requests comments on the work practice standards: (1) do the work practices (in conjunction with the emission limits) adequately reduce HAP emissions; and (2) are the work practices overly burdensome to implement or should additional work practices be considered? The EPA requests data to support or refute a proposed work practice or, for additional work

practices that are suggested, evidence of its effectiveness in reducing emissions.

F. Pollution Prevention Considerations

The Pollution Prevention Act of 1990 establishes the following environmental management hierarchy as national policy:

1. Pollution should be prevented or reduced at the source wherever feasible;
2. Pollution that cannot be prevented should be recycled in an environmentally safe manner wherever feasible;
3. Pollution that cannot be prevented or recycled should be treated in an environmentally safe manner wherever feasible; and
4. Disposal or other release into the environment should be employed only as a last resort and should be conducted in an environmentally safe manner.

The Pollution Prevention Act considers "source reduction" a fundamental aspect of pollution prevention. Source reduction is any practice that reduces the amount of any hazardous substance entering the waste stream or otherwise released into the environment prior to recycling, treatment, or disposal. Practices such as recycling, energy recovery, treatment, and disposal are not considered pollution prevention measures under the Pollution Prevention Act. As noted above, however, recycling conducted in an environmentally safe manner is still desirable.

The proposed rule not only encourages pollution prevention, but even requires certain pollution prevention measures. By expressing the proposed emission limit for finishing operations in terms of kg VHAP/kg solids (lb VHAP/lb solids), sources are encouraged to reduce the quantity of HAP through reformulation measures. Likewise, the emission limits for cleaning and gluing operations limit VOC or HAP content and sources will likely comply by using reformulated materials.

The proposed rule allows sources to comply with emission limits through other means such as control devices, which would not be pollution prevention. The proposed work practices, however, ensure that pollution prevention measures will be implemented at all major sources using HAP for finishing, gluing, cleaning, or washoff operations. Source reduction of HAP from finishing operations is achieved by prohibiting the use of conventional air spray guns except in limited situations. As previously described, application equipment with a higher transfer efficiency than conventional air guns will result in lower air emissions and reduced solid waste. Training operators in proper application techniques, cleaning and washoff procedures, and waste management will reduce emissions from finishing, cleaning, gluing, and washoff operations. Source reduction of HAP from cleaning operations is achieved by prohibiting the use of solvent for spray booth cleaning except in limited situations. Finally, although it cannot be assumed that it will actually result in source reduction, the cleaning and washoff solvent accounting system may prompt facilities to eliminate inefficient uses of solvent.

G. Selection of Compliance and Monitoring Requirements

During the regulatory negotiation, the Committee discussed general compliance measures; e.g., that compliance would be achieved through recordkeeping and reporting, the frequency of reporting, and the averaging time for compliance for a source choosing to use an averaging approach to meet the finishing material emission limits. After the regulatory negotiation, the Agency included the general concepts agreed to by the Committee into a regulatory framework that would also fulfill the requirements of the amended Act.

For a rule to be effective, an owner or operator of an affected source must demonstrate both initial and continuous compliance. The initial and continuous compliance measures included in the proposed rule account for situations in which either a control device or compliant finishing materials, adhesives, and cleaning materials are used. (See Table 5 for a summary of the proposed compliance and monitoring requirements.) In this industry, it is likely that the majority of sources will use compliant materials to comply with the proposed emission limits; control devices are likely to be used in limited situations.

The initial and continuous compliance methods for sources using control devices are identified in §§ 63.804(f)(4) and (f)(6) and (g)(4) and (g)(6) of the proposed rule and are generally consistent with previous regulations developed by the Agency. Therefore, the rationale for selection of these requirements is not discussed in great detail here. For example, the proposed rule requires the same type of monitoring parameters for a source using a thermal incinerator as those required by § 63.114 of the HON (57 FR 62608). A source must determine the HAP emission rate using EPA Reference Method 18, and during the test set the minimum combustion temperature that corresponds to compliance with the standards. Subsequent operation at a combustion temperature lower than this value constitutes a violation of the rule.

Special compliance provisions have been included for catalytic incinerators equipped with a fluidized bed and for carbon adsorbers. The compliance provisions for catalytic incinerators equipped with a fluidized bed are consistent with those currently in use by the only facility in the source category equipped with such a device. These provisions have proven successful in demonstrating compliance for this facility, so EPA has agreed to adopt these provisions for this category. However, they should not be adopted as compliance measures by other source categories without a thorough evaluation.

In this proposed rule, compliance monitoring is identified only for incinerators and carbon adsorbers because other types of control devices are not likely to be used for compliance. If an alternate control device is used by an affected source, the rule includes provisions for proposing appropriate compliance monitoring to the Administrator.

The proposed rule also recognizes that the overall control efficiency of a control system does not depend only on the destruction efficiency of the device but on the capture efficiency as well. The capture efficiency is the ratio of the quantity of pollutants entering the control device to the quantity of pollutants emitted from the emission source. The overall control efficiency is the product of the capture and control efficiency. The proposed rule identifies the methods to be used to determine the capture efficiency initially, and the monitoring required to demonstrate that this efficiency is continuously maintained. The provisions contained in the proposed rule are the same as those in the NESHAP for the magnetic tape industry (59 FR 11662), which was proposed on March 11, 1994. Owners or operators of a source to which the capture efficiency provisions apply are encouraged to review the magnetic tape preamble and rule to understand the rationale for selecting the capture efficiency provisions.

As previously stated, most affected sources are expected to comply with the proposed rule by using compliant materials. Initial and on-going compliance for these sources are demonstrated through reporting and recordkeeping requirements.

The records and reports that the EPA considers necessary for demonstrating initial and continuous compliance for this source category are summarized in

Table 5. (The selection of reporting and recordkeeping requirements is further discussed in section VI.H.) Reports identified under initial compliance methods in Table 5 are required to be submitted in accordance with the requirements of § 63.9(h) of subpart A, the General Provisions to part 63. Information that should be included in the initial compliance report is identified in Table 5. In order to perform the emission calculations, a source must by necessity keep records of the quantity of finishing material used over each month, and the VHAP and solids content of these finishing materials (see Table 6).

An affected source demonstrates continuous compliance if finishing materials, thinners, adhesives, and spray booth materials meeting the limits in the proposed rule are used. If a source at any time uses a material that does not meet these limits (unless the source is using an averaging approach or is subject to the special compliance provisions for coatings applied with continuous coaters), the source is out of compliance with the rule.

A source that complies with emission limits for finishing operations by achieving an average HAP limit across all finishing steps is in compliance if, over each month, the HAP limit required by the proposed rule is met. The Committee agreed that a monthly averaging period was appropriate for this source category because, at many facilities, manufacturing operations change from week-to-week or even day-to-day. The compliance timeframe of a month that is identified in the proposed rule accounts for this variation, and allows a source flexibility in performing manufacturing operations. The Committee did not think that there would be any adverse environmental impact by choosing a monthly compliance period. It was agreed that throughout the month, a source would not be likely to exceed the HAP limit by a considerable amount. If it did, they would have difficulty in meeting the monthly limit. If a source does not meet the HAP limit over any monthly period, it is out of compliance with the rule for each operating day of the month unless the source can demonstrate through records that the violation of the monthly average can be attributed to a particular day or days of operation. Further, periods of startup, shutdown, and malfunction should be included when determining compliance when methods other than control devices are used to meet the emission limits. Startup, shutdown, and malfunction periods are included because the use of compliant coatings should not be affected during these periods.

Semiannual reporting, in addition to recordkeeping, is necessary to document the compliance status of the affected source. A source using compliant finishing materials, thinners, adhesives, or strippable spray booth coatings must submit a semiannual compliance certification that states compliant materials are being used. A source using an averaging approach must provide copies of each month's emission calculation and submit a semiannual compliance certification that states that the value of (E), as calculated by Equation 1 of § 63.804, is no greater than 1.0 for existing sources or 0.8 for new sources.

The Agency has identified semiannual reporting for this source category, except for sources that experience excess emissions and are using a control device to comply with the proposed rule. For these sources, continuous monitoring system data are used directly for determining compliance. Sources with a control device that experience excess emissions must follow a quarterly reporting format for at least 1 year after the excess emissions occur and until a request to reduce reporting frequency is approved. This is consistent with guidance provided in the General Provisions, subpart A, 63.10(e)(3). In addition, if the Administrator finds significant industry-wide noncompliance with the rule, the Administrator may require that semiannual reporting be changed to quarterly reporting. The Agency considered small business impacts when developing the compliance and monitoring provisions and decided that more frequent reporting for those sources that are routinely complying with the rule would not be necessary for small businesses.

The Agency also believed it necessary to identify compliance provisions for the work practice standards because significant emission reductions will be achieved through the work practice standards. Obviously, direct measurement of emissions is not appropriate because emission points being controlled by work practices are not point sources that emit through a stack. All of the recordkeeping associated with work practices is required by the proposed rule to be included in the Work Practice Implementation Plan. The Agency believed that the least complicated way to ensure continuous compliance would be to require a semiannual compliance certification that states that the Work Practice Implementation Plan is being followed.

Compliance certifications submitted on a semiannual basis are required for a source that uses compliant materials or an averaging approach, and for a source demonstrating compliance with the Work Practice Implementation Plan. These compliance certifications are analogous to the compliance certification required by the parts 70 and 71 operating permit programs. Therefore, the compliance certification required by these proposed standards are consistent with other regulatory actions that may also apply to the affected source.

H. Selection of Reporting and Recordkeeping Requirements

In discussing the reporting and recordkeeping requirements, the Committee agreed on the types of records required and the reporting frequency it considered appropriate for this source category. As with the compliance and monitoring requirements, the Committee focused solely on the general information that should form the basis of the reporting and recordkeeping requirements. The Agency has developed a specific regulatory framework identifying reporting and recordkeeping requirements that builds on the general principles agreed to by the Committee.

The General Provisions (subpart A) to part 63 include general reporting and recordkeeping requirements that apply to sources for which a NESHAP has been developed, or will be developed, pursuant to section 112 of the Act. The requirements of the General Provisions, in conjunction with the Committee's decisions, form the basis for the reporting and recordkeeping provisions of the proposed rule. A summary of these provisions is provided in Table 6.

For sources using control devices, all of the reporting and recordkeeping requirements of the General Provisions apply. The General Provisions are particularly directed to sources that are using a control device, and that will therefore be conducting an initial performance test and performing traditional emission or process parameter monitoring. As such, for sources that are using compliant coatings or an averaging approach to demonstrate compliance with the proposed rule, some sections of the General Provisions do not apply. Table 6 summarizes those sections of the General Provisions requiring reporting or recordkeeping and identifies whether all sources are subject to the section or just sources using control devices. (For a discussion of the relationship between the proposed rule and the General Provisions in their entirety, see section

VI.K.) Sources using compliant materials or an averaging approach to comply with the proposed standards must keep records of finishing material usage, the VHAP content, in kg VHAP/kg solids (lb VHAP/lb solids), as applied, of each finishing material, thinner, and adhesive subject to the emission limits in § 63.802; the VOC content, in kg VOC/kg solids (lb VOC/lb solids), as applied, of each strippable booth coating; and the CPDS for finishing materials, cleaning materials, adhesives, thinners, and strippable booth coatings subject to regulation.

I. Small Business Considerations

Because of the large number of small businesses that could potentially be impacted by regulation of the wood furniture industry, the Committee considered carefully the impact of each aspect of the proposed standards on small businesses. The Committee included two small wood furniture manufacturers and a representative of a trade association consisting primarily of small businesses. A Small Business Work Group was formed to specifically address small business issues.

In evaluating options that the industry could use to comply with the proposed standards, the Committee tried to ensure that the compliance options would impose a minimum burden on small businesses. For example, the proposed standards do not require the use of control devices that require a significant capital investment and impose an unfair burden on small businesses that typically have trouble raising capital. Small businesses can meet the emission limits for finishing materials and adhesives through the use of compliant materials. The Committee tried to ensure that the recordkeeping and reporting requirements of the proposed standards were not beyond the resources of small businesses.

The Committee also evaluated whether the proposed work practice standards presented any particular problems to small businesses. Some members felt that developing an operator training program might pose some problems to small businesses. Rather than exempt small businesses from what the Committee feels is a key work practice, the Committee decided to recommend that small businesses work together to develop a training program. The Committee also suggested that large businesses that already have training programs in place could share the key components of those programs with small businesses. Finally, the Committee recommended that State small businesses assistance programs assist small businesses in developing their training program.

The Small Business Work Group made several recommendations to the Committee, including a recommendation that the EPA draft a document that would provide guidance to small businesses on how to obtain a Federally-enforceable limit on their potential to emit and recordkeeping requirements that might be associated with the limit. In addition, small business representatives proposed that the EPA draft a memorandum responding to questions developed by the Small Business Work Group pertaining to area sources that become major sources.

The Small Business Work Group also recommended that the EPA discuss in the preamble the benefits of general permits for small businesses and encourage their use where appropriate. The Agency agreed and a discussion of general permits is included in section VI.L. The Small Business Work Group also recommended that the EPA, in conjunction with the State of North Carolina Small Business Ombudsman Office, develop an information outreach program to serve as a resource for small wood furniture manufacturers. The Agency has agreed to work with the North Carolina Small Business Ombudsman Office to develop this program.

J. Selection of Definition of Source

The choice of an affected source influences possible reconstruction and modification impacts of the proposed standards. It also determines the point at which the addition or replacement of individual emission sources (i.e., a spray booth, or a finishing line) results in a new source. Section 112(a)(3) of the Act defines "stationary source" as having the same meaning as that given in section 111(a) of the Act, where "stationary source" is defined as "any building, structure, facility, or installation which emits or may emit any air pollutant." Most industrial plants consist of numerous pieces or groups of equipment that emit HAP and that may be viewed as "sources." The EPA, therefore, uses the term "affected source" to designate the equipment within a particular facility that is chosen as the source covered by a given rule. The definition of source may be broad and include all emission points within a facility, or may be narrow and include only an individual piece of equipment.

1. Reconstruction Considerations

Reconstruction is defined by § 63.5 as the replacement of the components of a stationary source to such an extent that: (1) the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new source, and (2) it is technologically and economically feasible for the reconstructed source to meet the promulgated emission standards established by the Administrator pursuant to section 112 of the Act. Upon reconstruction, a stationary source is subject to relevant standards for new sources, including compliance dates, irrespective of any change in emissions of HAP from that source. Major affected sources constructed or reconstructed after the effective date of a rule promulgated under this part are also subject to the preconstruction and review requirements in § 63.5 (d) and (e).

If, for example, an entire plant is designated as the affected source, the new source MACT would cover no part of the plant unless replacement of equipment or a group of equipment causes the entire plant to be reconstructed. On the other hand, if each individual piece of equipment (e.g., each spray booth) is designated as an affected source, then that individual piece of equipment can be subject to the reconstruction provisions. A narrow definition of source, such as this one, results in new source MACT applying to each piece of new equipment.

2. Modification Considerations

According to section 112(a)(5), modification means any physical change in, or change in the method of operation of, a major source that increases the actual emissions of any HAP emitted by such source by more than a de minimis amount or that results in the emission of any HAP not previously emitted by more than a de minimis amount. Subpart B of part 63 addresses modifications and identifies the de minimis quantities for each HAP that would trigger the modification provisions. Subpart B requires modified major sources to implement the MACT emission limit for existing sources established pursuant to section 112(d). If a MACT rule for an affected major source has not been promulgated, existing source MACT is established on a case-by-case basis.

For this source category, the modification provisions are not a primary consideration in selecting the affected source designation. Modifications of existing sources would mean that the existing source MACT standards continue to apply. The only modification that would occur in this industry that would affect a source's

control requirements would be one that causes an area source to become a major source. If an area source becomes major due to a modification, it is subject to existing source MACT. If an area source becomes major due to a reconstruction, it is subject to new source MACT. The affected source definition, however, has no effect on the major source designation because that designation is based on emissions from all emission points located in a contiguous area under common control, even if the affected source is narrowly defined.

3. Affected Source Definitions

The Committee did not discuss the affected source definition for the proposed rule. The Agency, therefore, is proposing the affected source definition that it believes is consistent with the Committee's other decisions. To determine the appropriate affected source definition, the Agency focused on the proposed standards for finishing operations as the driving force for choosing an affected source definition. The Agency did this because the finishing operation is the primary emission source at the majority of sources, and the proposed MACT standards differ depending on whether the source is existing or new. The Agency concluded that there are three possible affected source definitions for finishing operations: each finishing step, each finishing line, or each facility.

The Agency first considered the implications of defining the source as each finishing step. With this affected source definition, if a new application station (e.g., a spray booth) was added to a finishing line, the finishing material used in this step would have to meet the MACT standards for new sources. The Agency agreed that this was not feasible because the proposed rule allows for averaging within and across finishing steps. If a source is subject to new source MACT for one step and not for others, this step could not be incorporated into the averaging and the facility's flexibility would be limited. This runs counter to the Committee's previous decision to allow sources the maximum flexibility possible in complying with the proposed rule.

The second possible affected source definition would be to define a finishing line as the affected source. New source MACT would apply if a facility installed a new finishing line, or if an existing line was reconstructed, as reconstruction is defined in § 63.5. With this affected source definition, new source MACT is considered technically feasible by the Agency because all of the finishing materials applied would have to meet the same HAP limit. The same problems with averaging arise, however, as arise if a finishing step is the affected source. For example, if a facility operates multiple finishing lines, including one that is subject to new source MACT, the new line could not be included in the averaging calculation because the HAP limit that applies to it is different than the limit that applies to the other lines. Because this limits a facility's flexibility, the Agency did not select the finishing line as the affected source. Also, it is sometimes difficult to define the finishing line within a plant. For example, an owner or operator may add or remove pieces to or from a finishing line at any stage of the finishing. For all of these reasons, the Agency, by default, chose the entire facility to be the affected source.

K. Relationship Between General Provisions and Proposed Rule

The General Provisions (subpart A) to part 63 apply to any source that emits or has the potential to emit any HAP and is subject to any rule promulgated under part 63. Thus, all major sources performing wood furniture manufacturing are subject to subpart A.

Major sources subject to the proposed standards are subject to subpart A. However, some of the provisions of subpart A are applicable only to sources using control devices to comply with a rule established under part 63. As such, sources complying with this proposed rule by using compliant finishing materials, adhesives, thinners, and spray booth coatings are not subject to the following sections of subpart A.

1. Section 63.6(e)(3)

This section requires the submittal of a startup, shutdown, malfunction plan. For sources complying with the proposed rule through the use of compliant materials or an averaging approach at all times, periods of startup and shutdown have no relevance and should be included in the compliance determination. Likewise, a malfunction would not cause an increase in emissions because emission reduction is achieved through source reduction. Even if equipment malfunctions, the reformulated materials would still be in use.

2. Section 63.7

This section specifies procedures for conducting a performance test and therefore would not apply. The performance demonstration for sources complying using compliant materials or an averaging approach involves submitting the information required by § 63.804(f)(1), (2), (3), (5), (7), and (8) of the proposed rule. This information must be submitted within 60 days because the compliance status information report is required by § 63.807(b) to be submitted within 60 days after the compliance date.

3. Section 63.8

This section specifies monitoring requirements. The compliance provisions of § 63.804(g)(1), (2), (3), (5), (7), and (8) of the proposed rule supersede § 63.8 for sources using compliant materials or an averaging approach.

4. Section 63.9(e), (g), and (h)(2)(ii)

Sections 63.9(e) and 63.9(g) do not apply to sources using compliant materials or an averaging approach because they pertain to sources conducting performance tests and using continuous monitoring systems, respectively.

Section 63.9(h)(2)(ii) specifies that the compliance status information report be submitted within 60 days after the performance test. This requirement is relevant to sources using compliant materials, but is clarified by § 63.807(b) of the proposed rule, which requires that the compliance status information report be submitted within 60 days after the compliance date, not 60 days after the compliance determination, for sources using compliant materials. As written, § 63.9(h)(2)(ii) is not applicable for sources using compliant materials because no performance test is being required.

5. Section 63.10(b)(2)(i–vi, viii–xi, xiii)

These sections do not apply to sources using compliant materials because they specifically pertain to the startup, shutdown, and malfunction plan; performance tests; or continuous monitoring systems. Sections 63.10(b)(2)(vii, xii, and xiv) apply because they are more generic. Paragraph (2)(vii) requires that a source maintain records of all required measurements needed to demonstrate compliance. Paragraph (2)(xii) is related to the request for a waiver of reporting and recordkeeping requirements, which some sources subject to the proposed standards may pursue. Paragraph (2)(xiv) requires that a source maintain records to support initial notifications and notification of compliance status.

6. Section 63.10(c), (d)(2) and (d)(5), and (e)

These sections do not apply to sources using compliant materials or an averaging approach because they pertain to continuous monitoring systems, performance testing, or startup, shutdown, malfunction reports.

The General Provisions do not specify the reporting requirements for sources not operating continuous monitoring systems. Therefore, the reporting requirements in § 63.807(c) of the proposed rule apply. In lieu of the above monitoring requirements, the proposed rule contains continuous compliance provisions in § 63.804(g) for sources complying through the use of reformulated materials.

L. Relationship Between Operating Permit Program and Proposed Rule

Under the operating permit regulations codified at 40 CFR part 70, any source that is a major source under the Act, or any nonmajor source subject to standards under sections 111 or 112 of the Act, must obtain an operating permit (see § 70.3(a)(1).). Therefore, all major sources subject to these proposed standards must obtain an operating permit. Area sources in this source category are not regulated by the proposed standards and would therefore not be required to obtain an operating permit, unless a State with an approved operating permit program chooses to permit all nonmajor sources.

There are many major sources in this source category that are major based solely on their potential to emit. Such sources may choose to obtain a Federally enforceable limit on their potential to emit such that they are no longer considered major sources and not subject to the proposed rule. Sources that opt to limit their potential to emit are referred to by the EPA as "synthetic area" sources. The limiting of a source's potential to emit is identified as Federally enforceable by § 70.6(b) of part 70.

The Committee agreed that this source category was one that could benefit from the development of a general permit. Under part 70, State permitting authorities are allowed to develop general permits for categories of sources containing numerous similar sources. In deciding which source should be covered by general permits, State regulators must consider three primary criteria: (1) source categories covered by general permits should contain similar operations and emit pollutants with similar characteristics; (2) sources should not be subject to case-by-case standards; and (3) sources should be subject to the same or substantially similar requirements governing operation, emissions, monitoring, reporting, and recordkeeping. General permits were developed primarily to alleviate some of the permitting burden to area sources that are subject to section 112 standards and therefore required to obtain a title V permit. However, the preamble to part 70 states that general permits may be issued to cover any category of numerous similar sources, including major sources. Therefore, the Committee recommends that State permitting agencies pursue a general permit for wood furniture operations.

There are several benefits to a general permit. If a general permit developed by a permitting authority has been approved after public participation, and the EPA and affected State review, the permitting authority may then grant or deny a general permit to a source without further public participation or the EPA and affected State review. The action of granting or denying a general permit is also not subject to judicial review. Another benefit of a general permit that would be particularly advantageous for the wood furniture industry is that sources may use general permits strictly for the purposes of becoming synthetic area sources; i.e., limiting the potential to emit. Finally, for owners and operators with sources in multiple source categories located in a contiguous area, a general permit can be issued to a discrete affected source at an industrial complex.

M. Solicitation of Comments

This section was drafted as the EPA developed the proposed standards. It lists issues the Agency is soliciting comments on. The preamble requests comments on:

1. Exempting sources that commit to using no more than a total of 250 gallons of finishing, gluing, cleaning, and washoff materials per month, or 3,000 gallons per rolling 12-month period, from the proposed standards as long as the source maintains records of their usage including specific comments on:

a. Whether an alternative to the 250/3,000 gallon level would be appropriate;

b. The level and type of reporting needed to document the owner's commitment; and

c. The frequency and nature of the recordkeeping requirement.

2. Adding language to the final rule that would provide a mechanism for sources using more than 250 gallons per month that may emit less than 10 tons per year of a single HAP or 25 tons per year of a combination of HAP to accept case-by-case operating restrictions including specific comments on:

a. Whether such language should be added;

b. The type of reporting and process required to establish the case-by-case commitment (in particular, how to establish throughput and content limitations that could ensure area source status); and

c. The type of records that should be maintained to document compliance with the restriction.

3. The potential impact of the proposed rule on water pollution including any data that may support or refute the Agency's position that the proposed standards will have no impact on water pollution.

4. Modifying the MACT floor so that only one source with an incinerator was included.

5. Interpretation of average as either the arithmetic mean or the median (MACT floor).

6. The approach for establishing MACT for contact adhesives including:

a. The need for exemptions from the proposed emission limitations for contact adhesives used on non-porous substrates and for aerosol adhesives;

b. The appropriateness of excluding adhesives used in amounts less than 200 gallons from calculation of the MACT floor;

c. Calculating the MACT floor based on the average of the best performing 12 percent when the data set is limited; and

d. The appropriateness of setting MACT for foam adhesives for existing sources based on the type of testing required for the product.

7. Is the monitoring/repair frequency in the I&M plan appropriate?

8. Guidance on exemption to the use of conventional air spray guns based on technical or economic infeasibility.

9. The use of 70-year exposure levels versus 7-year exposure levels in assigning de minimis values to VHAP of potential concern.

10. Should additional pollutants be restricted from use in cleaning and washoff solvents?

11. Adequacy of the work practice standards—are they too burdensome, or should there be more?

VII. Other Considerations

In addition to establishing emission limits and work practice standards for the industry, several members of the Committee were also interested in establishing a mechanism for tracking the impact of the standards on emissions of HAP and other pollutants, collecting information on technologies being used to meet the standards, and providing a forum for dissemination of information on evolving technologies. The Committee members felt that it was important to verify the proposed standards were achieving the reductions in emissions and hazards that were expected and to provide information on the technologies and substances being used to achieve those reductions. Because the emission limits for

finishing materials can be met through substitution of non-HAP VOC's for HAP, and some non-HAP's can be as hazardous as the listed HAP's, they felt it was important to track emissions of other pollutants from the industry to ensure that materials of equal or greater toxicity were not being substituted for HAP, and that appropriate action would be taken if this should occur. Throughout the regulatory negotiation, there was discussion of new, lower emitting (both VOC and HAP) technologies that are reportedly on the threshold of demonstration. The Committee members felt that as these technologies are demonstrated, the information should be made available to the public.

After some discussion among Committee members concerning the logistics of collecting and disseminating the information, the Committee decided that the preamble to the NESHAP should call for a trends report. The report would be developed by the industry. The report would be made available to the EPA, who would disseminate it to all interested parties.

In compiling a trends report, the Committee agreed that industry will survey a sample of the industry that is determined to be representative of the entire industry. This industry-collected data will initially establish a baseline for this report and will, in subsequent years, be used to determine whether there have been increases and/or decreases in overall industry use of VHAP's and VOC's, and will include data on increases and/or decreases in the use of individual VHAP's or VOC's. Individual facility or company data would be collected and assembled by industry sources. As the individual data submissions will reflect confidential business practices and/or trade secrets, such individual submissions are prohibited from public disclosure except pursuant to court order or other legal requirement.

This agreement to compile a trends report begins with the report submitted for the baseline year, 1994, which industry will compile and submit to the Agency in 1995. Reports thereafter will be compiled every 2 years, beginning with a trends report for 1996. This agreement to submit a trends report will terminate 1 year after EPA is required to complete the review of this standard prescribed by 42 U.S.C. section 7412(f)(2), which mandates EPA to review NESHAP for residual risk.

In addition to the above data, the Committee agreed that the trends report would include a brief discussion of technologies being used by the industry to reduce emissions, and a discussion of evolving technologies including new finishing materials, adhesives, and improved application equipment. This discussion would not be an attempt to explain the emission trends, but rather it would be an independent review from industry experts on new technologies that are coming into increased use or that may be developing. The Committee also recommended a working group be formed from interested Committee members to provide further input on the details of the scope of the report.

VIII. 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 Clean Air Act. Persons wishing to make an oral presentation on the proposed standards for wood furniture manufacturing 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 Docket Section address given in the ADDRESSES section of this preamble and should refer to Docket No. A–93–10.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Air Docket Section 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 identify and locate documents readily so that they can participate intelligently and effectively in the rulemaking process; and
2. To serve as the record in case of judicial review (except for interagency review material [section 307(d)(7)(a) of the Clean Air Act]).

C. 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 OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order 12866, the EPA has determined that this rule is not a "significant regulatory action." Therefore, the EPA has determined that it will not be sent to OMB for review.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. An Information Collection Request document has been prepared by the EPA (ICR No. 1716.01), 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. The public burden for this collection of information is estimated to average 187 hours per respondent annually for recordkeeping and reporting. This includes time for reviewing instructions, searching existing data sources, conducting performance tests, 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 Street, SW., 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 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. It is currently the EPA policy to perform a regulatory flexibility analysis of the potential impacts of proposed regulations on small entities whenever it is anticipated that any small entities may be adversely impacted. Because it was anticipated that some small wood furniture manufacturers could be adversely impacted from implementation of the proposed standards, a regulatory flexibility analysis was performed. A copy of the Economic Impact Regulatory Flexibility Analysis is included in the docket.

While the majority of the approximately 11,000 wood furniture operations are small businesses, the vast majority of the smaller operations would not be directly affected by this proposed standard. Only approximately 7 percent of the 11,000 manufacturers are expected to be directly impacted. The estimate of 7 percent is based on EPA's estimate of the number of sources that are major based on actual emissions. It is anticipated that the remainder of the industry will take a Federally enforceable limit on their emissions.

As discussed under the summary of impacts (section IV.C of the preamble), the economic analysis predicted a slight increase in wood furniture prices. Therefore, the vast majority of small manufacturers, which will not be subject to the proposed rule may benefit from these slightly increased prices. If these costs are not offset by newer, less expensive technologies in the future, this benefit may be sustained.

For the smaller facilities that would be directly impacted by implementation of the proposed standards, an analysis of the potential impact of this proposed standard by plant size was performed. The results from this analysis indicate that implementation of this proposed rule would generally have a small impact on the net revenues of facilities of all size groups and that smaller plants would not be systematically impacted more severely than larger operations.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small business entities.

F. Miscellaneous

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 within the framework of a regulatory negotiation. The Administrator will welcome comments on all aspects of the proposed regulation, including health, economic and technological issues, and on the proposed test methods.

This regulation will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

G. 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.

List of Subjects in 40 CFR Part 63

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

Dated: November 21, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94–29194 Filed 12–5–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 63

[AD–FRL–5116–1]

RIN 2060–AD98

National Emission Standards for Hazardous Air Pollutants; Proposed Standards for Shipbuilding and Ship Repair

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 surface coating operations from any new or existing shipbuilding and ship repair facilities at a major source (defined in part V, A). The proposed standards implement section 112(d) of the Clean Air Act (Act), which requires the Administrator to regulate emissions of those chemicals designated as HAP in section 112(b). The intent of the proposed standards is to protect the public health by requiring new and existing major sources to limit HAP emissions to levels attainable by use of maximum achievable control technology (MACT).

In addition, this document contains draft recommended best available control measures (BACM) for volatile organic compound (VOC) and particulate emissions from this category. The draft BACM implements section 183(b)(4) of the Act.

DATES: *Comments.* Comments must be received on or before February 6, 1995.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by December 27, 1994, a public hearing will be held on January 18, 1995, beginning at 10 a.m.

ADDRESSES: *Comments.* Interested parties may submit written comments (in duplicate if possible) to Public Docket No. A–92–11 at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street, SW., Washington, DC 20460. The Agency requests that a separate copy also be sent to the contact person listed below.

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 interested in attending the hearing or wishing to present oral testimony should notify Ms. Kim Teal, Coatings and Consumer Products Group (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5580.

Background Information Document. The background information document (BID) and other documents supporting the proposed standards may be obtained from the docket or from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to "Surface Coating Operations at Shipbuilding and Ship Repair Facilities—Background Information for Proposed Standards," EPA–450/–D–94–011a.

Docket. Docket No. A–92–11, containing supporting information used in developing the proposed standards, is located at the EPA's Air and Radiation Docket and Information Center at the above address in Room M–1500, Waterside Mall (ground floor), and may be inspected from 8 a.m. to 4 p.m., Monday through Friday. The proposed regulatory text and other materials related to this rulemaking are available for review in the docket. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For information concerning regulatory decisions and the proposed standards,

contact Dr. Mohamed Serageldin, Coatings and Consumer Products Group, Emission Standards Division (MD–13), U. S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2379.

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

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The proposed regulatory text is not included in this **Federal Register** notice, but is available in Docket No. A–92–11 or by request from the EPA contact persons designated earlier in this notice, free of charge. The proposed regulatory language is also available on the Technology Transfer Network (TTN), one of the 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. Description of the Source Category

Section 112 of the Act requires the EPA to 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 major source categories and such minor sources as deemed appropriate that emit HAP. Pursuant to section 112(c) of the Act, the 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 both "major" and "area" sources (as defined by the Act) that the EPA intends to regulate before November of the year 2000. The initial list of source categories includes "Shipbuilding and Ship Repair (Surface Coating)," the major sources only, as a source category.

For the purpose of the proposed rule, shipbuilding and ship repair refers to all facilities that build, repair, paint, repaint, convert, or alter ships. (Hereafter, this industry will be referred to as "shipbuilding.") A ship is defined as any marine or fresh-water vessel used for military or commercial operations, including self-propelled vessels, those towed by other craft (barges), and navigational aids (buoys). This definition includes, but is not limited to, all military vessels, commercial cargo and passenger (cruise) ships, ferries, barges, tankers, container ships, patrol and pilot boats, and dredges. It does not include offshore oil and gas drilling platforms, although it is believed that identical coating systems would be appropriate for them also.

II. Background

The proposed rule represents the EPA's first extensive regulation of air pollutants from the shipbuilding and ship repair industry. Essentially all volatile organic hazardous air pollutants (VOHAP) are a subset of a category of pollutants referred to as volatile organic compounds (VOC). The VOC is a class of pollutants that are photochemically reactive precursors of ozone. Emissions of VOC (and consequently VOHAP as well) from "marine coating operations" have been regulated by some State and local district rules. California and Louisiana have defined VOC limits for a wide range of marine coating categories. The California limits being generally more stringent than those of Louisiana. Other States have limited VOC emissions from the industry's spray booths as one of many "miscellaneous metal coating operations," using guidance presented in the EPA's control techniques guidelines (CTG) document "Control of Volatile Organic Emissions from Existing Stationary Sources, Volume VI: Surface Coating of Miscellaneous Metal Parts and Products" (June 1978) EPA 450/2–78–015. Outdoor painting of ships' hulls was specifically exempt from this guidance, but some States have rules that limit shipyard painting done inside buildings and on the interior of ships based on the guidance.

Control Techniques Guidelines

Section 183(b)(4) of the Act, as amended in 1990 (1990 Amendments), requires the Administrator to issue CTG's for VOC and particulate emissions from coatings (paints) and solvents used in shipbuilding and ship repair facilities, to such level as the Administrator determines may be achieved through the adoption of BACM. Volatile organic compounds react in the atmosphere to form ozone, a criteria air pollutant for which primary and secondary ambient air quality standards have been established. The EPA is required to take into account the applicable requirements of section 112 in developing the guidelines.

The organic HAP emissions described in the remainder of this document are, with only one exception, a subset of the VOC emissions from coatings and solvents used in shipbuilding and ship repair facilities. Thus the control techniques evaluated for the MACT standard are also applicable to VOC emissions.

The EPA has traditionally issued draft CTG's containing recommended control levels for public comment. Rather than issue a separate draft CTG in this case, the EPA is using this document to request public comment on a draft recommended by BACM. The recommended BACM is identical to the proposed MACT for coatings and solvents, stated in terms of VOC units rather than VOHAP units (where a VOHAP means any compound of carbon, excluding metallic carbides and carbonates, that is listed in or pursuant

to section 112(b) of the Act; this includes both VOC and exempt compounds that are listed as HAP). For those options using VOC as a surrogate for VOHAP for the MACT standard, compliance would be based on the Agency's reference Method 24. For any compliance option involving measurement of actual VOHAP content, the test method used by the source must be documented and approved by the Administrator. Comments received on the proposed MACT rule will also be considered in formulating a final recommended BACM and vice-versa.

Meanwhile, States are in the process of developing VOC rules for these sources to meet other Act requirements. The EPA published an alternative control techniques (ACT) document in February 1994 to provide guidance to the States for these efforts. The recommended BACM described here is consistent with information in the ACT. Also, as explained in the ACT, although control technologies for particulate emissions at shipyards are in development, none are sufficiently demonstrated at this time to recommend as BACM. Therefore, the Agency has no recommendation for BACM for particulate emissions at this time.

III. Summary of the Proposed Rule

A. Applicability

1. Description of the Source Category

The proposed rule would apply to each shipbuilding facility whose total activities emit or have the potential to emit, considering controls, 9.1 megagrams per year (Mg/yr) (10 tons per year [tons/yr]) or more of any HAP or 22.7 Mg/yr (25 tons/yr) or more of any combination of HAP.

In general, the shipbuilding industry covered by the proposed rule is represented by SIC Code 3731, "Shipbuilding and Repairing." This industry consists of establishments that build, repair, repaint, convert, and alter ships. However, SIC Code 3731 includes the manufacture of both offshore oil and gas well drilling and production platforms; marine coatings used on such platforms will not be subject to this rule, but rather to limitations imposed by the EPA's Federal rule on Architectural and Industrial Maintenance Coatings.

Based on information obtained through the U. S. Maritime Directory Listings (June 1992), there are an estimated 437 facilities of varying capabilities involved in the construction and repair of ships in the United States. Of the 437 facilities, an estimated 25 qualify as major sources of HAP emissions and would be subject to the proposed rule. The total VOHAP emissions from surface coating operations at the 25 facilities that would be subject to the proposed rule are estimated at 1,155 Mg/yr (1,272 tons/yr).

The EPA requests comment on the appropriate timing of the shipbuilding and ship repair facility's applicability determination, and on whether all facilities, regardless of their past emissions or HAP usage, should be eligible to qualify as area sources under the HAP usage limits. The Agency also seeks comment on whether a facility that is initially determined to be subject to the rule should be able subsequently to escape applicability, and if so, under what circumstances.

2. Affected Sources

For purposes of this rulemaking, the affected source would be considered the aggregate of all operations at a shipbuilding facility. A new operation at a shipbuilding facility would not be considered a new source. Instead, it may qualify as a modification of the existing source.

The proposed standards would limit VOHAP emissions from indoor and outdoor coating operations. The VOHAP emissions result largely from solvent evaporation from the coatings. These emissions occur during application and drying/curing. Due to the size of ships and their components, most coatings are applied outdoors.

The proposed standards would also reduce VOHAP emissions from handling, transfer, use, and storage of VOHAP-containing materials through work practice measures. These emissions also occur as a result of solvent evaporation.

B. Standards

The proposed standards would be the same for new and existing facilities. (See section VII.B. for discussion on the basis for the standards.) The proposed standards would impose limits on the VOHAP content of 23 types of coatings used at shipbuilding facilities. (See section VII.C. for a list of the proposed limits.) The limits would be stated in terms of mass of VOHAP per volume of coating less water and less negligibly photochemically reactive (exempt) compounds. Compliance with the VOHAP limits must be demonstrated on a monthly basis.

The proposed standards would allow for an alternative means of compliance other than using compliant coatings, if approved by the Administrator.

The proposed standards would also require that all handling and transfer of VOHAP containing materials to and from containers, tanks, vats, vessels, and piping systems be conducted in a manner that minimizes spills and other factors leading to emissions. In addition, containers of thinning solvent or waste that hold any VOHAP must be normally closed (to minimize evaporation) unless materials are being added to or removed from them.

C. Compliance Dates

The proposed rule would require compliance for existing affected sources within 1 year after the effective date of the rule. An existing unaffected area source that increases its HAP emissions (or potential to emit) such that it becomes a major source would be required to comply within 1 year after becoming a major source.

Any new or reconstructed sources would be required to adhere to the compliance schedule in the General Provisions § 63.6(b) of subpart A without any modification. For new or reconstructed affected sources whose startup date is before the effective date of the rule, the compliance date is the effective date of the rule. For new or reconstructed affected sources whose startup date is after the effective date of the rule, the compliance date is the startup date. A new unaffected area source that increases its emissions (or potential to emit) such that it becomes a major source would be required to comply immediately upon becoming a major source.

D. Compliance Procedures

The proposed rule would allow affected sources to choose among five options for demonstrating compliance with the VOHAP standards. Their choice will be influenced by the perceived need to add "thinning" solvent (thinner) to alter the viscosity of the coating in order to spray effectively. (For the purposes of this proposed regulation, thinner is defined as any liquid material added to a coating.) Regardless of the option(s) chosen, affected sources would first be required to determine the coating category (e.g., general use, air flask, antenna, etc.), the applicable VOHAP limit, and the VOC content for each batch of coating received from the manufacturer.

A source may demonstrate compliance either by showing that the VOC content is less than the VOHAP limit (options 1–4) or by the use of option 5 (discussed below) which would measure the actual VOHAP content. If the shipyard is subject to regulatory limits on the VOC content of its coatings, the primary compliance method for this rule would be to certify the VOC content of each container of coating, as applied. (That information would then be used to determine

compliance with the applicable VOHAP limit using any of the options 1–4.) Certification of VOC content is done by: (1) using Method 24 of 40 CFR part 60, appendix A; (2) using forms similar to those included in the certification procedure published in EPA–450/3–84–019 (revised 6/86), "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink, and Other Coatings"; or (3) an alternative method approved by the Administrator. Option 5 may be used for demonstrating compliance when a shipyard is not subject to VOC limits.

Affected sources would be allowed to use the following methods to demonstrate compliance to avoid testing every container of coating; however, any analysis of an individual container of coating using the Agency's Method 24 would take precedence to determine or to verify a violation. Paragraphs (i) through (iii) are summaries of options 1, 2, and 3.

(i) Shipyards can demonstrate compliance of the as-supplied VOC content as certified by the manufacturer. If the as-supplied coating is used without adding thinning solvent, shipyards can certify that the as-applied VOC content of the batch of coating is identical to the as-supplied VOC content, if it were certified by the manufacturer. If the certified VOC content is less than the VOHAP limit, compliance is demonstrated. ("As applied" means after any thinning by the user or just prior to application to the substrate. "As supplied" means as supplied by the coating manufacturer.)

(ii) Shipyards can demonstrate compliance if the actual volume of thinner used is less than the maximum allowable volume of thinner on a coating-by-coating basis.

(iii) Shipyards can demonstrate compliance by comparing the actual volume of thinner used to the maximum allowable volume on a "group" basis. A group of coatings would be defined as those which use the same thinner. (See section VII.E. for more explanation.)

Compliance with options 1 through 4 is based on the VOC content of each container of coating, as applied. If the as-applied VOC content is less than or equal to the VOHAP limit, then compliance would be demonstrated (See part III.E. for how "exempt" compounds which are HAP are considered in compliance determinations and other details).

Shipyards can also demonstrate compliance by measuring the actual VOHAP content of a coating. If the as-applied VOHAP content is less than or equal to the alternate VOHAP limit, then compliance would be demonstrated. (See II.E., Option 5, for how alternate VOHAP limits are determined). (Concurrently with this rule, the Agency is preparing requirements for sample preparation and the performance specifications required of an acceptable analytical procedure.)

An affected source may choose to use only one of the options for all coatings at the facility or a combination of options. Each option is discussed in more detail below.

E. Test Methods and Procedures

The proposed rule would require Method 24 be used as the reference method to determine compliance if the VOC content is used as a surrogate for VOHAP. Manufacturers whose coatings do not release reaction by-products may request an alternative or equivalent method to be approved by the Administrator. If it is demonstrated to the satisfaction of the Administrator that a specific coating does not release VOC by-products from the cure reaction (all VOC emissions are evaporated solvent), then she may approve use of batch solvent formulation data to certify the as-supplied VOC content of that paint. In the event of any inconsistency between the VOC content as measured by Method 24 and formulation data, however, the Method 24 test shall govern.

A few coatings may contain HAP which are (or through subsequent formal action may become) excluded from EPA's definition of VOC because these HAP have negligible photochemical reactivity and do not contribute to tropospheric ozone formation. These non-VOC HAP are nonetheless of regulatory concern as toxic chemicals. Therefore, for the purposes of this rule the mass of VOHAP determined by Method 24 would be the mass of VOC plus exempt compounds; hence, unlike for a VOC determination, the total mass loss of these organic volatiles must be used in subsequent calculations. However, the volume of exempt compounds should be subtracted (from the total coating volume) just as water, as indicated by the units for VOHAP presented in Method 24. Manufacturers and affected sources would be required to certify the VOHAP of paints using a form similar to that published in the EPA's "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink, and Other Coatings" (Revised June 1986) EPA–450/3–84–019 [Docket A–92–11, II–B–27]. If the shipyard chooses to demonstrate compliance using the VOHAP content of the coating(s), the manufacturer or affected source would need to provide details on how the VOHAP values were determined.

F. Monitoring Requirements

Section 114(a)(3) of the amended CAA requires enhanced monitoring and compliance certifications of all major stationary sources. The annual compliance certifications certify whether compliance has been continuous or intermittent. Enhanced monitoring shall be capable of detecting deviations from each applicable emission limitation or standard with sufficient representativeness, accuracy, precision, reliability, frequency and timeliness to determine if compliance is continuous during a reporting period. The monitoring in this regulation satisfies the requirements of enhanced monitoring.

The test methods and procedures described in the previous section will be used to determine compliance. Failure to meet the emission limits as measured by these procedures would be an enforceable violation of the emission limits of the standard. When add-on controls are used, monitoring shall be capable of detecting deviations from each applicable emission limitation or other standard with sufficient reliability and timeliness to determine continuous compliance over the applicable reporting period.

Although the term "continuous" generally means at all times, the Agency has determined that less frequent measurements or determinations of compliance can ensure continuous compliance. The potential variability of the emissions or parameters is a primary factor in establishing the frequency of measurements.

G. Notification Requirements

The proposed rule would require affected sources to follow the notification requirements in §§ 63.9(a)-(d) and (h)-(j) of subpart A of the general provisions. In addition to the initial notification requirements in §§ 63.9(b)(2) and (3) of subpart A, sources would be required to include in the initial notification: (1) the compliance procedure(s) that they intend to use; (2) procedures for ensuring compliance with the handling, transfer, and storage standard; and (3) procedures for maintaining records. These are subject to the approval of the Administrator. In addition, they would be required to submit a notification of compliance status on a quarterly basis, with any exceedances reported on a quarterly basis. Following the first year, the owner or operator of a source that has had no exceedances for a full year

(can be any year after the first year), may request Administrator approval to reduce the frequency of notification to semiannual.

H. Recordkeeping and Reporting Requirements

The proposed rule would require affected sources to follow the general recordkeeping and reporting requirements in §§ 63.10(a)-(b) and (f) of subpart A of the general provisions. Sections 63.10(c)-(e) of subpart A do not apply unless a source uses a control device to comply with the standards except for the excess emission report required by § 63.10(e)(3) which applies regardless of how emissions are controlled.

In addition, each owner or operator of an affected source would be required to certify annually that all personnel involved with coatings, thinning of coatings, keeping coating records, or handling/transferring VOHAP-containing materials have received the training required by the regulation. A record of the certification is required, but no report is required. The purpose of the certification is to ensure that the training does occur at least once per year, and that documentation does exit for an enforcement official to review.

Affected sources would be required to keep all records needed to demonstrate compliance with the standards, including calculations and records of any Method 24 or alternate VOHAP tests. All records would be compiled each calendar month and compliance status determined every month. In addition, a source is required to report on a quarterly basis any exceedances to the EPA and to provide in the excess emissions report the data needed to confirm and quantify the reported exceedance. All records must be maintained for a minimum of 5 years.

The quarterly report should include:

1. A summary of the number and duration of deviations during the reporting period classified by reason, including known causes for which a Federally-approved or promulgated exemption from an emission limitation or standard may apply;

2. Identification of the data availability achieved during the reporting period, including a summary of the number and total duration of incidents during which the monitoring protocol failed to operate in accordance with design or produced data that did not meet minimum data accuracy and precision requirements (classified by reason);

3. Identification of the compliance status as of the last day of the reporting period and whether compliance was continuous or intermittent during the reporting period;

4. If, pursuant to (2) of this section, the owner or operator identifies any deviation as resulting from a known cause for which no Federally-approved or promulgated exemption from an emission limitation or standard applies, the monitoring report shall also include all records that the source is required to maintain that pertain to the periods during which such deviation occurred and:

a. The magnitude of each deviation;

b. The reason for each deviation;

c. A description of the corrective action taken for each deviation, including action taken to both minimize it and prevent recurrence; and

d. All quality assurance activities performed on any element of the monitoring protocol.

IV. Summary of Estimated Environmental, Energy, and Economic Impacts of the Proposed Standards

The nationwide impacts presented below are the impacts the proposed standards would have on existing facilities. Because of downsizing of military forces, no new major sources are expected to be built in the next five years. Therefore, impacts on new sources are expected to be zero.

A. Number and Type of Affected Facilities

Approximately 437 facilities (shipyards) are involved in the construction and repair of ships nationwide. Based on industry information and data reported in the U.S. Department of Commerce's "U.S. Industrial Outlook '92—Shipbuilding and Repair" (January 1992) and the U.S. Maritime Directory Listings (June 1992). It is estimated that only 25 qualify as major sources of HAP emissions and would be affected by the proposed rule.

B. Air Emission Reductions

The nationwide baseline VOHAP emissions for the approximately 25 major shipbuilding facilities from surface coating operations are estimated to be 1,155 Mg/yr (1,272 tons/yr). Implementation of the proposed standards would reduce these emissions by approximately 24 percent to 883 Mg/yr (972 tons/yr).

C. Secondary Environmental Impacts

No environmental impacts to water, solid waste, noise, or secondary air impacts are associated with implementation of the proposed standards, as explained below.

1. Water

There are no negative water pollution impacts resulting from transition to compliant coatings.

2. Solid Waste

There are no negative solid waste impacts associated with the proposed standards. No additional or new types of solid or hazardous waste will be generated. Because the compliant (higher solid) coatings are more concentrated, fewer containers will require disposal when the same volume of solids is applied.

3. Noise

There is no additional noise associated with the proposed standards. Pumps and compressors, the source of the majority of the noise in paint operations, is not expected to change.

4. Secondary Air Impacts

There are no significant secondary air pollution impacts. Use of compliant coatings avoids use of any type of control device or equipment that would consume large amounts of energy. Furthermore, any reduction in VOC emissions that result from compliance with the HAP rule will reduce both ozone formation and CO_2, a greenhouse gas (VOC that remain airborne react to form ozone and are ultimately oxidized to CO_2).

D. Energy Impacts

Paint heaters are now used in some shipyards. Some sources may use paint heaters in lieu of solvent to reduce paint viscosity. Although some secondary air impacts would result from the power requirements of the electrical heaters, the amount of electricity that they draw is insignificant.

E. Cost Impacts

The incremental nationwide annual costs associated with the proposed standards (MACT cost minus baseline cost) is approximately $1.7 million per year. The use of compliant coatings will not require different equipment. Because lower-VOC (and presumably lower-VOHAP) coatings are more concentrated, less coating volume is required to cover the same surface area to the same dry film thickness. Some of these compliant coatings, however, may be more expensive both on a dollar-per-gallon basis, but also in cost-per-volume solids (nonvolatiles). Therefore, the annual costs associated with the proposed standards reflect the difference between the costs of higher-priced coatings and the savings associated with the decreased volume of

coatings (because of the higher solids content) and labor to apply them.

Minor costs would be incurred by any source that purchases paint heaters or other minor equipment necessary to comply with the handling, transfer, and storage standard. These costs are expected to be insignificant.

F. Economic Impacts

Economic impacts were calculated on a facility-specific basis as well as on a market segment basis (i.e., military construction, commercial repair, etc.). Economic impact indicators examined included price, output, and employment impacts. The economic impact analysis calculated economic impacts for six market segments within the shipbuilding and repair industry. Two methods were used to calculate the potential price impacts; therefore, these impacts will be provided in terms of ranges.

Twenty major-source yards were identified as first-tier shipyards (facilities that have the capability to construct, drydock, and/or topside repair vessels with a minimum overall length of 400 feet). Two market segments in the first tier, facilities engaging in construction of military ships and privately owned facilities engaging in repair of military ships, are each estimated to increase their prices 0.1 percent or less to recover increased costs of the rule. The cost for the third market segment, government-owned shipyards engaging in repairing military ships, will be negligible.

The remaining five major-source shipyards are categorized into the "second tier" (facilities building and repairing ships less than 400 feet in length). Within this tier, the market segment consisting of facilities constructing ships for the military is estimated to require a price increase between 0.1 and 0.2 percent. The market segment consisting of facilities engaging in construction of ships for the commercial sector is estimated to require a price increase of 0.3 percent or less. Lastly, the market segment consisting of facilities performing repair on ships in the commercial sector is expected to require little or no price increase.

The facility-specific impact calculations estimate the maximum price increase necessary for a regulated facility to fully recoup its annualized control costs. For the purposes of the analysis, a facility's price increase was considered significant if greater than 1 percent and deviated considerably from its corresponding market segment price increase.

The facility-specific price increase calculations indicated that 23 of the 25 major-source shipyards are expected to experience price increases of 0.1 percent or less. Of the two remaining, one is expected to experience a 0.2 percent price increase and the other, 0.3 percent.

The above data indicate that none of the regulated facilities are expected to experience price increases greater than 1 percent. In addition, a comparison of each facility's price increase to its corresponding market segment price increase reveals that the results of each analysis are not significantly different. Therefore, implementation of the NESHAP is not expected to have a significant impact on the 25 major-source facilities in the shipbuilding and repair industry.

The economic analysis also examined the impact of the NESHAP on industry output and employment. The industry is expected to experience a negligible reduction in output as a result of implementing the regulation. Assuming a one-to-one relationship between output and employment, the same conclusion can be applied to the NESHAP impact on the industry's employment level.

V. National Emission Standards for Hazardous Air Pollutants (NESHAP) Decision Process

A. Source of Authority for NESHAP Development

Section 112 of the Act gives the EPA the authority to establish national standards to reduce HAP emissions from sources that emit one or more HAP. Section 112(b) contains a list of the specific HAP to be regulated by NESHAP. Section 112(c) directs the EPA to use this pollutant list to develop and publish a list of source categories for which NESHAP will be developed. The Act defines major sources as those that emit or have the potential to emit considering controls, in the aggregate, 9.1 Mg/yr (10 tons/yr) or greater of individual HAP or 22.7 Mg/yr (25 tons/yr) or greater of any combination of HAP. The initial list of source categories was published on July 16, 1992 (57 FR 31576). Shipyards (major sources only) appear on this list.

Area sources are those sources that are not major sources. Area source categories selected by the EPA for NESHAP development will be based on the Administrator's judgment that the sources in a category, individually or in the aggregate, pose a "threat of adverse effects to health and the environment." The EPA will continue to evaluate whether area source shipyards should be added to the list of area source categories.

B. Criteria for Development of NESHAP

The NESHAP are to be developed to control HAP emissions from both new and existing sources according section 112(d) of the Act. The standards are to reflect the maximum degree of reduction that is achievable for new or existing sources. The NESHAP must reflect consideration of the cost of achieving the emission reduction, nonair quality health and environmental impacts, and energy requirements for control levels more stringent than the MACT floor (described below). The Act specifies that emission reduction may be accomplished through application of measures, processes, methods, systems or techniques, including, but not limited to, measures which:

1. Reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials, or other modifications;
2. Enclose systems or processes to eliminate emissions;
3. Collect, capture, or treat such pollutants when released from a process, stack, storage, or fugitive emission point;
4. Are design, equipment, work practice, or operational standards including requirements for operator training or certification as provided in section 112(h); or
5. Any combination of the above [section 112(d)(2)].

To develop 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 to analyze possible regulatory approaches.

Although NESHAP are normally structured in terms of numerical emission limits, alternative approaches are sometimes necessary. In some cases, physically measuring emissions from a source may be impossible or at least impracticable due to technological and economic limitations. Section 112(h) authorizes the Administrator to promulgate a design, equipment, work practice, or operational standard or combination thereof, in those cases where it is not feasible to prescribe or enforce an emissions standard.

If any sources in the source category are considered major (based on their emissions), then a MACT standard is required. To establish a MACT standard, the level of control corresponding to the

MACT floor needs to be determined as a starting point for developing the regulatory alternatives.

C. Categorization/Subcategorization: Determining MACT "Floors"

Section 112 of the Act provides certain very specific directives to guide the EPA in the process for establishing MACT standards. It states that the EPA shall establish standards that require "the maximum degree of reduction in emissions of the hazardous air pollutants * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable * * *" [section 112(d)(2)]. In addition, a minimum baseline or "floor" for a standard is specified. For new sources, the standard 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" [section 112(d)(3)].

Further, standards for existing sources shall be no less stringent than: (1) the average emission limitation achieved by the best performing 12 percent of the existing sources in the category or subcategory for categories and subcategories with 30 or more sources; or (2) the best performing five sources for categories or subcategories with fewer than 30 sources [section 112(d)(3)].

Once the floor has been determined for new or existing sources for a category or subcategory, the Administrator must set MACT standards no less stringent. 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 and establish a different emission standard for each class, provided all standards are at least as stringent as the MACT floor.

The EPA has determined that there are less than 30 major shipbuilding sources. Consequently, the MACT floor for existing categories or subcategories was calculated to be the arithmetic average (the mean) of the emission limitation achieved by the best performing five sources.

D. Regulatory Approach and Regulatory Alternatives

The next step in establishing standards is the investigation of regulatory alternatives. With MACT standards, only alternatives at least as stringent as the floor may be considered. Information about the industry is analyzed to develop model plant populations for projecting national impacts, including HAP emission reduction levels, costs, energy, and secondary impacts. Several regulatory alternative levels (which may be different levels of emissions control or different levels of applicability or both) are then evaluated to determine the most appropriate regulatory alternative to serve as the basis for the standard.

The regulatory alternatives for new versus existing sources may be different, and separate regulatory decisions must be made for new and existing sources. For both source types, the selected alternative may be more stringent than the MACT floor. However, the control level selected as the name maximum achievable control technology indicates, must be available, i.e., technically achievable. In selecting a regulatory alternative, the Agency considers the achievable reduction in emissions of HAP (and possibly other pollutants that are co-controlled), the cost and economic impacts, the energy requirements, and other environmental impacts.

The selected regulatory alternative is then translated into a proposed regulation. The regulation implementing the decision typically includes the following sections: applicability, standards, test methods, compliance demonstration, monitoring, reporting, and recordkeeping. The preamble to the proposed regulation provides an explanation of the rationale for the decisions embodied in the rule. The public is invited to comment on the proposed regulation. Based on an evaluation of these comments, the EPA promulgates the final standard.

VI. Process Description and Control Technologies

This section describes the painting process and technologies that can be used to control organic HAP emissions from painting operations at shipyards. For more detailed description of the process and control technologies, consult the BID for the proposed standards (see ADDRESSES at the beginning of this Preamble).

Over 99 percent of HAP emissions at shipyards are organic solvents associated with paints and cleaning. Other activities that collectively contribute the remaining 1 percent include welding, metal forming/cutting, and abrasive blasting. The proposed standards will affect operations involving the use of paint and organic solvents.

A. Painting Process

Marine coatings are applied to the surface of ship components to form a protective, functional or decorative films. The basic components of a coating are the vehicle (resin or binder), solvent, pigment (except in clear coatings), and a variety of additives. Different coatings are used for different purposes; depending on where it is applied, the intended use of the ship, ship activity, travel routes, desired time between coatings (service life), aesthetic desires of the ship owner or commanding officer, and fuel costs.

Marine coatings are vital for protecting the ship from corrosive and biotic attacks from the water environment. Many marine coatings serve specific functions, such as corrosion protection, heat/fire resistance, or antifouling (to prevent the settlement and growth of marine organisms on the ship's underwater hull).

The most popular techniques for applying coatings to marine vessels are brushing, rolling, air-atomizing, and airless spraying. Brushing and rolling are primarily used for touchup and recessed surfaces where spraying is not practical. Spraying is used for all other surfaces because of its high application speed.

Thinning solvent is sometimes added to coatings before application even though paint manufacturers state that it is unnecessary. Temperature, reportedly can play a big part in the decision to thin; cold increases paint viscosity. For such cases, the appropriate solvent to use for each coating is specified by the manufacturer. Typically these paints and thinning solvents contain one or more of the following HAP: xylene, toluene, and/or methyl ethyl ketone.

B. Control Technologies for Painting Operations

Emissions of VOHAP result primarily from solvent evaporation—both solvent in the paint "as supplied" by the manufacturer and any solvent used by the shipyard to thin the paint. Reaction by-products released during the cure of some coatings may also contain HAP. Essentially, all organic solvents, including those which are HAP, are emitted either as the paint is applied or when it dries/cures. The shipyard may limit emissions of HAP from, "as supplied" or "as applied," coatings as discussed below.

1. Paints As-Supplied by the Manufacturer

Since the Agency began its program to reduce emissions of volatile organics in

the late 1970's, the coating industry has made significant progress in research of new products with increased solids: organic solvent ratios. These liquid paints are of two primary types: waterborne and higher solids. Although many new waterborne products have been developed, manufacturers of marine coatings have reduced solvent primarily by increasing the solids (nonvolatile) content of their products. Use of these concentrated or "higher solids" coatings reduce solvent emissions per surface area painted (at same film thickness). Because most hazardous air pollutants are also volatile organics, the VOC program has tended to also reduce HAP.

In addition, some coating manufacturers have reportedly been able to reduce the HAP content of certain paints by merely substituting a solvent not on the HAP list yielding paints that contain little or no HAP solvents. A coating reformulated in this manner may have the same or even higher VOC content than the one it replaces. In some cases, the HAP to VOC ratio may even increase when a company develops a new reformulation with lower VOC. (Note, the absolute HAP emissions are likely to go down.)

2. Paints As-Applied by the Shipyard

There are several alternatives a shipyard may follow to minimize HAP emissions from as-applied paints. One is to avoid diluting the paint and apply it as-supplied. Another is to only use thinners that contain little or no HAP. A third is to reduce paint viscosity by heating the paint to avoid or minimize the need for thinning. (Paint heaters are heating elements placed in the paint delivery line upstream of the spray gun. Depending on the length of the delivery line, the coating characteristics, and ambient temperature, multiple paint heaters may be required at intervals along the line. These decrease the ease of portability and flexibility of the application system.)

"Add-on" pollution control systems are often used to control emissions from spray booths when coatings are applied in factory operations. Such systems are not now a practical alternative for many shipyard operations because the size of ship components is too large to enable capturing of the emissions with an enclosure. (There is currently under development a mobile enclosure that, if successful, will offer shipyards a method of capturing both particulate and volatile organics. Metro Machine shipyard in Norfolk, Virginia has developed a prototype portable enclosure that mounts adjacent to the ship and supports an omni-directional elevator platform used by the operator to abrasive blast and paint ship's hulls. The method shows promise of containing particulate and volatile organics of concentrations great enough to make recovery available at reasonable cost. It also provides weather protection thereby allowing work to continued in inclement weather. Final evaluation will likely be completed in 1996.)

C. Handling, Transfer, and Storage of Volatile Organic HAP Containing Materials

Volatile organic emissions (including HAP) result from storage, handling, and transfer of solvents and paint wastes that contain VOHAP. These solvents, typically stored in 55-gallon drums, are frequently transferred by pump or spigot into small buckets or 1 gallon containers for transport to the painting site. Waste solvent and HAP also evaporate from solvent-laden rags and spent solvent used in cleaning activities and coating operations.

These HAP emissions may be minimized with appropriate work practices including managed chemical (paint and solvent) distribution systems designed to curb the volume of material exposed to the atmosphere and the length of the exposure. For example, solvent-soaked cleaning rags should be kept in impervious bags or containers that are normally closed when not in use.

VII. Selection Rationale

A. Selection of Emission Points to be Covered

The proposed standards would limit VOHAP emissions from surface coating operations at shipbuilding facilities that are major sources in accordance with the EPA's list of source categories published in the **Federal Register** on July 16, 1992 (57 FR 31576). Standards are being proposed to limit the VOHAP content of 23 categories of coatings used in shipyards. In addition, the proposed standards would require work practice measures for handling, transfer, and storage of solvent and paint wastes.

Welding, gas freeing (tank degassing), metal fabrication, fuel combustion, flame cutting, cooling towers, asbestos removal, and cleaning would not be regulated under the proposed rule, although their emissions must be included in determining if a facility qualifies as a major source. Asbestos removal is covered in 40 CFR part 61, subpart M; cooling towers are treated in the industrial process cooling tower rule proposed on August 12, 1993; and chromium emissions by the rule for hard and decorative electroplating and anodizing operations proposed on November 30, 1993. Methodology for determining and managing emissions from cleaning solvents is detailed in the ACT document—Industrial Cleaning Solvents, EPA–453/R–94–015.

B. Selection of the Basis for the Proposed Standards

The general methodology for selecting the basis for MACT standards was discussed in section V. A more detailed discussion specific to this industry is presented below.

1. Coating Operations

No emission control measures are known to have previously been implemented specifically to reduce HAP emissions from this industry. Regulations that reduce VOC emissions will limit HAP emissions since almost all organic HAP are VOC.

At shipyards, the only VOC control measure that has been fully demonstrated for outdoor coating operations is the use of coatings with inherently lower emissions. Such coatings have and are being developed by an enlightened industry to reduce its environmental impact. The new products are used for compliance with VOC regulations in Louisiana and some California jurisdictions. There are as yet no known cases where add-on pollution control systems have been used to control VOC emissions from outdoor coating operations at shipyards.

The California and Louisiana regulations limit the allowable quantity of VOC in each of several categories of coatings, as applied. Because VOHAP are VOC (with the exception noted above), such regulations also reduce, or at a minimum, put a ceiling on the allowable HAP content of these coatings.

The California regulations (VOC limits) are more stringent than those in Louisiana. Thus, the major sources subject to those California rules represent the "best controlled sources." Because three major source facilities are located in California, the single best controlled facility and the median facility of the best performing five sources are both subject to the stringent California regulations. Therefore, the Agency has determined that the MACT floor for both new and existing sources is identical to the current California VOC limits on marine coatings, except for one additional paint category [weld-through (shop) primer].

A variety of more stringent alternatives were considered, including more restrictive limits based on HAP content (rather than VOC content), more stringent VOC limits, and requiring use

of pollution control equipment. These alternatives are discussed below.

To evaluate other potential limits, the EPA gathered existing data on HAP content from marine coating manufacturers and shipyards. Information compiled from a material safety data sheet (MSDS) was used to determine (estimate) the HAP content of each paint. Most of the data came from MSDSs and product data sheets. Based on these data, the percentage of VOC in marine coatings that are HAP varies from zero to 100 percent and averaged 30 percent by weight for all paints in the project data base. (The HAP content could exceed the VOC content in coatings containing non-VOC HAP.)

Industry subsequently informed EPA that the quality of HAP-specific data on MSDSs is poor. The MSDSs are prepared primarily to meet Occupational Health and Safety Administration (OSHA) requirements. Although one section addresses hazardous constituents, the industry indicated that information and format required for OSHA purposes are not as detailed or accurate as would be desired for development of a regulation. Further, the list of hazardous materials that OSHA regulations require must be addressed in MSDSs is different from the HAP list in section 112(b) of the Act. In addition, it is acceptable to give a concentration range on the MSDS, rather than a specific value. Finally, many entries on the MSDS are generic petroleum solvents, such as mineral spirits, which are mixtures of many organics (some of which may be HAP) and vary in composition from lot to lot.

Because of these drawbacks in MSDS data, the EPA considered it not accurate enough to be used in setting limits for VOHAP. The Agency believes, however, that the resulting data base is sufficiently accurate for use in estimating broad parameters, such as the potential reduction associated with limitations on VOC content.

Enforcement of a limit on HAP content would require an EPA reference test method. Although one is under development by the Agency, it has not yet been published. Based on the quality of the HAP content data on the MSDSs and the lack of an approved test method for speciating and quantifying HAP, the EPA has determined that VOC will be used as a surrogate to limit HAP emissions. Consequently, the proposed rule would establish the VOHAP limit at the VOC limit of the California rules using VOC as a surrogate for HAP and the Agency's VOC test method, Method 24, for determining compliance.

The EPA considered requiring limits more stringent than the existing California limits. The data base indicates that within each category of coatings there are coatings with VOC contents below the California limit. (Some may have been developed in response to the technology-forcing provisions of the California regulations that provide for more stringent limits to come into effect in September 1994 for some coating categories.)

Although coatings with lower VOC contents than the rule requires are marketed in each category, they reportedly would not perform for the full range of potential applications within a coating category.

An important consideration in examining control requirements for this industry is U.S. Navy military specifications or "milspecs." Because of the need for coatings for specialized applications and the demand for predictable performance, the Navy oversees exhaustive performance testing procedures. Naval personnel indicate an ongoing program to qualify lower VOC coatings. The California rules were developed with considerable input from the Navy, and according to a Naval representative, reflect the "state of the art" for lower-VOC shipbuilding coatings. Volatile organic compound limits more stringent than proposed would require that the Navy use paints for which they have not yet completed long term testing, hence are not milspec approved. Given these considerations, the EPA is proposing MACT emission levels based on the 1992 California regulations that limit the total VOC as-applied paint.

The EPA also evaluated the potential of add-on VOC control devices (i.e., carbon adsorbers and incinerators). Although no cases are known where add-on controls are used for outdoor painting at shipyards, they have been used to reduce spraybooth emissions by many other industries. Most coating operations at shipyards take place outdoors, primarily because of the size of parts painted. This makes capture of emissions difficult and expensive. Use of add-on controls for outdoor painting was not selected as the basis for MACT for these reasons. It should be noted, however, that a portable enclosure that will contain particulate and VOC during abrasive blasting and coating of ships' hulls is under commercial development. Should these enclosures prove technically and economically feasible, their performance should be considered by any State or the Federal Government in developing future rules for this industry.

Two types of coating operations at shipyards where emissions are more available to capture were examined more closely for the feasibility of add-on controls: indoor coating operations and painting inside of ship's tanks or other internal enclosed spaces. Based on a brief screening analyses, using the limited available data that assumes all spray areas are continually drafted to the control device (whether painting operations are underway in all areas or not), add-on control was estimated to be on the order of $150,000/Mg of VOHAP removed. The EPA believes that this cost is not reasonable for this source category. As a result, add-on controls were not investigated further nor selected as the basis for MACT.

In reality, the amount of VOC and HAP controlled at a site is dependent on the rate of paint application, the concentration of these compounds in the exhaust air stream during the painting operation, the flow rate of the air stream flowing into the add-on control unit and a host of other factors. The suitability of add-on controls can only be determined on a case-by-case basis.

After review of alternatives more stringent than the MACT floor, the EPA is proposing to set the MACT standard at the floor based on the California marine coatings rule which is for both new and existing sources. The costs of the control option for new and existing sources is expected to be the same. The Agency solicits comments on this determination.

"Models" of shipyards were developed to help determine the need to differentiate among classes of shipyards in identifying the MACT." Models were developed for classes of yards based on market segment (yards that construct ships versus those that only repair) and size (large versus medium). The EPA concluded there is no basis for differentiating among classes of major source shipyards, but specifically solicits comments on whether this category should be subcategorized; and if so, how.

2. Handling, Transfer, and Storage of VOHAP Containing Material

Based on information received from industry, a variety of "work practice" measures are used to reduce evaporative losses of VOC from transfer, handling, and storage of solvent and paint wastes. These include spill minimization techniques (use of spouts, funnels, or catch basins during transfer of liquids from one container to another), the use of normally closed containers or piping to transport liquids, and the use of close-fitting or tight covers on containers for solvent, wet rags, and waste.

Many more than five facilities employ some type of work practice measures. Facilities in California are subject to regulations to minimize evaporative emissions; other facilities employ such measures to decrease solvent usage or to minimize exposure of workers. However, data to quantify accurately the emission reductions achievable by different work practice measures is unavailable. The beneficial effect of a specific change is largely a function of the previous plant practice being remedied. As a result, even though such activities obviously reduce emissions, there is no way to distinguish between the "best controlled source" and the "best performing five existing sources." Therefore, the EPA has designated the same select work practice measures as the MACT floor for control of emissions from handling and transfer of VOHAP containing material at both new and existing facilities. For emissions from storage containers, the MACT floor is use of tight-fitting covers that must be normally closed; that is, in place except when materials are being added to or withdrawn. The Agency believes that this is a reasonable approach. Because work practice measures typically entail negligible cost, any emission reduction that is achieved is believed to be worthwhile. The EPA specifically solicits comments on this determination.

No other more effective control options for these VOHAP emissions from cleaning activities were found. Use of lower-HAP or lower-vapor-pressure substitutes to minimize evaporative losses may be feasible, although this option depends on the availability of a suitable replacement cleaning material.

Capture and control of fugitive emissions from the many transfer, handling, and storage of solvents (and operation wastes) although conceivable, is impractical, making it difficult to invoke any quantifiable standard other than work practice requirements. Associated monitoring and recordkeeping are included for determining compliance. In an attempt to ensure that employees understand and comply with the requirements, the proposed standards also require each source to implement a training program for all involved personnel.

C. Selection of the Format of the Proposed Standards

1. Coating Operations

Most HAP emissions from coating operations in this industry occur outdoors where the technology for their capture has not been demonstrated. As a result the only available technology for reducing emissions is to require use of coatings with lower volatile content. Virtually all of the HAP and VOC contained in marine coatings are emitted to the atmosphere during the course of application and drying. Thus, an emission standard based on limiting both HAP and VOC content of the coatings, as applied, is appropriate for these operations, particularly because any additional HAP and VOC that may be formed and emitted during the curing process are detected and measured by the reference measurement methodology.

As a result, the types of coatings used by the industry were identified and maximum, never-to-be-exceeded HAP limits were selected for each of the several coating categories. To allow additional flexibility, the ability to average limits across categories was also considered. Under an averaging approach, any coating regardless of volatile organic content, can be used as long as the volume weighted average as applied VOHAP content, i.e., as measured by the reference method, of all coatings does not exceed the average calculated from their individual limits. In developing the limits, the Agency considered two types of averages: (1) Separate averages for coating within each of the coating categories and (2) a single average for all coatings used by a facility. The option of establishing limits based on weighted averages of various coatings of different pollution content was abandoned when the industry indicated that time and effort to plan, track, and demonstrate compliance would be too burdensome. As a result, the limits are based on never-to-be-exceeded VOHAP contents for 23 categories of coatings and permits "averaging" for purposes of compliance under certain conditions. The proposed coating categories and associated HAP limits are presented in Table 1.

2. Handling, Transfer, and Storage of VOHAP Containing Material

The proposed work practice standards require that these operations be carried out in such a manner that minimizes spills. For storage and transport, the proposed standards require use of containers that are normally closed.

To provide a measure of enforceability to these standards, each source will be required to indicate how it intends to comply with the standards as part of the initial notification that is required of all sources under the part 63 general provisions. After the Administrator or her designee negotiates and approves these compliance measures as part of the operating permit program, each source will have a specific set of requirements for which compliance can be determined by monitoring, observation and/or inspection.

D. Selection of Compliance Dates

The proposed rule would require that existing sources comply within 1 year after the effective date of the rule. This provides time for shipyards and coating manufacturers to deplete most existing inventories of contemporary coatings. An existing unaffected area source that increases its emissions (or potential to emit) such that it becomes a major source would be required to comply within 1 year after becoming a major source.

TABLE 1.—PROPOSED VOLATILE ORGANIC HAP (VOHAP) CONTENT LIMITS FOR MARINE COATINGS

Coating category	VOHAP limits [a,d]		$VOHAP_{alt}$ limits [c,d]	
	Grams per liter (g/L)	Pounds per gallon (lb/gal)[b]	Grams per liter (g/L)	Pounds per gallon (lb/gal)[b]
General use	340	2.83	571	4.76
Specialty:				
Air flask	340	2.83	571	4.76
Antenna	530	4.42	1,439	12.00
Antifoulant	400	3.33	765	6.38
Heat resistant	420	3.50	841	7.00
High gloss	420	3.50	841	7.00
High temperature	500	4.17	1,237	10.31
Inorganic zinc high-build primer	340	2.83	571	4.76

TABLE 1.—PROPOSED VOLATILE ORGANIC HAP (VOHAP) CONTENT LIMITS FOR MARINE COATINGS—Continued

Coating category	VOHAP limits [a,d]		$VOHAP_{alt}$ limits [c,d]	
	Grams per liter (g/L)	Pounds per gallon (lb/gal)[b]	Grams per liter (g/L)	Pounds per gallon (lb/gal)[b]
Military exterior	340	2.83	571	4.76
Mist	610	5.08	2,235	18.63
Navigational aids	550	4.58	1,597	13.31
Nonskid	340	2.83	571	4.76
Nuclear	420	3.50	841	7.00
Organic zinc	360	3.00	630	5.25
Pre-treatment wash primer	780	6.50	11,095	92.46
Repair and maintenance of thermoplastic coating of commercial vessels	550	4.58	1,597	13.31
Rubber camouflage	340	2.83	571	4.76
Sealant coat for thermal spray aluminum	610	5.08	2,235	18.63
Special marking	490	4.08	1,178	9.82
Specialty interior	340	2.83	571	4.76
Tack coat	610	5.08	2,235	18.63
Undersea weapons systems	340	2.83	571	4.76
Weld-through (shop) primer	650	5.42	2,885	24.04

[a] Volatile organic HAP limits (for compliance options 1 through 4) are expressed in units of mass of VOHAP per volume of coating less water and non-HAP "exempt" solvents, as applied. Volatile compounds classified by EPA as having negligible photochemical reactivity are listed as "exempt" in 40 CFR 51.100(s) (except those on the HAP list).

[b] To convert from g/L to lb/gal, multiply by: [(3.785 L/gal)(lb/453.6 g)] or (lb-L/120 g-gal).

[c] Alternate volatile organic HAP ($VOHAP_{alt}$) limits (for compliance option 5) are expressed in units of mass of VOHAP per volume of solids, a value that assumes the volumes of all components within a coating are additive.

[d] For compliance purposes, the metric limits are the standard.

Any new or reconstructed sources would be required to adhere to the compliance schedule in § 63.6(b) of subpart A of the general provisions. For new or reconstructed sources whose startup date is before the effective date of the rule, the compliance date would be the effective date of the rule. For new or reconstructed sources whose startup date is after the effective date of the rule, the compliance date would be the startup date. A new unaffected area source that increases its emissions (or potential to emit) such that it becomes a major source would be required to comply immediately upon becoming a major source.

Many shipyards in California have been complying with VOC limits equal to those in the proposed BACM since September 1991. Hence, coatings that meet the limits should be readily available.

E. Selection of Compliance Procedures

The proposed rule would allow affected sources to choose from five options for demonstrating compliance with the VOHAP standards. Regardless of the option(s) chosen, for each coating, affected sources would be required to first determine: (1) its coating category in Table 1 (e.g., general use, air flask, antenna, etc.), (2) the applicable VOHAP limit, and (3) the VOC (or VOHAP) content for each manufactured batch of coating. The VOC (or VOHAP) content of the batch would be determined through certification as explained in part III.D. (It is in the best interest of affected sources to use manufacturers that certify their coatings.)

For options 1 through 4 involving VOC content determinations, the compliance method is the Agency's Method 24. Affected sources would be allowed any of the methods described below to avoid testing every container. The ultimate referee method, however, is Method 24. Option 5 involves VOHAP content determinations; the compliance method has to be approved by the Administrator and comply with EPA requirements for sample preparation.

The proposed rule does not specify compliance procedures for the handling, transfer, and storage standard. Each affected source would be required to develop and include specific compliance procedures for their facility in the initial notification to the Administrator.

An affected source would be allowed to select any of the following methods for compliance and may choose to use only one of the options for all coatings at the facility or use a combination of options.

Option 1. Certification of Each Container or Coating, As-Applied

Procedures for certifying the quantity of VOC emitted by paints, ink, and other coatings are combined in the EPA publication 450/3–84–019 (revised 6/86). Compliance with the VOHAP content limits would be achieved by sampling, testing, and certifying the VOC content of each container of coating, as applied. If the as-applied VOC content is less than or equal to the VOHAP limit in Table 1, the coating complies.

Option 2. Coatings To Which Thinning Solvent Will Not Be Added

If thinning solvents will not be added to the coating under any circumstances, the affected source may demonstrate compliance with the VOHAP content limit by certifying the as-applied VOC content by manufacturer's batch. The as-applied certification may be based on a coating that has been certified by the manufacturer as to the as-supplied content and simply requires documentation that no thinning solvent was added to the coating. No additional testing would be necessary.

All painters would have to be notified that no thinning solvent may be added to the coating before application. This notification may be accomplished through a label affixed to each container in the batch or through another means of notification specified in the source's initial notification that is required in § 63.9(b) of subpart A of the general provisions. Other means of notifying painters may include use of a bar coding system or posting of a list of coatings that should not have thinning solvents added.

This option is the least burdensome to affected sources, but it may only be used for coatings that will not be thinned. However, any Method 24 tests on individual containers of coating, as applied, that show noncompliance with

the standards would take precedence and indicate a violation.

Option 3. Coatings to Which Thinning Solvent Is Added—Coating-by-Coating Compliance

If thinning solvents are added to the coating, the affected source could determine the allowed level of dilution for purpose of demonstrating compliance on a coating-by-coating basis. The source would determine the as-supplied VOC content of each type of thinning solvent. Then, using the as-supplied certification for the coating and the maximum allowable limit from Table 1, the source would calculate the maximum allowable thinning ratio that would not violate the VOHAP content limit.

The persons responsible for applying each coating shall be notified of the designated thinner and maximum allowable dilution ratio for that coating by affixing a label to each container of coating in the batch or through another means as discussed in the rule.

(A) For coatings and thinning solvents that do not contain water or exempt compounds, use Equation 1 as follows:

$$R^{+}_{d} = \frac{HAP_{a} - VOC_{s}}{D^{+}_{d} - HAP_{a}} \qquad \text{Equation 1}$$

where:

R^{+}_{d}=Maximum allowable thinning ratio (L thinner/L coating as supplied);

VOC_{s}=As-supplied VOC content of the coating (g VOC/L coating as supplied, less water and exempt solvents);

HAP_{a}=Allowable as-applied VOHAP content of the coating (g VOHAP/L coating as applied, less water and exempt solvents);

R^{+}_{d}=Density of the thinners (g thinner/L thinner);

(B) For coatings or thinners that contain water or exempt compound(s), use Equation 2 as follows:

$$R^{+}_{d} = \frac{\left[1-(V_{w})_{s}\right](HAP_{a} - VOC_{s})}{D^{+}_{d}\left[1-(W_{w})_{d}\right] - HAP_{a}\left[1-(V_{w})_{d}\right]} \qquad \text{Equation 2}$$

where:

$(V_{w})_{s}$=Volume fraction of water and exempt solvents in the coating as supplied (L water and exempt solvents/L coating as supplied);

$(V_{w})_{d}$=Volume fraction of water and exempt solvents in the thinner (L water and exempt solvents/L thinner); and

$(W_{w})_{d}$=Weight fraction of water and exempt solvents in the thinner (g water and exempt solvents/g thinner).

(C) The procedures specified under test methods and procedures may be used to determine the values of variables defined in this paragraph, as necessary.

A source is to determine the total allowable volume of thinner for each coating for the month using the following equation.

$$V_{d} = \sum_{i=1}^{n} \left(R^{+}_{d} \times V_{c}\right)_{i} \qquad \text{Equation 3}$$

where:

V_{d}=Total allowable volume of thinner for the coating for the previous month (L thinner);

V_{c}=Volume of each batch of the coating, as supplied, used during the month (L coating as supplied);

i=Each batch of coating; and

n=Total number of batches of the coating.

If the actual thinner volume used for a coating is less than or equal to the total allowable thinner volume for that coating then compliance is presumed for that coating for the month, unless a violation is revealed using Method 24. (If it is greater, the facility must report a violation.) Any Method 24 test on individual containers of coating, as applied, that shows noncompliance with the standards would take precedence and indicate a violation.

Option 4. A Group of Coatings To Which the Same Thinning Solvent Is Added—Group Compliance

Inasmuch as shipyards may use the same solvent to reduce more than one category of coating, this option was created to minimize recordkeeping in such cases. The group compliance option is similar to the coating-by-coating compliance option, except the source does not need to maintain thinner usage by individual paint category; it would be allowed to calculate the total allowable volume of thinner used for a group of coatings. A group would be constituted based on use of common thinner. A group could consist of two or more different batches of the same coating or different coatings. For example, a group may consist of a certain batch of antenna coating combined with all batches of general use coatings. However, a group may not contain any coating to which thinning solvent will not be added.

Affected sources would calculate the maximum allowable dilution ratio for each coating using equation 1 or 2. All painters would have to be notified of the maximum allowable dilution ratio for each coating. Beginning with the recorded amount of coating used during the previous month, the facility would calculate the net allowable volume of thinner that could have been used by each coating in the group. If the actual usage was less than or equal to the net allowable volume for the group, the source is in compliance. However, any Method 24 test on individual containers of coating, as applied, that shows noncompliance with the standards would take precedence and indicate a violation. Equations 1 through 3 were derived from the EPA's "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink, and Other Coatings" (Revised June 1986), EPA—450/3–84–019.

Option 5. Coatings with Noncompliant VOC Contents Used in Areas Without VOC Limits

In those facilities located in areas without required VOC limits for marine coatings (i.e., ozone attainment areas; all 25 of the existing major source facilities are located in current ozone nonattainment areas), the affected source may measure the HAP content using the following techniques and using alternate limits derived from the limits in the regulation to demonstrate compliance on a coating-by-coating basis. The $VOHAP_{alt}$ limits were calculated using the maximum allowable VOHAP limits (see Table 1) and an assumed average density for all solvents. To demonstrate compliance, the source would determine (using formulation data from the coating manufacturer) the as-supplied VOC content and volume solids (V_{s}) of each coating.

Then, using the measured (via any approved test method) VOHAP content divided by the volume solids, compliance can then be determined with the calculated $VOHAP_{alt}$ limit. The following equations were used to calculate the alternate VOHAP limits (for coatings that do not contain any exempt solvents or water):*

$$V_{s} = 1 - \frac{VOC}{\left(D_{avg}\right)} \qquad \text{Equation 5*}$$

where:

V_{s}**=Volume fraction of solids in the coating as supplied (L solids/L coating as applied);

VOC=Applicable as-supplied VOC content of the coating (g VOC/L

* Equation 5 only applies to those coatings containing only VOC's and (volume) solids.

** For purposes of this general discussion and example calculation, volume solids (V_{s}) has been used interchangeably with the term "nonvolatiles."

coating as supplied, less water and exempt solvents; and

D_{avg}=Average density of solvents in the coating (to demonstrate compliance of a marine coating, use the solvent mixture in the coating to calculate D_{avg}.)

In order to calculate $VOHAP_{alt}$ limits, the VOC content was assumed to be equal to the VOHAP limit for each coating category in Table 1, therefore:

$$V_s = 1 - \frac{\text{VOHAP limit}}{D_{avg}}$$

where:

$VOHAP_{limit}$=Applicable as-applied VOHAP limit of the coating category (g VOHAP/L coating as applied, less water and non-HAP exempt solvents);

D_{avg}=840 g/L (for conversion purposes, the average density of solvents used in all marine coatings).

The VOHAPalt limits were then calculated using the following equation:

$$VOHAP_{alt} = \frac{\text{VOHAP limit}}{V_s}$$

Equation 6

where:

$VOHAP_{alt}$=Allowable as-applied alternate VOHAP content of the coating (g VOHAP/L solids as applied)

V_s=Volume fraction of solids in the as applied coating (L solids/L coating)

If the measured VOHAP contents for a coating divided by the volume solids (V_s) is less than or equal to the calculated $VOHAP_{alt}$ limit in Table 1, then compliance is demonstrated.

An example calculation for determining the $VOHAP_{alt}$ limit for a "general use" coating follows:

First, the VOHAP limit=340 g/L and based on the assumption that the coating is only comprised of VOC and (volume) solids,

$$V_s = 1 - \frac{\text{VOC}}{840\ \text{g/L}}$$

Then,

$$V_s = 1 - \frac{340\ \text{g/L}}{840\ \text{g/L}} = 0.595$$

$$VOHAP_{alt} = \frac{\text{VOHAP limit}}{V_s}$$

When the as-applied coating contains thinner and/or exempt compounds, special allowances (calculations) must be

$$VOHAP_{alt} = \frac{340\ \text{g/L}}{0.595} = \frac{571\ \text{g VOHAP}}{\text{L solids}}$$

used to determine $VOHAP_{alt}$ limits. These special allowances and procedures for compliance testing are covered in a June 30, 1994, memo to the project file [Docket A–92–11, II–B–26] from Dr. Mohamed Serageldin.

To further illustrate the $VOHAP_{alt}$ limit calculations, the following example is provided: A shipyard wants to use (demonstrate compliance using option 5) a general use coating with a VOC content of 392 g/L less water and exempt solvents, a measured VOHAP content of 288 g/L less water, and an average solvent density of 880 g/L. Since the VOHAP limit for general use coatings is 340 g/L less water, the $VOHAP_{alt}$ limits were calculated to be 571 g VOHAP/L solids (see Table 1).

$$V_s = 1 - \frac{392\ \text{g/L}}{880\ \text{g/L}} = \frac{0.555\ \text{L solids}}{\text{L coating}}$$

$$\text{VOHAP content} = \frac{288\ \text{g/L less water}}{V_s} = \frac{288\ \text{g/L less water}}{0.555\ \text{L solids/L coating}}$$

$$\text{VOHAP content} = 519\ \text{g VOHAP/L solids}$$

Compliance for the coating is therefore demonstrated because the VOHAP content of 519 g/L solids is less than the $VOHAP_{alt}$ limit of 571 g/L solids.

F. Selection of Test Methods and Procedures

Since the EPA does not yet have a published reference method for analyzing for the amount of VOHAP in a coating, the measure of total VOC is to be used as a surrogate. Method 24 is the Agency's reference method for determining the total volatile organic content (the total amount of VOHAP and other volatile organics). The proposed rule would use the VOC content of as-applied coatings to determine compliance with the VOHAP content limits (see section VII.B.1).

Most, if not all, major shipbuilding facilities are believed to be located in ozone nonattainment areas. These facilities are likely to be required to meet State VOC regulations requiring BACM. As explained earlier in this notice, the EPA's draft recommended BACM for the draft CTG contains VOC limits equivalent to the VOHAP limits being proposed. Thus, using Method 24 to measure compliance with both the VOC and HAP rules (i.e., one test to satisfy two concerns) should be the least burdensome route of any source having to meet VOC rules in addition to HAP rules. However, in case there are any sources which are not required to meet VOC rules and have a desire to determine compliance through measuring VOHAP instead of VOC, an approach as outlined in option 5 is being proposed. (Comments are requested.)

The proposed rule would require that affected sources use forms and procedures comparable to those in the EPA's "Procedures for Certifying Quantity of Volatile Organic Compounds Emitted by Paint, Ink and Other Coatings," (Revised June 1986) EPA–450/3–84–019 for all certifications needed for compliance demonstrations. Consistent use of these forms and procedures will provide uniform and complete records that will allow determination of "continuous" compliance with the standards.

Procedures other than test methods would be required to demonstrate compliance with the handling, transfer, and storage standard. Each source is required to submit an implementation plan that will include specific procedures to ensure compliance.

G. Selection of Notification, Recordkeeping, and Reporting Requirements

1. Notification Requirements

The proposed rule would require affected sources to submit an initial notification and subsequent quarterly

notifications of compliance status. Exceedances (violations) should be reported on a quarterly basis. The notification requirements in §§ 63.9 (a)–(d) and (h)–(j) of subpart A would apply to all affected sources in addition to the source category-specific requirements in the proposed rule. Sections 63.9 (e)–(g) of subpart A would not apply unless an affected source installs an add-on control device.

Section 63.9(b) of subpart A contains the initial notification requirements. The initial notification would alert the Administrator of: (1) The applicability for existing facilities or of construction for new facilities, (2) how the source plans to comply with the proposed standards, and (3) if any delays in compliance are expected. This notification would be due no later than 120 calendar days after the effective date of the rule for existing sources; for new or reconstructed sources, the due date would be within 120 days after initial startup if approval of construction or reconstruction is not required under § 63.5(d) of subpart A. In addition to the items listed in § 63.9(b) of subpart A, sources would be required to include in the initial notification: (1) The compliance procedure(s) that they intend to use for the coating operation standards; (2) procedures for ensuring compliance with the handling, transfer, and storage standard; and (3) procedures for maintaining records.

Section 63.9(h) of subpart A contains the requirements for notification of compliance status. These would notify the Administrator of whether compliance has been achieved over the past 3 months. These notifications would be due before the 60th day following completion of each 3-month period. If there are no violations within the first year, compliant sources may request permission from the Administrator to go to 6-month notifications. Because records would be compiled on a monthly basis, 60 days should provide sufficient time to prepare these notifications. In addition to the items listed in § 63.9(h) of subpart A, affected sources would be required to include in these notifications all other records that the source is required to maintain and compile on a monthly basis according to the proposed rule.

2. Recordkeeping and Reporting Requirements

The proposed rule would require affected sources to maintain adequate records to verify the compliance status of the source on a monthly basis. The recordkeeping and reporting requirements of the general provisions in §§ 63.10 (a)–(b) and (f) of subpart A would apply to all affected sources. The source category-specific requirements in the proposed rule also apply. Sections 63.10 (c)–(e) of subpart A would not apply unless an affected source installs an add-on control.

Affected sources would be required to keep records for 5 years of all VOC content certifications, VOHAP content certifications, maximum allowable dilution ratios, quantities of coatings and thinner consumed, and compliance calculations needed to determine compliance with the standards. These records would vary slightly depending on the method(s) of determining compliance under § 63.784 that the source chooses to use. Records of any Method 24 tests (or VOHAP tests) conducted on individual coatings, as applied, would also be maintained. These records are required in case the results of any such test conflicts with the results of any compliance determination conducted in accordance with the other allowable methods.

The Administrator believes that the records required under the proposed rule are necessary for a regulatory agency to determine the compliance status of an affected source efficiently and effectively. All records would be compiled each calendar month and maintained for a minimum of 5 years.

H. Operating Permit Program

Under the operating permit regulations codified at 40 CFR part 70, any source that is considered major under the Act or any nonmajor source subject to a standard under sections 111 or 112 of the Act must obtain an operating permit [see § 70.3(a)(1)]. Often, emission limits, monitoring, and reporting and recordkeeping requirements are scattered among numerous provisions of State implementation plans or Federal regulations. As discussed in the promulgated regulation for the operating permit program published on July 21, 1992 (57 FR 32250), this new permit program includes all of the air pollution control requirements that pertain to a single major stationary source in a single document. Sources subject to the program are required to submit complete permit applications within a year after a State operating permit program is approved by the EPA; if a State program is not approved, sources will submit applications to the EPA within a year after the Federal program is promulgated.

I. Solicitation of Comments

The Administrator solicits comments on all aspects of this proposal. However, the Administrator is specifically requesting comment on the topics discussed in this section. Commenters should provide available data and rationale to support their comments on each topic.

The Administrator specifically requests comments on the MACT floor determination, subcategorization, and claims by some shipyards on the need for thinning solvents beyond levels indicated by the manufacturer because of viscosity problems attributable to extremely cold weather. Specifically, comments are requested on: (1) Are such needs compulsory or more convenience, (2) why in-line heaters would not provide sufficient viscosity control, (3) what extreme climatic conditions (e.g., temperature, humidity, etc.) would justify excess thinning, (4) how such additional solvent could be linked in quantity (e.g., dilution to a preapproved viscosity setpoint), and (5) any other information that would help the Agency in this matter.

The Administrator also requests comments on the timeframe for submitting items in the initial notification that are not required under the General Provisions §§ 63.9(b) (2) and (3) of subpart A. These items are the compliance procedure(s) that the source intends to use to demonstrate compliance; procedures for ensuring compliance with the handling, storage, and transfer standards; and procedures for maintaining records. Specifically, comments are requested on whether 120 days is sufficient time to prepare and submit these items.

VIII. 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 oral presentation on the proposed standards for coating operations at shipbuilding facilities 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–92–11.

A transcript of the hearing and 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))].

C. 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 OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

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

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. The proposed rule for coating operations at shipbuilding facilities does not meet any of the criteria in the Executive Order and is therefore not subject to the requirement for a regulatory impact analysis.

It has been determined that this rule is not a "significant regulatory action" under the terms of the E.O. 12866 and is therefore not subject to OMB review.

D. Paperwork Reduction Act

The information collection requirements in the 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 document has been prepared by the EPA (ICR No. 1712.01), and a copy may be obtained from Ms. Sandy Farmer, Information Policy Branch, U.S. Environmental Protection Agency, 401 M Street SW. (Mail Code 2136), Washington, DC 20460 or by calling (202) 260–2740.

The public reporting burden for this collection of information is estimated to average 845 hours per source 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. The cost for this additional burden per source is estimated to be $27,158 during the first year.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing his burden, to Chief, Information Policy Branch, 2136, U.S. Environmental Protection Agency, 401 M Street SW., 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 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 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.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities. Using the Small Business Administration's definition of small business for SIC Code 3731 of less than 1,000 employees, and examining the result of the economic impact analysis it has been determined that no small entities will be affected by the proposed rule. Therefore, a preliminary assessment of the impact of today's proposed rule on small entities indicated that 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 will welcome comments on all aspects of the proposed rule, 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 reporting and recordkeeping requirements.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements, Standard for shipbuilding and ship repair facilities.

X. 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: November 22, 1994.

Carol M. Browner,

Administrator.

[FR Doc. 94–29824 Filed 12–5–94; 8:45 am]

BILLING CODE 6560–40–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201–1, 201–2, 201–3, 201–4, 201–6, 201–7, 201–9, 201–17, 201–18, 201–20, 201–21, 201–22, 201–24, and 201–39

RIN: 3090–AF31

Amendment of FIRMR Provisions to Ensure Currency and Relevancy

AGENCY: Information Resources Management Service, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend selected Federal Information Resources Management Regulation (FIRMR) provisions to ensure the currency and relevancy of the FIRMR. It is issued in accordance with Executive Order 12866 of September 30, 1993, which requires agencies to periodically review their significant regulations to determine whether they should be modified or eliminated.

This rule will make a number of changes to the FIRMR. Among the more significant changes, are the following:

add, change, or remove FIRMR definitions and acronyms including redefining "outdated equipment" to mean FIP equipment over six years old that is no longer in current production; revise provisions pertaining to accessibility by individuals with disabilities to implement the new focus in Pub. L. 102–569 on information rather than equipment; permit agency heads to grant exceptions to the mandatory use of a Federal Standard (FED–STD) after notification to GSA; clarify the intent of the FIRMR requirement for agencies to conduct requirements analyses "commensurate with the size and complexity of the need"; allow agencies to substitute similar documentation prepared in response to programmatic needs for requirements analyses; establish a threshold below which agencies do not have to prepare a requirements analysis or analysis of alternatives; clarify that agencies should only perform an analysis of alternatives for those alternatives most feasible to implement; raise the threshold from $50,000 to $1,000,000 for doing an analysis of alternatives limited to demonstrating that the benefits of the acquisition will outweigh the costs; require agencies that conduct telephone monitoring to use some form of oral notice or a beep tone at the beginning of a call; remove the reporting requirements to GSA for listening-in to or recording telephone conversations and toll-free telephone service; clarify procedures for economical capability and performance validation; revise the scope of obsolescence reviews to include equipment that may be obsolescing; expand the exception from $300,000 to $1,000,000 for award based on lowest offered purchase price; clarify that agencies must submit post delegation information to GSA for specific acquisition delegations; clarify procedures for evaluating outdated and obsolete information technology; and remove an antiquated clause concerning warranty exclusion and limitation of damages.

DATES: Comments are due: February 6, 1995.

ADDRESSES: Comments may be mailed to GSA/KMR, 18th & F Streets, NW., Room 3224, Washington, DC 20405, Attn: Margaret Truntich, or delivered to that address between 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Margaret Truntich, GSA, Office of Information Resources Management Policy, Regulations Analysis Division (KMR), 18th & F Streets, NW., Room 3224, Washington, DC 20405, telephone FTS/Commercial (202) 501–0837 (v) or (202) 501–0657 (tdd).

SUPPLEMENTARY INFORMATION: (1) Explanation of changes being made by this issuance are shown below:

(a) Sections 201–1.003(a), 201–3.000, 201–3,001(a), 201–3.101, 201–3.201(d), 201–3.3 and the title to part 201–3 are amended by deleting references to the FIRMR system. The FIRMR system was established to permit agencies to issue regulations that implement or supplement the FIRMR as part of the CODE of Federal Regulations (CFR). GSA has determined that agencies have not issued such regulations in the CFR since the establishment of the FIRMR, and that a FIRMR system is therefore, unnecessary. Removal of this provision does not mean that agencies may not issue internal agency directives or orders to implement or supplement FIRMR provisions.

(b) Section 201–1.003 paragraph (d) is amended by deleting responsibilities of the Archivist of the United States. It is the intent of the FIRMR to only implement GSA's authorities and responsibilities. Including the Archivist's responsibilities in the FIRMR is, therefore, unnecessary.

(c) Section 201–2.001 paragraphs (a) (1) through (6) are removed. The original text was taken from the Paperwork Reduction Act. However, not all provisions were excerpted. This resulted in some confusion. Accordingly, the text is being removed so that agencies will refer to the Paperwork Reduction Act to learn the specific responsibilities of the designated senior official.

(d) Section 201–2.001 paragraph (b) is amended by removing the last sentence which pertained to agencies not subject to the Paperwork Reduction Act. This information is adequately covered in § 201–2.002.

(e) Section 201–2.002 is amended by changing the sequence of paragraphs (a) through (c). The revised sequence more accurately aligns the responsibilities of the agency designated senior official (DSO).

(f) Section 201–3 discuss the organization of the FIRMR, how it is supplemented with other guidance issuances, and its relationship to the Federal Acquisition Regulation (FAR). Section 201–3.001 is amended to remove unnecessary details which pertain to circumstances giving rise to interim rules. This information is more appropriately discussed in § 201–3.203. Section 201–3.203 paragraph (c) replaces the term "termporary change" with the words "interim rule" to standardize terminology pertaining to revising the FIRMR. Also removed for brevity is a redundant sentence that lists the various types of guidance material already described. For consistency, the enumeration of the types of guidance issuances contained in the FIRMR (§ 201–3.001(b) (1) through (3)) is changed to small roman numerals.

(g) Section 201–3.001 paragraph (b)(1) is amended to reflect the current availability of the FIRMR on CD–ROM.

(h) Section 201–3.204 paragraph (a) is amended to update the phone number for the Government Printing Office (GPO) Bookstore.

(i) In §§ 201–4.001 and 201–39.201, the definition for outdated FIP equipment is revised to shorten the period for determining when FIP equipment is outdated. The FIRMR defines outdated FIP equipment as any FIP equipment over eight years old, based on the initial commercial installation date of that model of equipment, and that is no longer in current production. This definition has been in existence since 1986 when the product cycle of computer equipment was four years. Since that time, the product life cycle has decreased to about three years, and industry spokesmen state that this figure is decreasing even more. When microcomputers are upgraded, the product cycle may be even less since typically they are upgraded by replacing internal computer equipment has little or no market value. In recognition of these faces, the definition for outdated equipment is being revised to shorten the time interval from eight to six years after the first commercial installation at which point equipment no longer produced is considered to be outdated.

(j) Section 201–4.001 is amended by adding a new definition for "Records management. The FIRMR discusses records management in subpart 201–9.1, but has never included a definition. The definition added is the same as contained in OMB Circular A–130. Also, the existing definitions of "application software" and "common-use software" are designated (a) and (b) respectively of the larger term, "Software" for consistency of format.

(k) Section 201–4.002 is revised to include the following new acronyms: CBD, FED-STD, FSTS, GAO, GSBCA, IRPMR, MIL, OAC, and POTS. These acronyms were used in the FIRMR index, but previously were not defined.

(l) Section 201–4.003, Applicable OMB Circulars, is being added. In order to avoid future changes to FIRMR text caused by revisions of OMB Circular titles, this new section is added to include the current titles of all OMB Circulars referenced in the FIRMR.

(m) Section 201–6.001 is revised to add a new item (a)(5) to more closely reflect the provisions of the Paperwork Reduction Act, as well as address matters raised in OMB Circular A–130. These include improving service delivery, dissemination of information, increasing productivity, improving quality of decision making, reducing fraud and waste, and reducing the information processing burden. Section 201–6.001 is also revised to redesignate the previous item (5) as new item (6).

(n) A series of revisions are being made due to Pub. L. 102–569 October 29, 1992), which amended the Rehabilitation Act of 1973 broadening the scope of accessibility for individuals with disabilities. These revisions capture more thoroughly the intent of Pub. L. 102–569. The previous version of the Rehabilitation Act only required that GSA ensure those with disabilities can access "electric office equipment." The revised statute recognizes that while equipment accessibility is important, that alone is not sufficient because an agency's applications software and user interfaces can impede the functional use of a computer if they do not have features permitting use by individuals with disabilities. The revised statutory provision emphasizes that all individuals must be able to use technology to accomplish the same end objectives.

A new § 201–6.002(g) is added to include as a predominant consideration in the management and use of information and records, the importance of ensuring that individuals with disabilities can produce information and data, and have access to information and data, comparable to the information and data, and access, respectively, of others. Section 201–6.002 is also revised to redesignate the previous item (g) as new item (h).

In addition to the insertion of § 201–6.002(g), discussed above, other provisions of the FIRMR pertaining to accessibility by individuals with disabilities are being revised to incorporate the statutory intent of Pub. L. 102–569. These other FIRMR provisions are:

—201–17.001(j)—Predominant Considerations in the Management and Use of Federal Information Processing (FIP) Resources;

—201–18.001(e), which generally describes the Federal Government's statutory responsibility to foster accessibility for individuals with disabilities;

—201–18.002(c), which pertains to adoption of accessibility guidelines in agency IRM plans; and

—201–20.103–7(a), which requires agencies to incorporate accessibility requirements in their acquisitions of FIP resources.

(o) Section 201–7.001 paragraph (b) is revised to delete a reference to canceled OMB Circular A–3.

(p) Section 201–7.002 paragraph (c) is revised to clarify when information needs are determined. The existing text suggested that information needs were to be determined before conducting a requirements analysis. The revised text reflects that determining information needs and analyzing requirements are frequently concurrent activities.

(q) Section 201–9.202–1 paragraph (b)(9) is revised to update the current mailing address for the Supply Management Division.

(r) The existing text in § 201–20.001(d) referenced the specific subjects of requirements analysis and analysis of alternatives in the GSA Acquisition Guide series. The reference to the guide series is unnecessary and is being deleted.

(s) Subpart 201–20.1 is revised to clarify GSA's intent regarding the preparation of requirements analyses. Currently, the FIRMR requires agencies to document their requirements for FIP resources "by conducting a requirements analysis commensurate with the size and complexity of the need." Some agencies have questioned the necessity of conducting a requirements analysis and preparing the required documentation when a similar document has already been prepared in conformance with agency programmatic needs. The FIRMR is being revised to allow agencies to use such similar documents if they address the basic information required in a requirements analysis. Other agencies have misinterpreted the intent of the phrase "commensurate with the size and complexity of the need," and, in some cases, are over documenting requirements for small dollar acquisitions. These small dollar acquisitions are usually for commercial items readily available in the competitive marketplace. FAR planning provisions and agencies' local procurement practices provide sufficient information for requirements to justify small dollar value acquisitions.

To ensure more expeditious and efficient acquisitions, this rule establishes a threshold for when agencies must conduct requirements analyses and analyses of alternatives. Sections 201–20.102 and 201–20.202 are revised to eliminate the requirement to perform requirements analyses and analyses of alternatives for acquisitions of FIP resources when the total estimated system life costs are less than $100,000. Additionally, § 201–20.103 is revised to require that agencies only consider the factors in this section if it is appropriate to do so. This allows agencies to exercise discretion regarding whether or not to include the factors in their requirements analyses.

(t) Subpart 201–20.1 requires agencies to perform an analysis of alternatives based on the requirements analysis to determine the most advantageous alternative that will meet their needs. Like the requirements analysis, the analysis of alternatives must be "commensurate with the size and complexity of the agency's need". As indicated in § 201–20.203–1(a)(1), GSA's intention was that agencies only include in the analysis of alternatives those alternatives that are truly feasible to implement. It has come to our attention, however, that some agencies are analyzing all alternatives, whether or not they are feasible in the specific circumstance. This unnecessarily complicates and lengthens the acquisition process. Accordingly, § 201–20.202, which states the FIRMR policy on performing analyses of alternatives, is being revised to emphasize that agencies should limit the number of alternatives analyzed to those that are feasible to implement. Other changes are also being made to this subpart. Section 201–20.203–2 is being revised to increase from $50,000 to $1,000,000 the threshold for performing a more detailed analysis of alternatives. Agencies will be given the option of performing either an analysis using the present value of money if the estimated amount of their proposed acquisition is less than $1,000,000 or an analysis that demonstrates that the benefits of the acquisition will outweigh the costs. This change will help to streamline the acquisition process by reducing documentation requirements for a greater number of smaller acquisitions. Additionally, paragraph 201–20.203–2(c) is being revised to delete the title of OMB Circular A–94 and to move it to the new § 201–4.003.

(u) Section 201–20.203 paragraph (d)(2) is revised to permit agency heads to grant exceptions to FED–STDS provided GSA is notified at least 30 days prior to any use of the excepted FED–STD, e.g., in a solicitation. This change empowers agencies to accomplish their missions more effectively.

(v) Section 201–20.304 paragraphs (a) and b(1) deal with capability and performance validation. They are revised to require use of validation

techniques that are more economical to Government and industry than use of a benchmark or an operational capability demonstration (OCD). In the early years of computing, comprehensive benchmarks, stress tests, and OCDS were useful for validating reliability, performance and other requirements. In today's mature industry, the reliability and stability of the marketplace offerings are much higher. Also, there is substantial empirical data available from independent sources to assist agencies in assessing how a proposed system will perform in their environment and with their workloads. As a result, the use of benchmarks or OCDs may not be the most advantageous approach in many acquisitions. This is more likely to be the case for those acquisitions that do not require customized hardware and/or software. Agencies will not be required to select the most economical technique available that will meet their minimum needs. Additionally, § 201–20.304(b)(2) is revised to delete the adjective "actual" in front of the word "requirements". The world "actual" caused some confusion about the meaning of "When a benchmark is used as part of performance validation, agencies shall ensure, that the FIP software selected for benchmarks is representative of actual requirements * * *" In fact, agencies acquire systems to accommodate a workload over a life cycle of some years. Any agency's definition of its requirements at the time of acquisition is its best estimate of workload that will ultimately occur over the ensuing years.

(w) Section 201–20.305–3 is revised to emphasize the agency requirement for the submission of post delegation information to GAS for specific delegations. With the increased emphasis on results oriented performance, GAS will seek information demonstrating that agencies are obtaining the benefits cited in their agency procurement requests.

(x) Section 201–21.201 paragraph (b) is revised to reflect the current name and symbol of a GSA organization.

(y) Section 201–21.301 paragraphs (a) and (d) are revised to delete references to OMB Circular A–130, Appendix III.

(z) Section 201–21.401 paragraph (c) is revised to remove references to OMB Circular A–130, Appendix II, which is proposed for revision; and to remove the title of the Circular since it appears in the new § 201–4.003.

(aa) Section 201–21.43 is amended to change the annual report date from November 30 to October 20 for reporting the dollar amount charged to users for the sharing of excess FIP resources. This earlier due date allows for more timely submission of GSA's consolidated Governmentwide report to Congress.

(bb) Section 201–21.603 is amended to delete the agency reporting requirement and to add a requirement that agencies that do public service monitoring provide an oral notice or beep tone at the beginning of a call. This section currently prohibits agencies listening-in to or recording telephone conversations, on a GSA-provided telephone system, any telephone system acquired under a delegation of GSA procurement authority, or any telecommunications system approved in accordance with the Federal Property and Administrative Services Act of 1949, as amended, except under certain circumstances. Agencies that listen-in or record conversations for public safety, public service monitoring or to assist individuals with disabilities must notify GSA in writing at least 30 days before the operational date. This notification provision is being removed because it places an unnecessary burden on agencies. GSA does not have any affirmative enforcement or other function with regard to listening-in that would make this reporting requirement necessary. Such responsibilities rest solely with the reporting agency. Accordingly, in line with placing authority and responsibility at the appropriate level, this reporting requirement will be removed as will the provision that GSA will periodically review agency listening-in activities.

Section 201–603 paragraph (d)(4)(ii) requires that agencies that perform public service monitoring provide for continuous positive action to inform the public of that monitoring. Some agencies have interpreted this to mean that including a statement in agency publications that calls to the agency may be monitored meets this requirements. After careful review, GSA has determined that since all callers may not see such publications, additional notification is required. Accordingly, we propose adding a provision that requires agencies to provide an upfront announcement or beep tone at the beginning of a call to advise callers of potential monitoring. Since such an announcement may increase communications costs, we request that agencies provide us detailed information about any negative impact implementation of this provision may have on them. We will carefully review this information before reaching a decision on whether to include this provision in the final rule.

(cc) Section 201–21.604, requires agencies to forward to GSA copies of each order for toll free telephone service. Documentation submitted is to include estimates of monthly costs and usage, and cite the relevant statute, Executive Order, or other regulation directing the toll free service. This provision is being removed because the use of toll-free telephone services are sufficiently routine that close supervision by GSA is no longer needed. Removal of this provision reduces costly and burdensome over-regulation and places authority and responsibility with the agency.

(dd) Section 201–22.303 is revised to expand the scope of the subpart. Currently, this provision requires agencies to review the use of equipment that is already outdated and to determine if continued use is economical. This provision is revised also to expand the scope of the review to include equipment that may be obsolescent. This change is made to encourage agencies to ensure that their FIP equipment always remains economical and efficient. Guidelines are provided to assist agencies in identifying obsolescent equipment. Agencies are encouraged to replace their obsolescent equipment if the cost of continued use exceeds the cost of acquiring and operating newer technology.

(ee) Section 201–39.1001–1 is amended by removing the words "OMB Bulletin 88–16" in paragraph (i) and adding in their place "OMB Bulletin 90–08".

(ff) Sections 201–39.1402–2 paragraph (c) and 201–39.1501–2 paragraph (c) are revised to increase the thresholds below which certain factors need not be considered in determing the lowest bid or total proposed cost, respectively. In determining the lowest bid in a sealed bidding acquisition, § 201–39.1402–1 requires agencies to factor in costs pertaining to life cycle support and conversion. In determing the total cost of a proposal in a negotiated acquisition, § 201–39.1501–1 requires agencies to factor in costs pertaining to life cycle support and conversion. These thresholds are increased from $300,000 to $1,000,000 in order to give agencies greater discretion in managing their acquisitions.

(gg) Subpart 201–39.46 is amended to delete provisions that are more adequately addressed in FAR Subpart 46. This subpart addresses quality assurance and provides guidance limiting contractor liability in contracts for FIP resources. Unless circumstances warrant otherwise, contracting officers are instructed to insert a limitation of liability clause found at § 201–39.5206. FAR Subpart 46 also provides guidance on limitation of contractor liability. The

FAR's guidance is more comprehensive and flexible than is the FIRMR's. The FAR provides multiple contractual clauses from which a contracting officer must choose. One clause applies to contracts for the delivery of non-high value end items, a second to the delivery of high-value end items, and a third to the provision of services. Contracting officers are instructed to combine relevant parts of each clause for contracts involving more than one of these categories. Accordingly, the FIRMR provision and clause found at § 201–39.5202–6 are removed so that the corresponding FAR provision will apply.

(2) GSA has determined that this rule is not a significant rule for the purposes of Executive Order 12866 of October 4, 1993, because it is not likely to result in any of the impacts noted in Executive Order 12866, affect the rights of specified individuals, or raise issues arising from the policies of the Administration. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Parts 201–1, 201–2, 201–3, 201–4, 201–6, 201–7, 201–9, 201–11, 201–17, 201–18, 201–20, 201–21, 201–22, 201–23, 201–24, and 201–39

Archives and records, Computer technology, Government procurement, Property management, Records management, Telecommunications.

Accordingly 41 CFR parts 201–1, 201–2, 201–3, 201–4, 201–6, 201–7, 201–9, 201–11, 201–17, 201–18, 201–20, 201–21, 201–22, 201–23, 201–24, and 201–39 are proposed to be amended as follows:

PART 201–1—APPLICABILITY AND AUTHORITY

1. The authority citation for part 201–1 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

§ 201–1.003 [Amended]

2. Section 201–1.003 is amended by removing the word "system" from paragraph (a) and removing paragraph (d).

PART 201–2—DESIGNATED SENIOR OFFICIALS

3. The authority citation for part 201–2 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

4. Section 201–2.001 is revised to read as follows:

§ 201–2.001 General.

(a) The PRA requires that the head of each executive agency designate a senior official who shall report directly to the agency head. The designated official is responsible for carrying out the IRM function assigned to the agency by the PRA.

(b) The PRA also assigns to the designated official the responsibility for the conduct of and accountability for acquisitions of FIP resources made under a DPA from GSA. Therefore, when GSA delegates its procurements authority to executive agencies, it grants those delegations to the designated officials when GSA determines that such officials are sufficiently independent of program responsibility and have sufficient experience, resources, and ability to fairly and effectively carry out procurements under GSA's authority as provided by 40 U.S.C. 759(b)(3).

§ 201–2.002 [Amended]

5. Section 201–2.002 is amended by redesignating paragraphs (a), (b), and (c) as paragraphs (c), (a), and (b) respectively.

§ 201–2.003 [Amended]

6. Section 201–2.003 is amended by removing the words "18th and F Streets, NW.," in paragraph (a).

PART 201–3—THE FIRMR

7. The authority citation for part 201–3 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

8. The heading of Part 201–3 is revised to read as set forth above.

9.–10. Section 201–3.000 is revised to read as follows:

§ 201–3.000 Scope of part.

This part describes the Federal Information Resources Management Regulations.

11. Section 201–3.001 is revised to read as follows:

§ 201–3.001 General.

(a) The Federal information Resources Management Regulation (FIRMR) is codified in the Code of Federal Regulations (CFR) and includes interim rules which have the same effect as codified material.

(b) From time to time, the General Services Administration (GSA) will issue nonregulatory publications to provide guidance and information:

(1) FIRMR bulletins contain guidance and information on various information resources management areas. FIRMR bulletins do not constitute binding authority, but should be used as an aid in understanding GSA programs and the FIRMR. FIRMR bulletins are published in Appendix B of the looseleaf edition of the FIRMR and are available along with the FIRMR from GPO by subscription or on GSA's CD–ROM.

(2) Handbooks and reports address specific program or technical areas where the audience generally will be defined by the subject matter.

(3) Appendix C of the looseleaf edition of the FIRMR contains a listing of current bulletins, handbooks, and reports and information on how to obtain them.

§ 201–3.101 [Amended]

12. In § 201–3.101, remove the word "system".

13. Section 201–3.201 is amended by revising paragraph (d) to read as follows:

§ 201–3.201 Issuance.

* * * * *

(d) The FIRMR is issued as chapter 201 of title 41, CFR.

14. Section 201–3.203 is amended by revising paragraph (c) to read as follows:

§ 201–3.203 Maintenance.

* * * * *

(c) The Administrator of General Services may issue an interim rule to the FIRMR when solicitation of comments is impractical due to urgent and compelling circumstances (e.g., when a new statute must be implemented in a relatively short period of time). However, the interim rule will make provision for a public comment period of at least 30 days for consideration in the formulation of the final change to the FIRMR.

15. Section 201–3.204 is amended by removing the phone number "275–2091" in paragraph (a) and add in its place "512–0132".

§§ 201–3.300—201–3.302 (Subpart 201–3.3)—[Reserved]

16. Subpart 201–3.3 consisting of §§ 201–3.300 through 201–3.302 is removed and reserved.

PART 201–4—DEFINITIONS, ACRONYMS AND OMB CIRCULARS

17. The authority citation for part 201–4 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

18.–19. Section 201–4.000 is revised to read as follows:

§ 201–4.000 Scope of part.

This part defines words, terms, acronyms, and OMB Circulars used in the FIRMR.

§ 201–4.001 [Amended]

20. Section 201–4.001 is amended by removing the words "Information resources management" and add in their place "Information resources management (IRM)".

§ 201–4.001 [Amended]

21. Section 201–4.001 is amended by removing the word "eight" in the definition *Outdated FIP equipment* and add in its place "six".

22. Section 201–4.001 is amended by adding a new definition to read as follows:

§ 201–4.001 Definitions.

* * * * *

Records management means the planning, controlling, directing, organizing, training, promoting, and other managerial activities involved with records creation, records maintenance and use, and records disposition in order to achieve adequate and proper documentation of the policies and transactions of the Federal Government and effective and economical management of agency operations (44 U.S.C. 2901(2)).

* * * * *

§ 201–4.001 [Amended]

23. Section 201–4.001 is amended by removing the word "Software" and in its place adding "Software includes—" and adding paragraph designations to the undesignated paragraphs to read as follows:

Software includes—

(a) *Application software* * * *

(b) *Common-use software* * * *

* * * * *

24. Section 201–4.002 is amended by removing the acronym "MAS", alphabetizing the acronyms "GPO" and "GSA", and adding new acronyms to read as follows:

§ 201–4.002 Acronyms.

* * * * *

CBD means Commerce Business Daily.

* * * * *

FED–STD means Federal Telecommunications Standards.

* * * * *

FSTS means Federal Secure Telephone Service.

* * * * *

GAO means General Accounting Office.

GPO means Government Printing Office.

GSA means General Services Administration.

GSBCA means General Services Board of Contract Appeals.

* * * * *

IRPMR means Information Resources Procurement and Management Review.

* * * * *

MOL means Maximum Ordering Limitation.

* * * * *

OAC means Original Acquisition Cost.

* * * * *

POTS means Purchase of Telephones and Services.

* * * * *

25. Section 201–4.003 is added to read as follows:

§ 201–4.003 Applicable OMB Circulars.

A–11 Preparation and submission of budget estimates.

A–94 Benefit-cost analysis of Federal programs; guidelines and discounts.

A–127 Financial management systems.

A–130 Management of Federal information resources.

PART 201–6—PREDOMINANT CONSIDERATIONS

26. Section 201–6.001 is amended by revising paragraphs (a)(3) and (a)(5) and adding paragraph (a)(6) to read as follows:

§ 201–6.001 General.

(a) * * *

(3) Maximize the usefulness of information collected, maintained, and disseminated by the Federal Government;

* * * * *

(5) Ensure that FIP resources are acquired and used by the Federal Government in a manner which improves service delivery and program management, increases productivity, improves the quality of decisionmaking, reduces waste and fraud, and wherever practicable and appropriate, reduces the information processing burden for the Federal Government and for persons who provide information to and for the Federal Government; and

(6) Ensure that the collection, maintenance, use, and dissemination of information by the Federal Government is consistent with applicable laws, regulations, and executive orders.

* * * * *

27. Section 201–6.002 is amended by redesignating paragraphs (g) through (m) as paragraphs (h) through (n) respectively and adding a new paragraph (g) to read as follows:

§ 201–6.002 Predominant considerations.

* * * * *

(a) * * *

(g) Ensure that individuals with disabilities can produce information and data, and have access to information and data, comparable to the information and data, and access, respectively, of other individuals.

* * * * *

PART 201–7—PLANNING

28. The authority citation for part 201–7 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

29. Section 201–7.001 is amended by revising paragraph (b) to read as follows:

§ 201–7.001 General.

* * * * *

(b) The Paperwork Reduction Act (44 U.S.C. Chapter 35) OMB Circular No. A-11, and No. A–130, and the Computer Security Act of 1987 (Public Law 100–235) require agencies to conduct various information resources management (IRM) planning activities. OMB Circular No. A–130 (appendix IV) states that executive agencies must plan for how they will process and transmit information, how they will use it, what provisions they will make for access to it, whether and how they will disseminate it, how they will store it, and finally, how they will dispose of the information.

* * * * *

30. Section 201–7.002 is amended by revising paragraph (c) to read as follows:

§ 201–7.002 Policies.

* * * * *

(c) Ensure that the agency's information needs are documented on a timely basis, for example when conducting a requirements analysis for FIP resources.

PART 201–9—CREATION, MAINTENANCE, AND USE OF RECORDS

31. The authority citation for part 201–9 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

§ 201–9.202–1 [Amended]

32. Section 201–9.202–1 is amended by removing the words "Inventory and Requisition Management Division (FCNI)" in paragraph (b)(9) and add in their place "Supply Management Division (3FNI–CO)".

PART 201–17—PREDOMINANT CONSIDERATIONS

33. The authority citation for part 201–17 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

34. Section 201–17.001 is amended by revising paragraph (j) to read as follows:

§ 201–17.001 Predominant consideration.

* * * * *

(j) Provide individuals with disabilities (employees and others who create and/or use the agency's information and data) the ability to produce information and data, and have access to information and data, comparable to the information and data, and access, respectively, of other individuals.

* * * * *

PART 201–18—PLANNING AND BUDGETING

35. The authority citation for part 201–18 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

36. Section 201–18.001 is amended by revising paragraph (e) to read as follows:

§ 201–18.001 General.

* * * * *

(e) Section 508 of the Rehabilitation Act Amendment of 1992 (Pub L. 102–569) requires the Federal Government to adopt guidelines for information and data accessibility designed to ensure that individuals with disabilities can produce information and data, and have access to information and data, comparable to information and data, and access, respectively, of other individuals. This Act requires that agencies comply with such guidelines. FIRMR Bulletin C–8, provides guidance on planning for FIP resources to accommodate the needs of individuals with disabilities.

* * * * *

37. Section 201–18.002 is amended by revising paragraph (c) to read as follows:

§ 201–18.002 Policies.

* * * * *

(c) Agencies shall adopt information and data accessibility guidelines similar to those described in FIRMR Bulletin C–8 in their planning process.

PART 201–20—ACQUISITION

38. The authority citation for part 201–20 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

§ 201–20.001 [Amended]

39. Section 201–20.001 is amended by removing paragraph (d).

40. Section 201–20.102 is revised to read as follows:

§ 201–20.102 Policy.

Agencies shall establish and document requirements for FIP resources by conducting a requirements analysis, or similar study, commensurate with the size and complexity of the need except for those acquisitions whose total dollar value, including all optional quantities and periods over the life of the contract does not exceed $100,000. Requirements analyses shall not be performed when the value of acquisitions are less than the $100,000 threshold. Agencies shall follow local practice for documenting such small dollar acquisitions. Agencies shall justify all requirements for other than full and open competition in accordance with FAR Part 6 whether or not a requirements analysis is performed.

41. Section 201–20.103 is revised to read as follows:

§ 201–20.103 Procedures.

Agencies shall consider the following factors in establishing requirements, as applicable:

42. Section 201–20.103–7 is amended by revising paragraph (a) to read as follows:

§ 201–20.103–7 Accessibility requirements for individuals with disabilities.

(a) Agencies shall acquire FIP resources that allow individuals with disabilities to produce information and data, and have access to information and data, comparable to the information and data, and access, respectively, of other individuals. Agency plans shall address both present and future needs.

* * * * *

43. Section 201–20.202 is revised to read as follows:

§ 201–20–202 Policy.

Using the results of the requirements analysis as the basis, agencies shall conduct an analysis of alternatives commensurate with the size and complexity of the requirement to identify the most advantageous alternative to the Government. The number of alternatives analyzed should be limited to those considered the most feasible to be implemented. Agencies shall not conduct analyses of alternatives for those acquisitions whose total dollar value, including all optional quantities and periods over the life of the contract, does not exceed $100,000. Agencies shall instead follow local practice to identify the most advantageous alternative.

44. Section 201–20.203–2 is revised to read as follows:

§ 201–20.203–2 Cost for each alternative.

(a) In the analysis of alternatives, agencies shall calculate the total estimated cost, using the present value of money, for each feasible alternative unless the anticipated cost of the acquisition is $1,000,000 or less. The total estimated cost for each alternative shall include system life cost for that alternative and any other costs that can be identified with the alternative incurred either before or after the system life period.

(b) When the anticipated cost of the acquisition is $1,000,000 or less, the total estimated cost may be limited to an analysis demonstrating that the benefits of the acquisition will outweigh the costs.

(c) Agencies shall follow guidance in OMB Circular No. A–94, when calculating the cost of each alternative.

45. Section 201–20.303 is amended by revising paragraph (d)(2) to read as follows:

§ 201–20.303 Standards.

* * * * *

(d) * * *

(1) * * *

(2) *Exceptions.* An agency head may grant an exception to the mandatory use of a FED-STD upon receipt of adequate documentation. If an agency head grants an exception to the use of an individual FED-STD, a deviation from the FIMR is not required. However, GSA must be notified at least 30 days prior to any use of the excepted FED-STD at the following address: General Services Administration, Regulation Analysis Division (KMR), 18th & F Streets, NW., Washington, DC 20405.

46. Section 201–20.34 is amended by removing paragraph (b)(1), redesignating paragraph (b)(2) as paragraph (b)(1) and revising paragraphs (a) and (b)(2) to read as follows:

§ 201–20.304 Capability and performance validation.

(a) *Policy.* When acquiring FIP resources, an agency shall use the most economical technique available to provide reasonable assurance that capability and performance requirements are met.

(b) *Procedures.* (1) * * *

(2) When a benchmark is used as part of performance validation, agencies shall ensure that the FIP software selected for the benchmark is representative of the requirements and requires the minimum amount of reprogramming or conversion.

47. Section 201–20.305–3 is revised to read as follows:

§ 201–20.305–3 Specific acquisition delegations.

(a) Agencies shall submit an agency procurement request (APR) to GSA and receive a specific acquisition DPA if the acquisition is not covered by a regulatory or specific agency DPA. Procedures for requesting a DPA for a specific acquisition are provided in FIRMR Bulletin C–5.

(b) A description of the Trail Boss program and procedures for requesting a specific acquisition DPA under the Trail Boss Program are provided in FIRMR Bulletin C–7. Participation in the Trail Boss Program is optional. However, a Trail Boss request shall be submitted in accordance with FIRMR Bulletin C–7.

(c) GSA may require agencies to submit post delegation information such as contract award, milestone schedules, contract costs, program performance measures, and technology costs.

PART 201–21—OPERATIONS

48. The authority citation for part 201–21 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

§ 201–21.201 [Amended]

49. Section 201–21.201 is amended by removing the words "Federal Equipment Data Center (WKHE)" in paragraph (b) and add in their place "Federal Data Systems Division (WKH)".

§ 201–21.301 [Amended]

50. Section 201–21.301 is amended by removing the words "Appendix III to" in paragraph (a).

§ 201–21.303 [Amended]

51. Section 201–21.303 is amended by removing the words "Appendix III" in paragraph (d).

52. Section 201–21.401 is amended by revising paragraph (c) to read as follows:

§ 201–21.401 General.

* * * * *

(c) OMB Circular No. A–130, establishes Governmentwide procedures for cost accounting and recovery for shared resources.

§ 201–21.403 [Amended]

53. Section 201–21.403 is amended by removing the date "November 30" in paragraph (a)(2)(ii) and adding in its place "October 20".

§ 201–21.603 [Amended]

54. Section 201–21.603 is amended by revising paragraphs (d)(1) and (d)(2), removing paragraphs (d)(3) and (d)(6), redesignating paragraphs (d)(4) and (d)(5) as paragraphs (d)(3) and (d)(4), and revising the new paragraph (d)(3)(ii) to read as follows:

(a) * * *

(d) *Procedures.* (1) Agencies that plan to listen-in to or record telephone conversations under § 201–21.603(c) (2), (3), or (4) shall prepare a determination of need. A determination as used in this section means a written justification signed by the agency head or the head's designee, that specifies the operational need for listening-in to or recording telephone conversations; indicates the specific system and location where monitoring is to be performed; lists the number of telephones or recorders involved; and establishes operating times and an expiration date for the monitoring.

(2) Agencies shall review, at least every 2 years, the need for each determination authorizing listening-in or recording. Agency documentation to continue or terminate the program shall be maintained in agency files.

* * * * *

(3) * * *

(ii) An announcement or beep tone at the beginning of a call to inform the public of monitoring;

* * * * *

§ 201–21.604 [Removed]

55. Section 201–21.604 is removed.

PART 201–22—FEDERAL INFORMATION RESOURCES MANAGEMENT (IRM) REVIEW PROGRAM

56. The authority citation for part 201–22 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

57. The heading of Part 201–22 is revised as set forth above and Section 201–22.303 is revised to read as follows:

§ 201–22.303 Procedures.

(a) Agencies shall evaluate their existing outdated and/or obsolescent FIP resources to determine whether the cost of operating them is greater than the cost of acquiring and operating technologically newer resources. FIRMR Bulletin C–27 provides guidance that can be used for identifying obsolescent equipment.

(b) When the cost of operating existing outdated and/or obsolescent FIP resources is greater than the cost of acquiring and operating technologically newer resources, agencies shall replace the existing less cost effective resources.

PART 201–24—GSA SERVICES AND ASSISTANCE

58. The authority citation for part 201–24 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

§ 201–24.001 [Amended]

59. Section 201–24.001 is amended by removing paragraph (g).

PART 201–39—ACQUISITION OF FEDERAL INFORMATION PROCESSING (FIP) RESOURCES BY CONTRACTING

60. The authority citation for part 201–39 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

61. Section 201–39.001 is revised to read as follows:

§ 201–39.001 General.

(a) In addition to this part 201–39, contracting officers should review and be familiar with the policies and procedures contained in the complete FIRMR, for example, parts 201–20 and 201–24 of this chapter.

(b) To assist Federal agencies in preparing solicitations for FIP resources, the General Services Administration (GSA) makes available standard solicitations and other guidance. Federal agencies can obtain copies of the standard solicitations by contacting: General Services Administration, Regulations Analysis Division (KMR), 18th & F Streets, NW., Washington, DC 20405. Acquisition guides may be obtained by contacting: General Services Administration, Agency Liaison Division (KML), 18th and F Streets, NW., Washington, DC 20405.

§ 201–39.201 [Amended]

62. Section 201–39.201 is amended by removing the word "eight" in the definition *Outdated FIP equipment*, and adding in its place the word "six".

§ 201–39.1001–1 [Amended]

63. Section 201–39.1001–1 is amended by removing the numbers "88–16" in paragraph (i), and adding in their place "90–08".

§ 201–39.1402–2 [Amended]

64. Section 201–39.1402–2 is amended by removing the number "$300,000" in paragraph (c) and adding in its place "$1,000,000."

§ 201–39.1501–2 [Amended]

65. Section 201–39.1501–2 is amended by removing the number "$300,000" in paragraph (c) and adding in its place "$1,000,000."

§§ 201–39.4600 and 201–39.4601 (Subpart 201–39.46)—[Reserved]

66. Subpart 201–39.46 consisting of §§ 201–39.4600 and 201–39.4601 is removed and reserved.

§ 201–39–5202–6 [Reserved]

67. Section 201–39.5202–6 is removed and reserved.

Dated: September 9, 1994.

Francis A. McDonough,

Assistant Commissioner for Federal Information Resources Management.

[FR Doc. 94–29081 Filed 12–5–94; 8:45 am]

BILLING CODE 6820–25–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–266 and 93–215, FCC 94–286]

Cable Television Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Seventh Notice of Proposed Rulemaking.

SUMMARY: This seventh notice of proposed rulemaking is one segment of the Sixth Order on Reconsideration, Fifth Report and Order and Seventh Notice of Proposed Rulemaking in this proceeding. The final rules adopted in this decision may be found elsewhere in this issue. In the Seventh Notice of Proposed Rulemaking, the Commission sought comment on whether cable operators electing to use the per channel adjustment under the Commission's new rules should be allowed to take the 7.5% mark-up on programming cost increases for channels added to the system before May 15, 1994; and whether operators electing to use the current going forward rules should be permitted to pass-through the 7.5% mark-up on new programming cost increases after the initial mark-up on programming costs of new channels. The intended effect of this proposal is to eliminate the pass-through to subscribers of unnecessary cost increases.

DATES: Comments are due on or before January 13, 1995 and reply comments are due on or before February 13, 1995.

ADDRESSES: Federal Communications Commission, Washington, DC, 20554.

FOR FURTHER INFORMATION CONTACT: Paul D'Ari or Joel Kaufman, (202) 416–0800.

SUPPLEMENTARY INFORMATION: This is the proposed rules segment of the Commission's Sixth Order on Reconsideration, Fifth Report and Order and Seventh Notice of Proposed Rulemaking in MM Docket No. 92–266 and MM Docket No. 93–215, FCC 94–286, adopted November 10, 1994, and released November 18, 1994. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. ("ITS, Inc.") at (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Seventh Notice of Proposed Rulemaking

Background

A. The Commission's existing rate regulation rules permit operators to increase rates by a per channel amount when channels are added to basic service tiers (BSTs) and cable programming service tiers (CPSTs), with the per channel amount decreasing as the number of channels on a system increases. 47 CFR 76.922(e). These rules also permit operators to pass through to subscribers the costs of obtaining programming plus a 7.5% mark-up on new programming costs. 47 CFR 76.922(d)(3)(xi).

B. The revised regulations adopted pursuant to the Sixth Order on Reconsideration and Fifth Report and Order provide that operators may adjust their rates after December 31, 1994, for channel additions occurring after May 14, 1994. Operators electing to use the new rules will be allowed to take a per channel mark-up of up to 20 cents for each channel added to cable programming service tiers ("CPSTs). Operators may make rate adjustments under this rule at any time during the three-year period beginning on January 1, 1995. They may not make per channel adjustments to monthly rates totalling more than $1.20 per subscriber over the first two years of the three-year period for new channels added on CPSTs or by more than $1.40 over the full three-year period. Operators may use any portion of the Operator's Cap to recover license fees associated with adding new channels to CPSTs. In addition, operators may recover an additional amount of not more than 30 cents per subscriber per month for license fees associated with adding new channels during the first and second years the Operator's Cap is in effect. In the third year, license fees will not be subject to special rules, but will be subject to the general rate rules.

C. In addition, the Commission determined that operators electing to use the 20 cent per channel adjustment may not take the 7.5% mark-up on programming cost increases, including retransmission consent fees and copyright fees incurred for carriage of broadcast signals, for channels added on or after May 15, 1994. The Commission made this determination because its analysis indicates that the 20 cent per channel adjustment will provide full and fair compensation to operators adding new channels to CPSTs.

Discussion

D. The Commission believes that for operators using the per channel adjustment of up to 20 cents, maintaining the 7.5% mark-up on programming cost increases for channels offered before May 15, 1994, may no longer be necessary given the total incentive structure provided in the revised going forward rules. In addition, the 7.5% mark-up on such channels may create an artificial incentive for the operator to continue to offer programming that the operator would not otherwise continue to offer. For these reasons, the Commission tentatively concludes that the 7.5% mark-up is unnecessary for such operators with respect to increases in programming costs for channels offered before May 15, 1994. The Commission solicits comment on whether operators electing to use the per channel adjustment of up to 20 cents under the new rules should be allowed to take the 7.5% mark-up on increases in programming costs, including retransmission consent fees and copyright fees incurred for carriage of broadcast signals, for channels added before May 15, 1994. If the Commission decides that such operators may not take a 7.5% mark-up on increases in programming costs, it will not consider requiring cable operators to prospectively remove from rates any 7.5% mark-up added prior to the effective date of a final rule on this issue.

E. The Commission believes that the 7.5% mark-up on new programming costs when channels are initially added to a system ought be preserved for systems that continue to use the existing going forward rules because the 7.5% mark-up is an important part of the total package of incentives to add new programming under the existing rules. The Commission's rules permitting operators to pass through external costs are generally intended to compensate for added costs outside the operators' control and not to provide an additional mark-up without a clear policy purpose. In contrast to the situation where the goal of providing incentives to add new programming services justifies a mark-up, there appears to be no strong reason to allow a mark-up programming cost increases for a service already being offered. The Commission therefore solicits comment on whether operators electing to use the current going forward

rules should be permitted to pass-through the 7.5% mark-up on programming cost increases after the initial mark-up on the programming cost of new channels. The Commission will not, however, consider prospectively removing from rates any 7.5% mark-up that was reflected in rates prior to our reaching a decision on this issue.

Administrative Matters

F. *Initial Regulatory Flexibility Analysis.* Pursuant to Section 603 of the Regulatory Flexibility Act, the Commission has prepared the following initial regulatory flexibility analysis (IRFA) of the expected impact of these proposed policies and rules on small entities. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the Notice, but they must have a separate and distinct heading designating them as responses to the regulatory flexibility analysis. The Secretary shall cause a copy of the Notice, including the initial regulatory flexibility analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with Section 603(a) of the Regulatory Flexibility Act, Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. Section 601 et seq. (1981).

I. Reason for action. The Cable Television Consumer Protection and Completion Act of 1992 requires the Commission to prescribe rules and regulations for determining reasonable rates for basic tier cable service and to establish criteria for identifying unreasonable rates for cable programming services. The Commission's existing rate regulations permit operators to pass through to subscribes the costs of obtaining programming plus a 7.5% mark-up on new programming costs. The revised rules, adopted pursuant to the Sixth Order on Reconsideration and Fifth Report and Order, permit operators to use a new per channel adjustment methodology for channels added on or after May 15, 1994, and to eliminate the 7.5% mark-up on new programming costs for those channels. This Notice proposes to determine extent to which cable operators electing to use either the existing or the new going forward rules, can continue to pass through to subscribers a 7.5% mark-up on increases on new programming costs.

II. Objectives. To propose rules to implement Section 3 of the Cable Television Consumer Protection and Competition Act of 1992. The Commission also desires to adopt rules that will be easily interpreted and readily applicable and, whenever possible, minimize the regulatory burden on affected parties.

III. Legal Basis. Action as proposed for this rulemaking is contained in Sections 4(j), 303(r) and 623 of the Communications Act of 1934, as amended.

IV. Description, potential impact and number of small entities affected. The Commission anticipates a possible impact on small entities because the Notice addresses the extent to which cable operators, including small cable operators, electing to use either the existing or the new going forward rules, can continue to pass through to subscribers a 7.5% mark-up on increases on new programming costs.

V. Reporting, record keeping and other compliance requirements. None.

VI. Federal rules which overlap, duplicate or conflict with this rule. None.

VII. Any significant alternatives minimizing impact on small entities and consistent with stated objectives. None.

G. Paperwork reduction Act. The requirements adopted herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no new or modified information collection requirements on the public.

Procedural Provisions

H. Ex parte Rules-Non-Restricted Proceeding. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided that they are disclosed as provided in Commission rules. See generally 47 CFR 1.11202, 1.1203, and 1.1206(a).

I. Pursuant to applicable procedures set forth in 1.415 and 1.419 of the Commission's Rules, 47 CFR Sections 1.415 and 1.419, interested parties may file comments on or before January 13, 1995, and reply comments on or before February 13, 1995. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. If you want each Commissioner to receive a personal copy of your comments and reply comments, you must file on original plus nine copies. You should send comments and reply comments to Office of the Secretary, Federal Communications Commission, 1919 M Street, N.W. Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Room 239, Federal Communications Commission, 1919 M Street N.W., Washington D.C. 20554.

Ordering Clauses

J. Authority for this Further Notice of Proposed Rulemaking is contained in Sections 4(i), 4(j), 303(r), 612, 622(c) and 623 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r), 532(c) and 543.

K. *It is ordered,* That, pursuant to Sections 4(i), 4(j), 303(r), and 623 of the Communications Act of 1934, 47 U.S.C. §§ 154(i), 154(j), 303(r), and 543, Notice is hereby given of proposed amendments to Part 76, in accordance with the proposals, discussions, and statement of issues in this Further Notice of Proposed Rulemaking, and that Comment is Sought regarding such proposals, discussion, and statement of issues.

List of Subjects in 47 CFR Part 76

Cable television

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 94–29444 Filed 12–5–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

48 CFR Part 242

Defense Federal Acquisition Regulation Supplement; Personal Services Compensation

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Department of Defense is proposing to amend the Defense Federal Acquisition Regulation Supplement to establish a dollar threshold for DoD contractors for application of the FAR requirements for contractor compensation system reviews.

DATES: Comments on the proposed rule should be submitted in writing at the address shown below on or before February 6, 1995, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Mr. Eric R. Mens, PDUSD(A&T)DP/DAR, IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 602–0350. Please cite DAR Case 91–085D in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Eric R. Mens, (703) 602–0131.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed DFARS rule supplements a proposed FAR rule concerning the allowability of personal services compensation costs which was published in the **Federal Register** for public comment on October 11, 1994 (59 FR 51399). The proposed DFARS rule would limit the FAR compensation system review procedures to DoD prime contractors or subcontractors which have received awards totaling $50 million or more in the previous fiscal year and for which cost or pricing data was submitted.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected DFARS subpart will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite DAR Case 91–085D in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the proposed rule does not impose any additional reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 48 CFR Part 242

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, it is proposed that 48 CFR Part 242 be amended as follows:

PART 242—CONTRACT ADMINISTRATION

1. The authority citation for 48 CFR Part 242 continues to read as follows:

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

2. Subpart 242.13 is added to read as follows:

Subpart 242.13—Contractor Compensation Systems

Sec.

242.1303 Applicability.

Subpart 242.13—Contractor Compensation Systems

242.1303 Applicability.

(a) The review procedures at FAR 42.1306 apply only to DoD contractors which in their preceding fiscal year received Government prime contracts or subcontracts totaling $50 million or more for which cost or pricing data was submitted.

[FR Doc. 94–29878 Filed 12–5–94; 8:45 am]

BILLING CODE 5000–04–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1043 and 1084

[Ex Parte No. MC–223]

Electronic Filing of Surety Bonds, Trust Fund Agreements, Insurance Certificates, and Cancellations

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to modify our regulations to provide for the electronic filing of surety bonds, trust fund agreements, certificates of insurance and cancellations. We currently receive approximately 102,000 such filings each year on prescribed printed forms, most of which are filed by a relatively small number of insurers. As compared to the printed forms and mailed filings, we believe that electronic filing will result in greater time and cost efficiencies for both the ICC and insurers.[1] Electronic filing will be optional, and insurers may continue to file the printed forms.

DATES: Comments are due January 5, 1995.

ADDRESSES: Send comments (an original and 10 copies) referring to Ex Parte No. MC–223 to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, NW, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Patricia A. Burke, (202) 927–5520 or James W. Greene, (202) 927–5612. [TDD for the hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: We automated our receipt of insurance certificates and cancellation notices in 1983. Since that time, the Commission's computer system has remained unchanged in the face of staff cuts and increased insurance filings. The current system is maintained on a contracted time-sharing system (Interactive Services, Inc.) DEC 20/60 mainframe computer.

Insurance filings are processed manually, with visual inspection of each item and keying in the data. If the insurance filing is not complete or the computer rejects the entry, a rejection letter is generated and mailed to the insurance company. An insurance master file is used to generate monthly billings to insurance companies. Because the Commission's current insurance system is labor intensive, and thus vulnerable to human error, the potential exists for legal liability due to incomplete or inaccurate insurance data on file at the Commission. Thus, it is crucial that we develop more efficient ways to handle our insurance responsibilities.

We expect a significant percentage of filings to be made electronically. For example, one insurer, which accounts for a large number of the agency's monthly insurance filings, already has a compatible automated system, and must reduce the filings to printed form for filing with the Commission. This proposal eventually will improve the accuracy and timeliness of our processing and reduce the overall cost to the Commission and the public.

Accordingly, we propose to modify our regulations to permit the electronic filing of all surety bonds, trust fund agreements, insurance certificates and cancellations. Electronic filing would be done through the transmission of ASCII delimited files (i.e., all records must have the same number of fields separated by commas) by way of dial-up access to a local telephone number in the Washington, D.C., metropolitan area. We welcome comments on whether the ability to file electronically should be extended to all of these forms and request comments specifically on electronic filing of property broker security instruments (BMC 84 surety bond and BMC 85 trust fund agreement). In that regard, we note that the BMC 84's and BMC 85's filed are the actual security, whereas the other forms certify that the underlying policy or bond has been executed.

We currently maintain a data base of regulated carriers that includes insurance information and other data. The electronic filing capability we propose will allow us to maintain electronically the insurance information on that data base, rather than input it

[1] In Ex Parte No. 55 (Sub-No. 94), *Revision of Application Procedures and Corresponding Regulations*, (59 FR 51546, October 12, 1994), we requested comments on our proposal that would permit motor carrier applicants to include proof of insurance in their applications. Currently the Commission only accepts proof of insurance from the insurance company. Electronic filing of the initial insurance form will enhance the expedited compliance objectives contemplated in that proceeding.

manually from the printed forms, without requiring a major rewrite of the entire system. While a more sophisticated system could offer additional advantages, such as immediate, two-way electronic communication of the status of individual insurance transactions, our limited financial resources do not permit the development of such a system at this time. We believe the basic system we propose here will allow us to achieve the more important advantages, while staying within our resource limitations. However, we invite public comment on how this limitation might be overcome, perhaps by industry initiative, and invite comment on other alternative approaches. Commenters should discuss whether such industry involvement would be ethical.

As noted, we believe electronic filing will promote efficiencies for both the Commission and insurers, resulting in benefits to the public. To help gauge the full effect of our proposal, we seek comments on the number of insurers that envision filing electronically and the extent to which they will avail themselves of the opportunity to file their forms electronically. Given the potential for significant public benefits from electronic filing of insurance and substantial voluntary use of such a system by insurers, we also seek comments on the alternative of making electronic filing mandatory, either initially or at some point in the future. Such comments should include a discussion of the impact of such a mandatory system on insurers and an assessment of the type of system that would be necessary to handle the resulting volume of use.

After receiving comments on the proposal, our Systems Services Branch will build and test the electronic filing system, as well as prepare and maintain systems documentation and a User Manual. Each participating insurer will receive a unique account and password for login purposes on the timesharing system. We also envision that the insurer could register branch offices or other authorized filers under its account and password. We contemplate access being available 24 hours a day, 7 days a week (except scheduled maintenance) by way of dial-up at either 1200 or 2400 baud to a local telephone number in the Washington, D.C., metropolitan area (although we recognize that 9600 baud may be more desirable). Any long distance telephone charges required to reach such number will be the responsibility of the filer, and even at 1200 baud should be minimal. Once connected, the insurance company will be presented with a variety of menu options.

After an authorized insurer logs in on the system and selects the menu option to upload insurance filings, the ICC computer will initiate the communications protocol, KERMIT, to receive filings. Upon completion of the transmission of the insurance filings, the ICC computer system will append the filings to a transaction file for subsequent batch processing. The insurance company will be returned to the main menu. One of the menu options contemplated is the insurer's ability to generate a report showing the number and type of transactions transmitted and received by the ICC. This transaction report will not be available to the home office of the insurance company at the time the transactions are filed. The home office will receive a comprehensive list of filings accepted at the time it receives its monthly billing statement.

However, mere transmission of the filings does not guarantee acceptance by the Commission. Any record not containing a valid field or containing fields with incomplete or invalid data will be flagged with an error code. Each of these records will generate a rejection notice to be sent back to the insurance company. Records passing the initial validity checks will then be edited field by field against the ICC carrier and insurance data base. When all transmitted fields have been edited and verified, the filing will be applied against the insurance master file, either adding a new filing or applying a cancellation against an existing filing. All records that do not pass the automated edits will be flagged for manual processing. After manual review, those records accepted will be applied against the insurance master file, and those rejected will generate a rejection letter. A follow-up "hard copy" of an accepted filing will not be required. However, we do propose that insurers agree to furnish the Commission a duplicate original of any policy (or policies) and all endorsements, surety bond, trust fund agreement, or other filing.

We will accept or reject individual filings, and assess filing fees, as we do for printed filings, except that, in lieu of returning a copy of the printed form to the filer, we will provide a listing identifying each electronic filing with the monthly billing statement.

In connection with the assessment and billing of fees for electronic filings, we are considering the option of allowing insurers to establish large prepaid accounts from which the filing fees would automatically be deducted. This enhancement would reduce costs to both insurers and the Commission. Once this system has been in place for a sufficient amount of time, we will review the fees charged and the appropriateness of changing them to reflect the costs associated with the new system.

To obtain a copy of this notice, 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 service (202) 927–5721.]

Regulatory Flexibility

The rules proposed herein will not impose additional burdens on insurers; rather, they will offer insurers a new option of complying with existing requirements. While we expect the impact of the proposed rules to be beneficial, we do not anticipate it to be significant on insurers.

Environmental and Energy Considerations

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1043

Insurance, Motor carriers, Surety bonds.

49 CFR Part 1084

Freight forwarders, Insurance, Surety bonds.

Decided: November 21, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons, Morgan, and Owen.

Vernon A. Williams,

Secretary.

For the reasons set forth in the preamble, the Commission proposes to amend chapter X of title 49 of the Code of Federal Regulations, parts 1043 and 1084 as follows:

PART 1043—SURETY BONDS AND POLICIES OF INSURANCE

1. The authority citation for part 1043 continues to read as follows:

Authority: 49 U.S.C. 10101, 10321, 11701, 10927; 5 U.S.C. 553.

2. A new § 1043.12 is proposed to be added to read as follows:

§ 1043.12 Electronic filing of surety bonds, trust fund agreements, certificates of insurance and cancellations.

(a) Insurers may, at their option and in accordance with the requirements and procedures set forth in paragraphs (a) through (d) of this section, file forms BMC 34, BMC 35, BMC 36, BMC 82, BMC 83, BMC 84, BMC 85, BMC 91, and BMC 91X electronically, in lieu of using the prescribed printed forms.

(b) Each insurer must obtain authorization to file electronically by registering with the Commission. An individual account number and password for computer access will be issued to each registered insurer.

(c) All files to be transmitted must be in an ASCII delimited format, i.e., all records must have the same number of fields separated by commas. Any field that contains commas must also be enclosed in double quotation marks ("). Numeric fields must be presented without internal commas and without leading zeros or blanks. The record layouts for electronic filing transactions are as described in the following table:

ELECTRONIC INSURANCE FILING TRANSACTIONS

Field name	No. of positions	Description	Required F=filing C=cancel B=both
Record Type	1 Numeric	1 Filing	B
		2 Cancellation	
Insurer Number	8 Numeric	ICC Assigned Insurer Number (Home Office) With Suffix (Issuing Office), If Different, e.g. 12345–01.	B
Filing Type	1 Numeric	1 = BI&PD	B
		2 = Cargo	
		3 = Bond	
		4 = Trust Fund	
ICC Docket Number	8 Text	ICC Assigned MC or FF Number e.g., MC000045	B
Insured d/b/a Name	60 Text	Doing Business As Name If Different From Legal Name	B
Insured Legal Name	120 Text	Legal Name	B
Insured P.O. Box/Route	30 Text	If applicable	B
Insured Building, Suite, etc.	30 Text	If applicable	B
Insured Street Address	30 Text	If applicable	B
Insured City	45 Text	If Mexican carrier include state with city	B
Insured State	2 Text	If Mexican carrier enter MX for state	B
Insured Zip Code	10 Text		B
Form Code	10 Text	BMC–91, BMC–91X, BMC–34, BMC–35, etc.	B
Primary or Excess Coverage	1 Text	P or E—If BMC–91X indicator of primary or excess policy	F
Limit of Liability	5 Numeric	$ in Thousands	F
Underlying Limit of Liability	5 Numeric	$ in Thousands (will default to $000 if Primary)	F
Effective Date	8 Text	MM/DD/YY Format for both Filing or Cancellation	B
Policy Number	25 Text		B

(d) All registered insurers agree to furnish upon request to the Commission a duplicate original of any policy (or policies) and all endorsements, surety bond, trust fund agreement, or other filing.

PART 1084—SURETY BONDS AND POLICIES OF INSURANCE

3. The authority citation for part 1084 continues to read as follows:

Authority: 49 U.S.C. 10102, 10321 and 10927; 5 U.S.C. 553.

4. A new § 1084.10 is proposed to be added to read as follows:

§ 1084.10 Electronic filing of surety bonds, certificates of insurance and cancellations.

Insurers may, at their option and in accordance with the requirements and procedures set forth at 49 CFR 1043.12, file certificates of insurance, surety bonds, and other securities and agreements electronically.

[FR Doc. 94–29958 Filed 12–5–94; 8:45 am]

BILLING CODE 7035–01–P

Notices

Federal Register
Vol. 59, No. 233
Tuesday, December 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

Forms Under Review by Office of Management and Budget

December 2, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection;

(2) Title of the information collection;

(3) Form number(s), if applicable;

(4) How often the information is requested;

(5) Who will be required or asked to report;

(6) An estimate of the number of responses;

(7) An estimate of the total number of hours needed to provide the information;

(8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, D.C. 20250, (202) 690–2118.

Revision

• Food and Nutrition Service

Vendor Activity Monitoring Profile (VAMP) data—Addendum FNS—675, 675B.

Recordkeeping; Annually.

State or local governments; 81 responses; 653 hours.

Laurie Hickerson (703) 305–2715.

• Rural Electrification Administration

State Telecommunications Modernization Plan.

On occasion.

Small businesses or organizations; 60 responses; 21,000 hours.

Gary Allan (202) 720–0665.

Extension

• Farmers Home Administration.

7 CFR 1930–C, Management and Supervision of Multiple Family Housing Borrowers and Grant Recipients.

FmHA 444–27A; 1944–8, 25, 27, 29; 1930–5, 7, 8; 1951–29.

Recordkeeping; On occasion; Monthly.

Individuals or households; State or local governments; Farms; Businesses or other for-profit; Non-profit institutions; Small businesses or organizations; 2,482,265 responses; 2,218,740 hours.

Jack Holston (202) 720–9736.

• Farmers Home Administration.

7 CFR 1951–L, Servicing Cases Where Unauthorized Loan or Other Financial Assistance was Received—Farmers Programs.

On occasion.

Farms; Businesses or other for-profit; Small businesses or organizations; 1,535 responses; 1,535 hours.

Jack Holston (202) 720–9736.

• Farmers Home Administration

7 CFR 1946–A, Agricultural Loan Mediation Program.

On occasion.

State or local governments; 108 responses; 612 hours.

Jack Holston (202) 720–9736.

New Collection

• Animal and Plant Health Inspection Service; Federal Plant Pest and Noxious Weed Regulations—Addendum 2.

On occasion.

State or local governments; Farms; Businesses or other for-profit; Small businesses or organizations; 14 responses; 24 hours.

Matthew H. Royer (301) 436–8896.

Donald E. Hulcher,

Deputy Departmental Clearance Officer.

[FR Doc. 94–29961 Filed 12–5–94; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 941117–4317]

Annual Retail Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Determination.

SUMMARY: In accordance with Title 13, United States Code, Sections 182, 224, and 225, I have determined that the Census Bureau needs to collect data covering annual sales, year-end inventories, purchases, and accounts receivables to provide a sound statistical basis for the formation of policy by various government agencies. These data also apply to a variety of public and business needs. This annual survey is a continuation of similar retail trade surveys conducted each year since 1951 (except 1954). It provides, on a comparable classification basis, annual sales, purchases, and accounts receivable balances for 1994, and year-end inventories for 1993 and 1994. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Ronald Piencykoski or Dorothy Engleking on (301) 763–5294.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code. This survey will provide continuing and timely national statistical data on retail trade for the period between economic censuses. The 1992 Economic Censuses are currently being tabulated. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic census.

The Census Bureau will require a selected sample of firms operating retail establishments in the United States (with sales size determining the probability of selection) to report in the 1994 Annual Retail Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submissions within thirty days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above.

This survey was cleared by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended, and was cleared under OMB Control No. 0607–0013. We will provide copies of the form upon written request to the Director, Bureau of the Census, Washington, DC 20233.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: November 18, 1994.

Martha Farnsworth Riche,

Director, Bureau of the Census.

[FR Doc. 94–29944 Filed 12–5–94; 8:45 am]

BILLING CODE 3510–07–P

[Docket Number 941123–4323]

Transportation Annual Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Consideration.

SUMMARY: Notice is hereby given that the Bureau of the Census is considering a proposal to conduct the 1994 Transportation Annual Survey under the authority of Title 13, United States Code, Sections 131, 182, 224, and 225. On the basis of information and recommendations received by the Bureau of the Census, the data have significant application to the needs of the public and industry and are not available from nongovernmental sources. We will provide national estimates of the dollar volume of revenue and expenses for the for-hire trucking and public warehousing industries, as well as inventories of revenue-generating equipment for the trucking industry.

Effective with the 1994 survey, the Census Bureau proposes changes to the trucking questionnaires. We propose to adopt a more descriptive name for this survey and add questions that will allow publication of data on miles traveled, weight of shipments, and revenue from transborder shipments.

DATES: Any suggestions or recommendations concerning the proposed survey should be submitted in writing by January 5, 1995.

ADDRESSES: Director, Bureau of the Census, Washington, D.C. 20233.

FOR FURTHER INFORMATION CONTACT: Thomas E. Zabelsky, Chief, Current Services Branch, Services Division, on (301) 763–5528.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to conduct surveys necessary to furnish current data on subjects covered by the major censuses authorized by Title 13 of the United States Code. This survey will provide continuing and timely national statistical data on the for-hire trucking and public warehousing industries for the period between the economic censuses. The next economic census is in 1997. The data collected in this survey will be within the general scope, type, and character of those inquiries covered in the economic censuses. Preliminary information and recommendations received by the Bureau of the Census indicate that the data have significant application to the informational needs of government agencies, the public, and the transportation industries. Furthermore, these data are not publicly available from other sources on a continuing basis.

The Bureau of the Census needs reports only from a limited sample of trucking and warehousing firms in the United States. The probability of a firm's selection is based on revenue size (estimated from payroll). The sample will provide, with measurable reliability, statistics on the aforementioned industries. We will mail report forms to the firms covered by this survey and require their submission within thirty days after receipt.

This survey has been submitted to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended. Copies of the proposed forms are made available on request to the Director, Bureau of the Census, Washington, D.C. 20233.

Dated: November 28, 1984.

Martha Farnsworth Riche,

Director, Bureau of the Census.

[FR Doc. 94–29943 Filed 12–5–94; 8:45 am]

BILLING CODE 3510–07–P

Foreign-Trade Zones Board

[Docket 38–94]

Foreign-Trade Zone 77, Memphis, TN; Application for Subzone Status Brother Industries (U.S.A.) Inc. (Typewriters and Word Processors) Bartlett, TN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Memphis, Tennessee, grantee of FTZ 77, requesting special-purpose subzone status at the typewriter and word processor manufacturing facilities of Brother Industries (U.S.A.) Inc. (Brother) (a subsidiary of Brother International Corporation (BIC)) located in Bartlett, Tennessee. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on November 22, 1994.

The Brother facilities include a manufacturing site (231,000 sq. ft., 25 acres) located at Brother Boulevard and Highway 64, Bartlett, and a nearby BIC warehouse (270,000 sq. ft., 20 acres) located at 3131 Appling Road, Bartlett. Both sites are within the Bartlett Municipal Industrial Park. The facilities (520 employees) are used to manufacture electric and automatic typewriters and word processors. Certain components are sourced from abroad, including circuit boards, disk drives, signalling devices, motors, integrated circuits, capacitors, diodes, transistors, resistors, wire, cable, springs, steel fasteners, pulleys and gears. It is estimated that foreign status merchandise would represent 50 to 60 percent of total product value.

Zone procedures would exempt Brother from Customs duty payments on parts and materials used in finished products that are exported. On its domestic sales, the company would be able to choose the finished product duty rates (zero to 2.2%). The duty rates on components average 4 percent. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been appointed examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is [60 days from date of publication]. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 21, 1995).

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations.

Office of the Area Port Director, U.S. Customs Service, 3150 Tchulahoma, Suite 1, Memphis, Tennessee 38118.

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230.

Dated: November 28, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–29995 Filed 12–5–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 353.22 or 355.22 of the Department of Commerce (the Department) Regulations (19 CFR 353.22/355.22 (1993)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than December 31, 1994, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in December for the following periods:

Antidumping duty proceedings	Period
BRAZIL: Certain Carbon Steel Butt-Weld Pipe Fittings (A–351–602)	12/1/93–11/30/94
CANADA: Elemental Sulphur (A–122–047)	12/1/93–11/30/94
GERMANY: Animal Glue and Inedible Gelatin (A–428–062)	12/1/93–11/30/94
INDIA: Stainless Steel Wire Rods (A–533–808)	5/7/93–11/30/94
JAPAN:	
Certain Small Business Telephone Systems and Subassemblies Thereof (A–588–809)	12/1/93–11/30/94
Cellular Mobile Telephones and Subassemblies (A–588–405)	12/1/93–11/30/94
Certain Electric Motors of 150–500 Horsepower (A–588–091)	12/1/93–11/30/94
Drafting Machines and Parts Thereof (A–588–811)	12/1/93–11/30/94
Polychloroprene Rubber (A–588–046)	12/1/93–11/30/94
Steel Wire Strand for Prestressed Concrete (A–588–069)	12/1/93–11/30/94
MEXICO: Porcelain-on-Steel Cooking Ware (A–21–504)	12/1/93–11/30/94
NEW ZEALAND: Low-Fuming Brazing Copper Rod and Wire (A–614–502)	12/1/93–11/30/94
SWEDEN: Seamless & Welded Stainless Steel Hollow Products (A–41–603)	12/1/93–11/30/94
TAIWAN:	
Certain Carbon Steel Butt-Weld Pipe Fittings (A–583–605)	12/1/93–11/30/94
Certain Small Business Telephone Systems and Subassemblies Thereof (A–583–806)	12/1/93–11/30/94
Certain Welded Stainless Steel Pipe (A–583–815)	12/1/93–11/30/94
Porcelain-on-Steel Cooking Ware (A–583–508)	12/1/93–11/30/94
THE PEOPLE'S REPUBLIC OF CHINA:	
Ceiling Fans (A–570–807)	12/1/93–11/30/94
Porcelain-on-Steel Cooking Ware (A–570–506)	12/1/93–11/30/94
THE REPUBLIC OF KOREA:	
Certain Welded Stainless Steel Pipes (A–580–810)	12/1/93–11/30/94
Photo Albums and Filler Pages (A–580–51)	12/1/93–11/30/94
VENEZUELA: Aluminum Sulfate (A–307–81)	12/1/93–11/30/94
Countervailing duty proceedings	
MEXICO: Porcelain-on-Steel Cookware (C–21–505)	1/1/94–12/31/94
VENEZUELA: Aluminum Sulfate (C–307–802)	1/1/93–12/31/93

In accordance with sections 353.22(a) and 355.22(a) of the regulations, an interested party as defined by 353.2(k) may request in writing that the Secretary conduct an administrative review. For antidumping reviews, the interested party must specify for which individual producers or resellers covered by an antidumping finding or order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which were produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: John Kugelman, in room 3065 of the main Commerce Building. Further, in accordance with section 353.31(g) or 355.31(g) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by December 31, 1994. If the Department does not receive, by December 31, 1994, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: December 1, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–29993 Filed 12–5–94; 8:45 am]

BILLING CODE 3510–DS–M

[A-823-805]

Notice of Final Determination of Sales at Less Than Fair Value: Silicomanganese From Ukraine

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 6, 1994.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Donna Berg, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482-5288 or (202) 482-0114, respectively.

FINAL DETERMINATION: We determine that silicomanganese from Ukraine is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination and postponement of the final determination of this investigation on June 10, 1994 (59 FR 14851, June 17, 1994), the following events have occurred:

On June 20, 1994, the petitioners, Elkem Metals Company and the Oil, Chemical, & Atomic Workers, Local 3-639, alleged that the Department of Commerce (the Department) had made significant ministerial errors in our preliminary determination calculations. After reviewing the allegation, we determined that the errors made were not "significant" within the meaning of section 353.15(g)(4)(ii) of the proposed regulations (55 FR 9048 (March 9, 1990)).

On July 8, 1994, the petitioners alleged that the Department had not carried forward all of the corrected numbers and that a complete recalculation would constitute a "significant" ministerial error (*i.e.*, a change of more than five absolute percentage points and more than 25 percent of the dumping margin calculated in the original preliminary determination). On reexamination, we agreed that this error had been made, and that the recalculation would result in a significant change to the margin. Thus, on July 19, 1994, we amended the preliminary determination (59 FR 18167, July 26, 1994).

We conducted the factory and sales verifications of the Nikopol Ferroalloys Plant (Nikopol) and the Zaporozhye Ferroalloys Works (Zaporozhye) during the period September 26 through 30, 1994.

On September 30, 1994, the Department and the Government of Ukraine initialled an agreement that, if ultimately accepted by the Department, would suspend the antidumping investigation on silicomanganese from Ukraine.

Petitioners submitted a case brief on October 11, 1994.

On October 31, 1994, the Department suspended the investigation by accepting an agreement with the Government of Ukraine pursuant to section 734(l) of the Act. (See Notice to the **Federal Register** of Antidumping: Silicomanganese from Ukraine; Suspension of Investigation, signed November 21, 1994). Both the petitioners and the respondents in this investigation filed requests on November 1, 1994, pursuant to section 734(g) of the Act, that the antidumping investigation be continued.

Scope of Investigation

The merchandise covered by this investigation is silicomanganese. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon, and iron, and normally containing much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese generally contains by weight not less than four percent iron, more than 30 percent manganese, more than eight percent silicon and not more than three percent phosphorous. All compositions, forms and sizes of silicomanganese are included within the scope of this investigation, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. This investigation covers all silicomanganese, regardless of its tariff classification. Most silicomanganese is currently classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Some silicomanganese may also currently be classifiable under HTSUS subheading 7202.99.5040. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation is June 1, 1993, through November 30, 1993.

Ukraine's Status as a Non-Market Economy

The Department determined in Ferrosilicon from Ukraine (see Final Determinations of Sales at Less Than Fair Value: Ferrosilicon From Kazakhstan and Ukraine 58 FR 13050, March 9, 1993) that Ukraine is a non-market economy (NME). A designation as an NME remains in effect until revoked by the Department (*see* section 771(18)(C) of the Act). No party has contested Ukraine's designation as an NME in this investigation.

Best Information Available (BIA)

In investigations involving imports from non-market economy countries, unless respondents request and qualify for separate rates, we apply the same rate to all exports from that country. Since neither respondent in this case qualified for separate rates, they will be treated as a single respondent for purposes of assigning an antidumping margin.

Although the respondents did attempt to cooperate with the Department's requests for documents during their respective verifications, they were not able to provide the full range of documentation necessary for the Department to establish the accuracy and completeness of the information provided (see verification reports). Therefore, the Department must assign a dumping margin on the basis of BIA, pursuant to section 776 (b) and (c) of the Act.

In determining what rate to use as BIA, the Department applies a methodology which has been upheld by the Court of Appeals for the Federal Circuit in *Allied-Signal* v. *United States*, 996 F.2d 1185 (Fed. Cir. 1993). Specifically, in the case where there is only one respondent, and that respondent has been cooperative, the Department assigns as BIA the higher of (a) the estimated margin found in the preliminary determination, or (b) the margin in the petition. (Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany, 54 FR 18992, 19033 (May 3, 1989)). Accordingly, the Department is using as BIA the estimated margin calculated in the preliminary determination (*i.e.*, 163 percent).

Verification

As provided in section 776(b) of the Act, we attempted to verify information provided by respondents by using standard verification procedures, including the examination of sales and

accounting records, and selection of original source documentation containing relevant information. However, as noted above, we were not able to verify the accuracy and completeness of the respondents' submissions.

Critical Circumstances

On June 10, 1994, we preliminarily found that critical circumstances exist for the two respondents in this investigation.

Pursuant to section 733(e)(1) of the Act, we based the preliminary decision on a finding of (1) a petition margin (123.02 percent) in excess of 25 percent, and (2) a massive increase in imports. It should be noted that the second part of this finding, a massive increase in imports, was based on BIA because one respondent, Nikopol, did not provide adequate information (59 FR 14852, June 17, 1994).

For the final determination, we have received no information that would lead us to change our preliminary determination of critical circumstances. We have continued to use BIA as the basis for our determination with regard to a massive increase in imports, and we determine that critical circumstances exist for all exporters in this investigation.

Interested Party Comments

Comment 1: The petitioners assert that the Department should assign a BIA margin at a rate higher than the petition rate of 125.3 percent because the petition rate was not high enough to induce the respondents to prepare for the verifications. The petitioners propose that BIA should be based on the amended preliminary determination margin of 163.00 percent because that margin is based on data supplied to the Department by the respondents.

DOC Position: We agree with the petitioners. (See the BIA section of this notice.)

Suspension of Liquidation

Consistent with section 734(f)(2)(A) of the Act, the suspension of liquidation of all entries, entered or withdrawn from warehouse for consumption, of silicomanganese from Ukraine, will not now be reimposed. Suspension of liquidation will be reinstated only if the International Trade Commission (ITC) issues an affirmative injury determination and the Department terminates the agreement suspending this investigation.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination. The ITC will now determine, within 45 days, whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury, does not exist, the proceeding will be terminated. If the ITC determines that such injury does exist, the suspension agreement will remain in force and the Department will not issue an antidumping duty order. Consistent with section 734(f)(3)(B) of the Act, the Department will not issue an order, so long as the agreement remains in force.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act, 19 USC 1673d(d), and 19 CFR 353.20(a)(4).

Dated: November 30, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–29994 Filed 12–5–94; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

[Docket No. 941114–4314]

RIN 0693–AB23

Proposed Federal Information Processing Standard (FIPS) for Federal Building Grounding and Bonding Requirements for Telecommunications

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Request for comments.

SUMMARY: A Federal Information Processing Standard (FIPS) for Federal Building Grounding and Bonding Requirements for Telecommunications is being proposed. This proposed standard specifies a uniform grounding and bonding infrastructure for Federal buildings. The grounding and bonding infrastructure is consistent with the cabling topology specified in FIPS PUB 174, Federal Building Telecommunications Wiring Standard (ANSI/EIA/TIA–568–1991), and installed in accordance with FIBS PUB 175, Federal Building Standard for Telecommunications Pathways and Spaces (ANSI/EIA/TIA–569–1990).

This proposed FIPS adopts a voluntary industry standard (ANSI/TIA/EIA–607–1994) that was developed with Federal participation and coordinated by the Federal Telecommunications Standards Committee, an interagency committee administered by the National Communications System. The purpose of this notice is to solicit views from the public, manufacturers, and State and local governments so that their views can be considered prior to the submission of this proposed FIPS to the Secretary of Commerce for review and approval.

This proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of the specifications (ANSI/TIA/EIA–607–1994) from Global Engineering Documents, Suite 400, 1990 M Street, NW, Washington, DC 20036, telephone 1–800–854–7179 or 202–429–2860; FAX 202–331–0960.

DATES: Comments on this proposed FIPS must be received on or before March 7, 1995.

ADDRESSES: Written comments concerning the adoption of this proposed FIPS should be sent to: Director, Computer Systems Laboratory, ATTN: Proposed FIPS for Grounding and Bonding, Technology Building, Room B–154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:

Mr. A. Glenn Hanson, Institute for Telecommunications Sciences, National Telecommunications and Information Administration, 325 Broadway, Boulder, CO 80303–3328, telephone 303–497–5449; FAX 303–497–6982.

Dated: November 29, 1994.

Samuel Kramer,

Associate Director.

Proposed Federal Information Processing Standards Publication

(date)

Announcing the Standard for Federal Building Grounding and Bonding Requirements for Telecommunications

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. Name of Standard. Federal Building Grounding and Bonding Requirements for Telecommunications. (Former Draft Federal Standard 1093).

2. Category of Standard. Telecommunications Standard; Grounding and Bonding.

3. Explanation. This standard, by adoption of ANSI/TIA/EIA–607–1994, Commercial Building Grounding and Bonding Requirements for Telecommunications, specifies the requirements for a uniform telecommunications grounding and bonding infrastructure that should be followed within Federal buildings where telecommunications equipment is installed. The standard provides the requirements for a ground reference for telecommunications systems within the telecommunications entrance facility, the telecommunications closet, and equipment room; it also provides the requirements for bonding and connecting pathways, cable shields, conductors, and hardware at telecommunications closets, equipment rooms, and entrance facilities.

This standard supports the telecommunications infrastructure which encompasses telecommunications equipment spaces, cable pathways, grounding, wiring, termination hardware, and other devices, and which provides the basic support for the distribution of all forms of information within a building or campus.

The grounding and bonding approach described in this standard is consistent with the cabling topology specified in Federal Information Processing Standards Publication (FIPS PUB) 174, Federal Building Telecommunications Wiring Standard (ANSI/EIA/TIA–568–1991) and installed in accordance with Federal Information Processing Standards Publication (FIPS PUB) 175, Federal Building Standard for Telecommunications Pathways and Spaces (ANSI/EIA/TIA–569–1990).

4. Approving Authority. Secretary of Commerce.

5. Maintenance Agency. National Communications System, Office of Technology and Standards.

6. Related Documents.

a. Federal Information Resources Management Regulations subpart 201–20.303, Standards, and subpart 201–39.1002, Federal Standards.

b. Federal Standard 1037B, Glossary of Telecommunications Terms.

c. Federal Information Processing Standards Publication (FIPS PUB) 174, Federal Building Telecommunications Wiring Standard (Former Draft Federal Standard 1090).

d. Federal Information Processing Standards Publication (FIPS PUB) 175, Federal Building Standard for Telecommunications Pathways and Spaces (Former Draft Federal Standard 1091).

e. Federal Information Processing Standards Publication (FIPS PUB) 176, Residential and Light Commercial Telecommunications Wiring Standard (Former Draft Federal Standard 1092).

f. Federal Information Processing Standards Publication (FIPS PUB) 187, Administration Standard for the Telecommunications Infrastructure of Federal Buildings (Former Draft Federal Standard 1094).

At the time of publication of this standard, the editions indicated above were valid. All publications are subject to revision, and parties to agreements based on this standard are encouraged to investigate the possibility of applying the most recent editions of these publications.

7. Objectives. The purpose of this standard is to facilitate the planning, design, and installation of telecommunications grounding systems within a Federal government building with or without prior knowledge of the telecommunications systems that will subsequently be installed. This telecommunications grounding and bonding infrastructure supports a multivendor, multiproduct environment as well as the grounding practices for various systems that may be installed on customer premises.

8. Applicability. This standard shall be used by all departments and agencies of the Federal Government in the design, maintenance, renovation, or retrofit of telecommunications grounding systems within new or existing Federal buildings. Existing building wiring systems, especially those installed prior to the emergence of digital communications and voice/data integration, may not readily accept application of this standard. Modernization of the existing pathway, space, and wiring systems to meet the FIPS 174, FIPS 175, FIPS 176, and FIPS 187 infrastructure standards may require a significant monetary expenditure. Agencies should conduct a thorough facility analysis of existing and renovated buildings to determine the cost of applying the standards, and develop a migration plan where cost savings can be achieved. This plan will help to ensure timely and efficient completion of the conversion process. The result of following this standard will be a telecommunications infrastructure that supports advanced technology and is compatible with modern telecommunications equipment. This standard is not intended to hasten the obsolescence of telecommunications grounding systems currently in use in Federal facilities; nor is it intended to provide systems engineering or applications guidelines.

9. Specifications. This FIPS adopts ANSI/TIA/EIA–607–1994, Commercial Building Grounding and Bonding Requirements for Telecommunications, The American National Standard specifies the requirements for a uniform telecommunications entrance facility, the telecommunications grounding and bonding infrastructure for a building where telecommunications equipment is to be installed. Areas of the infrastructure include:

(a) A ground reference for telecommunications systems within the telecommunications entrance facility, the telecommunications closet, and equipment room.

(b) Bonding and connecting pathways, cable shields, conductors and hardware at telecommunications closets, equipment rooms, and entrance facilities.

(c) Interconnectivity to other building grounding systems.

10. Implementation. The use of this standard by Federal departments and agencies is compulsory and binding for the design, maintenance, renovation, or retrofit of telecommunications grounding systems within new or existing Federal buildings, effective _____ (six (6) months after date of publication of final document in the Federal Register).

Use of the standard is recommended in the telecommunications grounding systems within existing buildings.

This standard should be useful to anyone engaged in the design, maintenance, renovation, or retrofit of new or existing buildings. This standard will also be useful to manufacturers of telecommunications equipment and to

those responsible for purchasing, installing, or operating such equipment and devices.

11. Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to Section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system or related telecommunications system, or

b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; Attn: FIPS waiver Decisions, Technology Building, Room B–154; Gaithersubrg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after the notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

12. Where to Obtain Copies. Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the Electronic Industries Association.) When ordering, refer to Federal Information Processing Standards Publication _____ (FIPSPUB _____), and the title. Payment may be made by check, money order, purchase order, credit card, or deposit account.

[FR Doc. 94–29891 Filed 12–5–94; 8:45 am]

BILLING CODE 3510–CN–M

University of Colorado Board of Regents; Prospective Grant of Exclusive Patent License

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of Prospective Grant of Exclusive Patent License.

SUMMARY: This notice is in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology ("NIST"), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent Application 07/935,016, titled, "Perflourinated Inonomer Membrane Invention" to The Board of Regents of the University of Colorado, having a place of business in Boulder, Colorado. This invention was co-developed by employees of the University of Colorado and NIST. The inventors' respective patent rights in this invention have been assigned to The University of Colorado and the United States of America.

FOR FURTHER INFORMATION CONTACT: Bruce E. Mattson, National Institute of Standards and Technology, Technology Development and Small Business Program, Building 221, room B–256, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. The University of Colorado will have the right to, and intends to, grant sublicenses to commercial entities desiring to use the method.

U.S. Patent Application 07/935,016 relates to a process describing the method for producing an improved perfluorinated ionomer membrane with an improved transport characteristic.

NIST may enter into a Cooperative Research and Development Agreement ("CRADA") to perform further research on the invention for purposes of commercialization. The CRADA may be conducted by NIST without any additional charge to any party that licenses the patent. NIST may grant the licensee an option to negotiate for royalty-free exclusive licenses to any jointly owned inventions which arise from the CRADA as well as an option to negotiate for exclusive royalty-bearing licenses for NIST employee inventions which arise from the CRADA.

The availability of U.S. Patent Application 07/935,016 was published in the **Federal Register**, Vol. 59, No. 208 (October 28,1 994). A copy of the patent application maybe obtained from the University of Colorado.

Dated: November 30, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–29949 Filed 12–5–94; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Coastal Nonpoint Pollution Control Program Programmatic Environmental Impact Statement Scoping

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

ACTION: Notice of Intent to Prepare a Programmatic Environmental Impact Statement.

SUMMARY: Pursuant to Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990, 16 U.S.C. 1455b, the National Oceanic and Atmospheric Administration (NOAA) proposes to prepare a programmatic environmental impact statement (PEIS) on the approval of state coastal nonpoint pollution control programs.

The requirements of 40 C.F.R. parts 1500–1508 [Council on Environmental Quality (CEQ) regulations to implement the National Environmental Policy Act (NEPA)] apply to the preparation of the PEIS. Specifically, 40 CFR 1501.7 requires an early and open "scoping" process. This notice is part of NOAA's action to comply with the scoping requirement.

DATES: Individuals or organizations wishing to submit comments on these or other issues should do so by December 30, 1994.

ADDRESSES: Comments should be made to: Marcella Jansen, Coastal Programs Division (N/ORM3), Office of Ocean and

Coastal Resource Management, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, tel. (301) 713–3098, x143.

FOR FURTHER INFORMATION CONTACT: Marcella Jansen, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland 20910, tel. (301) 713–3098, x143.

SUPPLEMENTARY INFORMATION: Section 6217 of the Coastal Zone Act Reauthorization Amendments of 1990 requires states with coastal zone management programs that have received Federal approval under section 306 of the Coastal Zone Management Act (CZMA) to develop and implement coastal nonpoint pollution control programs (coastal nonpoint programs). Coastal states are required to submit their coastal nonpoint programs to NOAA and the Environmental Protection Agency (EPA) for approval by July, 1995. Once approved, these programs will be implemented through changes to the state nonpoint source pollution program approved by EPA under section 319 of the Clean Water Act and through changes to the state coastal zone management program approved by NOAA under the CZMA. To assist states in the development of their programs, NOAA and EPA jointly published a program development and approval guidance document.

EPA also published a technical guidance document specifying management measures for sources of nonpoint pollution in coastal waters. This management measure guidance addresses five source categories of nonpoint pollution: agriculture, forestry, urban, marinas, and hydromodification. Management measures are also included for wetlands protection, riparian areas, and vegetated filter strips. In addition to these management measures, additional management measures must be developed and implemented by each state for land uses and critical areas adjacent to impaired or threatened coastal waters.

NOAA proposes to prepare a programmatic environmental impact statement (PEIS). This PEIS will assess the environmental impacts associated with the implementation of the requirements of the section 6217 program. The PEIS will form the basis for the subsequent NEPA documents (environmental impact statements or assessments) NOAA will prepare on each of the 29 state coastal nonpoint programs submitted for approval. When a state program is proposed, a subsequent NEPA document will be prepared which addresses the state-specific environmental impacts arising from that method of implementing the program. These subsequent NEPA documents will present a summary of the issues addressed in the PEIS and, as appropriate, incorporate by reference the analyses presented in the PEIS.

Possible alternatives to the proposed action of approval of the state coastal nonpoint programs include: (a) Conditional approval of the programs; and, (b) denial of program approval.

Based on discussion with the EPA and other involved Federal agencies and comments received in response to this notice, NOAA will develop the draft PEIS. The final PEIS will be published in July, 1995. Comments on the draft PEIS will be solicited and evaluated in accordance with 40 CFR Part 1503.

The following preliminary table of contents for the PEIS has been developed for discussion purposes:

1. Cover Sheet and Abstract.
2. Summary.
3. Table of Contents.
4. Purpose of and Need for the Action.—As part of the Coastal Zone Act Reauthorization Amendments of 1990, states with approved coastal zone programs are required to develop and implement coastal nonpoint programs. Coastal states are required to submit their coastal nonpoint programs to NOAA and the EPA for approval by July, 1995. NOAA and EPA must review the programs within six months.
5. Alternatives, including proposed action.—This section will evaluate reasonable alternatives to the approval of the state programs.
6. Affected Environment.—This section will describe the physical, chemical, and biological characteristics of the marine and terrestrial environment within the boundaries of the 6217 management areas that NOAA recommended after its review of each state's existing coastal zone boundary and coastal watersheds. Land and water uses within the areas will also be described.
7. Environmental Consequences.—This discussion will identify direct and indirect impacts associated with each management measure and with the implementation of the Coastal Nonpoint Pollution Control Program, including any adverse environmental impacts which cannot be avoided. The relationship between the proposed action and the enhancement of long-term productivity and the irreversible or irretrievable commitment of resources will be described.
8. List of Preparers.
9. List of Agencies, Organizations and Persons to Whom EIS Sent.
10. Index.
11. Appendices.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: November 30, 1994.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 94–29999 Filed 12–5–94; 8:45 am]

BILLING CODE 3510–12–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Limits and Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Costa Rica

November 29, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels for a new agreement year.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A Memorandum of Understanding (MOU) dated December 23, 1993 between the Governments of the United States and Costa Rica establishes restraint limits and guaranteed access levels for the period January 1, 1995 through December 31, 1995.

These limits are subject to revision pursuant to the Uruguay Round Agreement on Textiles and Clothing (URATC). On the date that both the United States and Costa Rica are members of the World Trade Organization, the restraint limits will be modified in accordance with the URATC.

A description of the textile and apparel categories in terms of HTS numbers is available in the

CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Information regarding the 1995 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; and 55 FR 21047, published on May 22, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 29, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1993; pursuant to the Memorandum of Understanding (MOU) dated December 23, 1993, between the Governments of the United States and Costa Rica; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Costa Rica and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following restraint limits:

Category	Twelve-month limit
340/640	815,648 dozen.
342/642	301,101 dozen.
347/348	1,374,545 dozen.
443	206,060 numbers.
447	11,110 dozen.

Imports charged to these category limits for the periods January 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the MOU dated December 23, 1993 between the Governments of the United States and Costa Rica.

Additionally, pursuant to the December 23, 1993 MOU; and under the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), effective on January 1, 1995, guaranteed access levels have been established for properly certified cotton, wool and man-made fiber textile products in the following categories which are assembled in Costa Rica from fabric formed and cut in the United States and re-exported to the United States from Costa Rica during the period beginning on January 1, 1995 and extending through December 31, 1995:

Category	Guaranteed access level
340/640	650,000 dozen.
342/642	250,000 dozen.
347/348	1,500,000 dozen.
443	200,000 numbers.
447	4,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of May 15, 1990, shall be denied entry unless the Government of Costa Rica authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94-29954 Filed 12-5-94; 8:45 am]

BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in Bulgaria

November 29, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement, effected by exchange of notes dated December 2 and December 23, 1993, between the Governments of the United States and the Republic of Bulgaria establishes limits for certain wool textile products, produced or manufactured in Bulgaria and exported during the period beginning on January 1, 1995 and extending through December 31, 1995.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1995 limits. The limit for Category 435 has been reduced for carryforward used during the previous agreement year.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1683.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Information regarding the 1995 CORRELATION will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 29, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the

Bilateral Textile Agreement, effected by exchange of notes dated December 2, 1993 and December 23, 1993, between the Governments of the United States and the Republic of Bulgaria; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in Bulgaria and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following levels of restraint:

Category	Twelve-month limit
410	739,573 square meters.
435	18,988 dozen.
448	20,402 dozen.

Imports charged to these category limits for the period January 1, 1994 through December 31, 1994, shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–29950 Filed 12–5–94; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in Hungary

November 29, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated February 15 and 25, 1983, as amended and extended, between the Governments of the United States and the Republic of Hungary establishes limits for the period beginning on January 1, 1995 and extending through December 31, 1995.

These limits are subject to revision pursuant to the Uruguay Round Agreement on Textiles and Clothing (URATC). On the date that both the United States and Hungary are members of the World Trade Organization, the restraint limits will be modified in accordance with the URATC.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1683.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Information regarding the 1995 CORRELATION will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 29, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1993; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated February 15 and 25, 1983, as amended and extended, between the Governments of the United States and the Republic of Hungary; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in Hungary and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
410	896,442 square meters.
433	17,000 dozen.
434	14,424 dozen.
435	24,933 dozen.
443	159,697 numbers.
444	51,515 numbers.
448	22,034 dozen.
604	1,023,053 kilograms.

Imports charged to these category limits for the period January 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–29953 Filed 12–5–94; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Jamaica

November 29, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels for the new agreement year.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and

Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textile Agreement of August 27, 1986, as amended and extended, and the Memorandum of Understanding (MOU) dated November 8, 1993, between the Governments of the United States and Jamaica establish limits and guaranteed access levels (GALs) for the period beginning on January 1, 1995 and extending through December 31, 1995.

These limits are subject to revision pursuant to the Uruguay Round Agreement on Textiles and Clothing (URATC). On the date that both the United States and Jamaica are members of the World Trade Organization, the restraint limits will be modified in accordance with the URATC.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Information regarding the 1995 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 6049, published on February 27, 1987; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement and the MOU dated November 8, 1993, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 29, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1993; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textile Agreement of August 27, 1986, as amended and extended, and the Memorandum of Understanding (MOU) dated November 8, 1993 between the Governments of the United States and Jamaica; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Jamaica and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
331/631	530,000 dozen pairs.
336/636	118,000 dozen.
338/339/638/639.	1,045,022 dozen.
340/640	488,679 dozen of which not more than 413,499 dozen shall be in shirts made from fabrics with two or more colors in the warp and/or the filling in Categories 340–Y/640–Y [1].
341/641	613,632 dozen.
342/642	175,000 dozen.
345/845	151,416 dozen.
347/348/647/648.	1,127,970 dozen.
352/652	1,685,400 dozen.
445/446	50,894 dozen.
447	10,000 dozen.

[1] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

Imports charged to these category limits for the period January 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and Jamaica.

In accordance with the provisions of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), you are directed to establish guaranteed access levels for properly certified cotton, man-made fiber and other vegetable fiber textile products in the following categories which are assembled in Jamaica from fabric formed and cut in the United States and re-exported to the United States from Jamaica during the twelve-month period which begins on January 1, 1995 and extends through December 31, 1995.

Category	Guaranteed Access Level
331/631	1,320,000 dozen pairs.
336/636	125,000 dozen.
338/339/638/639.	1,500,000 dozen.
340/640	300,000 dozen.
341/641	375,000 dozen.
342/642	200,000 dozen.
345/845	50,000 dozen.
347/348/647/648.	2,000,000 dozen.
352/652	10,500,000 dozen.
447	30,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of February 19, 1987 shall be denied entry unless the Government of Jamaica authorizes the entry and any charges to the appropriate designated consultation levels or specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–29952 Filed 12–5–94; 8:45 am]

BILLING CODE 3510-DR-F

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Poland

November 29, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1995.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the

quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement, effected by exchange of notes dated December 30 and 31, 1991, as amended and extended, between the Governments of the United States and the Republic of Poland establishes limits for the period beginning on January 1, 1995 and extending through December 31, 1995.

These limits are subject to revision pursuant to the Uruguay Round Agreement on Textiles and Clothing (URATC). On the date that both the United States and Poland are members of the World Trade Organization, the restraint limits will be modified in accordance with the URATC.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the 1995 agreement period. The limit for Category 443 has been reduced for carryforward used during the previous agreement period.

A copy of the current agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647–1683.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Information regarding the 1995 CORRELATION will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 29, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1993; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Product Agreement, effected by exchange of notes dated December 30, 1991 and December 31, 1991, between the Governments of the United States and the Republic of Poland; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1995, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Poland and exported during the twelve-month period beginning on January 1, 1995 and extending through December 31, 1995, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
335	154,832 dozen.
338/339	1,667,422 dozen.
410	2,575,753 square meters.
433	18,190 dozen.
434	9,921 dozen.
435	12,982 dozen.
443	203,510 numbers.
611	4,765,851 square meters.
645/646	244,158 dozen.

Imports charged to these category limits for the period January 1, 1994 through December 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–29951 Filed 12–5–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Supplemental Record of Decision (SROD) for the Disposal and Reuse of Mather Air Force Base (AFB), California

On November 21, 1994, the Air Force issued the Supplemental Record of Decision (SROD) for Mather Air Force Base (AFB), California. The decisions included in this SROD have been made in consideration of the Mather AFB Disposal and Reuse Final Environmental Impact Statement (FEIS), which was filed with the Environmental Protection Agency and released to the public on April February 18, 1994, and other relevant considerations.

Mather AFB was closed on September 30, 1994. This SROD finalizes the Mather AFB disposal decisions begun with the issuance of the Record of Decision for the Disposal Reuse of Mather AFB on March 31, 1993.

The major methods which will be utilized to dispose of the approximate 5,716 acre base are: public airport conveyance (approximately 2,875 acres), public park conveyance (approximately 1,432 acres), and public or negotiated sale (approximately 899 acres

The uses proposed for the property by prospective recipients of property under the ROD are consistent with the community's redevelopment plan for the base. The ROD announced that any potential environmental impacts would result directly from reuse and redevelopment by others. Likewise, most of the mitigation of environmental impacts would be the responsibility of future owners and developers. The Air Force has tried to take all practical measures to avoid or minimize environmental harm that may occur as a result of its disposal action.

Any questions regarding this matter should be directed to Mr. John P. Carr, Program Manager, Northwest Region. Correspondence should be sent to AFBCA/NW, 1700 N. Moore Street, Suite 2300, Arlington, VA 22209–2809.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94–29867 Filed 12–5–94; 8:45 am]

BILLING CODE 3910–01–M

Record of Decision (ROD) for the Disposal and Reuse Final Environmental Impact Statement for Homestead Air Force Base (AFB), FL

On October 26, 1994, the Air Force issued the Record of Decision (ROD) for the disposal of a portion of Homestead Air Force Base (AFB), Florida. The

decisions included in this ROD have been made in consideration of the Homestead AFB Disposal and Reuse Final Environmental Impact Statement (FEIS), which was filed with the Environmental Protection Agency on February 18, 1994, and other relevant considerations.

Homestead AFB was realigned on March 31, 1994, pursuant to the Defense Base Closure and Realignment Act (DBCRA) (Public Law 101–510) and recommendations of the Defense Secretary's Commission on Base Realignment and Closure. This ROD documents the Homestead AFB disposal decisions.

The methods which will be utilized to dispose of the approximate 2,014 acre closure portion of the base are: public airport conveyance (approximately 1,880 acres), homeless assistance public health conveyance (approximately 75 acres), transfers to U.S. Departments of Labor (approximately 40 acres) and the Treasury (approximately 19 acres). The bank and credit union will be provided the opportunity to purchase the land underlying the buildings they have constructed. Base utilities will be disposed of separately. Not yet resolved is whether the Florida Army National Guard will require property for an armory. That matter is under consideration at the Department of the Army and will require Department of Defense approval.

The uses proposed for the property by prospective recipients of property under the ROD are consistent with the community's redevelopment plan for the base. Data County prepared the plan, with the assistance of the broader community, and further refined the plan through the County's proposed Airport Master Plan, which it submitted to the Federal Aviation Administration.

The ROD announced that any potential environmental impacts would result directly from reuse and redevelopment by others. Likewise, most of the mitigations of environmental impacts would be the responsibility of future owners and developers. The Air Force has tried to take all practical measures to avoid or minimize environmental harm that may occur as a result of its disposal action.

Any questions regarding this matter should be directed to Mr. Patrick W. McCullough, Program Manager, Southeast Division. Correspondence should be sent to AFBCA/SE, 1700 N. Moore Street, Suite 2300, Arlington, VA 22209–2809.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94–29962 Filed 12–05–94; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF ENERGY

Alaska Power Administration

Snettisham Project; Wholesale Power Rates

AGENCY: Alaska Power Administration, Department of Energy

ACTION: Notice of proposed rate adjustment for the Snettisham Project, notice of public forum and opportunity for review and comment.

SUMMARY: Alaska Power Administration (APA) is proposing to adjust the rates for the Snettisham Project. The present rate of 32.1 mills per kilowatthour is insufficient to meet the Snettisham Project's repayment criteria. APA proposes to raise the rate for firm energy to 34.4 mills per kilowatthour beginning May 1, 1995, for a period of up to five years. Rates for non-firm energy deliveries under both the oil displacement and wood-heat displacement programs would not change. The final proposal may differ from the present. The proposed rates will be submitted to the Deputy Secretary of Energy for interim approval and to the Federal Energy Regulatory Commission for review and final approval.

DATES: Written comments will be considered on or before March 7, 1995.

ADDRESSES: Written comments should be submitted to Mr. Lloyd A. Linke, Alaska Power Administration, 2770 Sherwood Lane, Suite 2B, Juneau, Alaska 99801.

FOR FURTHER INFORMATION CONTACT: Mr. Lloyd A. Linke, Director, Power Division, Alaska Power Administration, 2770 Sherwood Lane, Suite 2B, Juneau, Alaska 99801, (907) 586–7405.

SUPPLEMENTARY INFORMATION: The proposed rates apply for power sold from the Snettisham Hydroelectric Project to the electric utility serving the Juneau area and a State-owned hatchery at the Snettisham Project.

Details of the proposed rates, including supporting studies, are available for inspection at Alaska Power Administration, 2770 Sherwood Lane, Suite 2B, Juneau, Alaska. A public information and comment forum is scheduled to be held January 12, 1995, at 7:00 PM, in Room 320 of the Super 8 Motel, 2295 Trout Street, Juneau, Alaska. APA is requesting that the parties interested in attending the public information and comment forum notify APA of this intent in writing by January 5, 1995. If APA has not received any written notices of intent to attend the forum the APA Administrator will cancel the forum, as allowed in 10 CFR 903.15(c) and 10 CFR 903.16(c). Authorities for the proposed rate action are the 1962 Flood Control Act (Public Law 87–874), the Water Resource Development Act (Public Law 94–587) and the Department of Energy Organization Act (Public Law 95–91). Alaska Power Administration is developing these rates in accordance with DOE financial reporting policies, procedures and methodology (DOE Policy RA 6120.2 [September 20, 1979]), and the procedures for public participation in rate adjustments found in 10 CFR Part 903 (1987) as amended.

The present rates went into effect in October 1991. Since the last rate action, sales have been significantly lower than projected and the actual cost of the Crater Lake Addition to the Snettisham Project was higher than estimated. The proposed rate results in a seven percent rate increase. This is below the rate of inflation from 1991 to 1994.

Firm sales from the Snettisham Project were six percent (53 GWh) less than projected in August of 1991. Non-firm sales were down nine percent (4 GWh). The reduced sales resulted in revenues that were four percent ($1.1 million) less that forecasted in August 1991. The actual cost, to date, for the Crater Lake Addition is 7 percent ($5 million) higher than estimated in August of 1991.

The sales forecast APA used in August of 1991 was based on loads during a historically normal weather year. APA has based its new sales forecast on a more conservative approach using warmer than normal weather load patterns. This results in lower sales projections due to reduced heating loads. APA believes this will result in more stabile rates for the Snettisham Project.

The Administration continues to advocate divestiture of APA, and a legislative proposal to authorize the divestiture is under Congressional consideration. This proposed rate action continues present rate policies under existing law.

ENVIRONMENTAL IMPACT: The proposed rate action will have no significant environmental impact within the meaning of the National Environmental Policy Act of 1969. The proposed action meets the requirements of a categorical exclusion as defined in

40 CFR 1508.4 and is listed as a categorical exclusion for DOE in 10 CFR 1021 Appendix B4.3. An Environmental Assessment and an Environmental Impact Statement is not required.

Issued at Juneau, Alaska, November 22, 1994.

Michael A. Deihl,

Administrator.

[FR Doc. 94–29964 Filed 12–5–94; 8:45 am]

BILLING CODE 6450–01–P

Energy Information Administration

Agency Information Collection Under ReviewBy the Office of Management and Budget

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of request submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) hassubmitted 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. No. 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 sponsorof the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMBdocket number (if applicable); (4) Collection title; (5) Type ofrequest, 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 respondentsper 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 within 30 days of publication ofthis notice. If you anticipate that you will be submittingcomments but find it difficult to do so within the time allowedby this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The DeskOfficer may be telephoned at (202) 395–3084. (Also, pleasenotify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy DeskOfficer, Office of Information and Regulatory Affairs, Office ofManagement and Budget, 726 Jackson Place NW., Washington, DC20503. (Comments should also be addressed to the Office ofStatistical Standards at the address below.)

FOR FURTHER INFORMATION: Requests for additional information or copies of the forms and instructions should be directed to 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–25
3. 1902–0092
4. Financial Audits
5. Extension
6. Other (3 to 5 year cycle depending on size and complexity of audit)
7. Mandatory
8. Businesses or other for-profit
9. 77 respondents
10. 1 response
11. 215 hours per response
12. 16,555 hours
13. The information collected on FERC financial compliance audits is needed to determine the companies' compliance with the Commission's accounting, ratemaking and related regulations, and the Commission's reporting requirements. The Commission issues letter orders to the companies based on the results of the audits.

Statutory Authority: Sec. 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. No. 96–511), which amended Chapter 35 of Title 44 United States Code (See 44 U.S.C. 3506(a) and (c)(1).

Issued in Washington, DC, November 29, 1994.

Yvonne M. Bishop,

Director, Office of Statistical Standards,Energy Information Administration.

[FR Doc. 94–29965 Filed 12–5–94; 8:45 am]

BILLING CODE 6450–01–P

Agency Information Collection Under Review By the Office of Management and Budget

AGENCY: Energy Information Administration, Department of 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. No. 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 (the DOE component or 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 January 5, 1995. 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: Requests for additional information or copies of the forms and instructions should be directed to 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–577
3. 1902–0128
4. Gas Pipeline Certificates: Environmental Impact Statement
5. Revision
6. On occasion; Other (about 21.5 times per year)
7. Mandatory
8. Businesses or other for-profit
9. 55 respondents
10. 21.5 responses
11. 154 hours per response
12. 181,794 hours
13. The Commission uses FERC–577 data to ensure compliance with sections 102(c) of the National Environmental Policy Act of 1969 (NEPA), section 7(c) of the Natural Gas Act (NGA), and section 311 of the Natural Gas Policy Act (NGPA). The data are used to evaluate the environmental impact of proposed gas pipeline construction projects.

Statutory Authority: Sec. 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. No. 96–511), which amended Chapter 35 of Title 44 United States Code (See 44 U.S.C. § 3506 (a) and (c)(1).

Issued in Washington, D.C., November 28, 1994.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 94–29966 Filed 12–5–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. RP94–60–007]

Transwestern Pipeline Co.; Notice of Proposed Changes in FERC Gas Tariff

November 30, 1994.

Take notice that on November 28, 1994 Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, with an effective date of December 1, 1994:

110th Revised Sheet No. 5
16th Revised Sheet No. 5A
11th Revised Sheet No. 5A.01
8th Revised Sheet No. 5A.02
8th Revised Sheet No. 5A.03
8th Revised Sheet No. 5A.04
14th Revised Sheet No. 5B
14th Revised Sheet No. 90A

On August 23, 1994, Transwestern filed a Stipulation and Agreement (Settlement) to resolve all issues in Docket No. RP94–60–000, et al., except the right to challenge the prudence of certain costs under Order Nos. 500 and 528.

On October 28, 1994, the Commission approved the before-mentioned Settlement subject to Transwestern filing tariff sheets to implement the Settlement within 30 days of the date of the Order. The purpose of this filing is to file the tariff sheets in compliance with the Commission's Order.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before December 7, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–29910 Filed 12–5–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–219–000]

Columbia Gulf Transmission Co.; Notice of Informal Settlement Conference

November 30, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on December 6, 1994, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, N.E., Washington, D.C., for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Edith A. Gilmore at (202) 208–2158 or Hollis J. Alpert at (202) 208–0783.

Lois D. Cashell,

Secretary.

[FR Doc. 94–29911 Filed 12–5–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP95–49–001]

Northwest Alaskan Pipeline Co.; Notice of Application and Tariff Changes

November 30, 1994.

Take notice that on November 28, 1994, Northwest Alaskan Pipeline Company (Northwest Alaskan), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets:

Third Revised Sheet Nos. 400–401
First Revised Sheet Nos. 402–405
Third Revised Sheet No. 406
First Revised Sheet Nos. 406B–406Q
Fourth Revised Sheet No. 450
Second Revised Sheet No. 451
First Revised Sheet Nos. 452–453
Second Revised Sheet No. 454
First Revised Sheet No. 455
Third Revised Sheet No. 456
Second Revised Sheet No. 456A
First Revised Sheet Nos. 456B–456R
Second Revised Sheet Nos. 457–458
Third Revised Sheet Nos. 459–460
First Revised Sheet Nos. 460A–466
Third Revised Sheet No. 467
Second Revised Sheet Nos. 467A–467D
First Revised Sheet No. 567E

Northwest Alaskan states that on November 16, 1994, it made a filing in the above referenced docket to amend and restate its X–4 Rate Schedule. Pursuant to request from Commission staff, Northwest Alaskan states that the instant filing is being made to correct the pagination on the tariff sheets filed November 16, 1994.

Northwest Alaskan states that the tariff revisions would become effective on the first day of the first month following the day on which the Satisfaction of the Conditions Precedent to closing occurs in accordance with the Closing Agreement.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before December 7, 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. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashall,

Secretary.

[FR Doc. 94–29912 Filed 12–5–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–4–34–003]

Florida Gas Transmission Co.; Notice of Compliance Filing

November 30, 1994.

Take notice that on November 14, 1994, Florida Gas Transmission Company (FGT) filed certain information in compliance with the Commission's October 28, 1994 order in the above referenced docket. FGT states that no tariff sheets are being filed.

On October 28, 1994 the Commission issued its Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions, and Granting Waiver (October 28 Order). The October 28 Order accepted the tariff sheets submitted with FGT's September 12 Filing, subject to refund, and directed FGT to provide additional information and documentation regarding the determination of the remaining charges in response to the protesting parties' concerns. FGT states that the instant filing is made in compliance with the October 28 Order.

In addition to explanations made in the text of its filing, FGT states that it has attached as Appendix A a detail by customer, by month of total sales and transportation deliveries and actual recoveries from the volumes delivered to each customer during the period from May 1989 through May 1994. FGT states that it has attached as Appendix B a list of delivery points, identified by POI number, associated with each customer. FGT states that this additional data and the explanations contained in the text should provide all protesting parties with the information required to verify the accuracy and validity of FGT's calculations.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 7, 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–29913 Filed 12–5–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–1685–000]

Citizens Lehman Power Sales; Notice of Filing

December 1, 1994.

Take notice that on October 24, 1994, Citizens Lehman Power Sales supplemented its earlier filing in this docket.

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 December 8, 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. 94–29985 Filed 12–5–94; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10625–001]

Kittitas Reclamation District; Availability of Draft Environmental Assessment

November 30, 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 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for a license for the Taneum Chute Hydroelectric Project, located on the Kittitas Reclamation Districts', Taneum Chute irrigation canal near the city of Ellensburg, Washington, and has prepared a Draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that approval of the project, with appropriate environmental protective or enhancement measures, would not constitute a major federal action that would significantly affect quality of the human environment.

Copies of the DEA 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.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC., 20426. Please affix "Taneum Chute Hydroelectric Project, FERC No. 10625–001" to all comments. For further information, contact Gaylord W. Hoisington at (202) 219–2756.

Lois D. Cashell,

Secretary.

[FR Doc. 94–29909 Filed 12–5–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Cases Filed; Week of October 3 Through October 7, 1994

During the Week of October 3 through October 7, 1994, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585.

Dated: November 30, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of October 3 through October 7, 1994]

Date	Name and location of applicant	Case No.	Type of submission
Sept. 6, 1994	Amoco/Oklahoma, Oklahoma City, OK	RM251–276	Request for modification/rescission. *If granted:* The November 21, 1988 Decision and Order, Case Number RQ251–489, issued to Oklahoma regarding the State's Application for Refund submitted in the Amoco second stage refund proceeding would be modified.
Sept. 6, 1994	Belridge/Oklahoma, Oklahoma City, OK	RM8–272	Request for modification/rescission. *If granted:* The March 5, 1985 Decision and Order, Case Number RQ8–162, issued to Oklahoma regarding the State's Application for Refund submitted in the Belridge second stage refund proceeding would be modified.
Sept. 6, 1994	OKC/Oklahoma, Oklahoma City, OK	RM13–274	Request for modification/rescission. *If granted:* The November 21, 1988 Decision and Order, Case Number RQ13–491, issued to Oklahoma regarding the State's Application for Refund submitted in the OKC second stage refund proceeding would be modified.
Sept. 6, 1994	Palo Pinto/Oklahoma, Oklahoma City, OK	RM5–273	Request for modification/rescission. *If granted:* The March 5, 1985 Decision and Order, Case Number RQ5–161, issued to Oklahoma regarding the State's Application for Refund submitted in the Palo Pinto second stage refund proceeding would be modified.
Sept. 6, 1994	Vickers/Oklahoma, Oklahoma City, OK	RM1–275	Request for modification/rescission. *If granted:* The November 21, 1988 Decision and Order, Case Number RQ1–490 issued to Oklahoma regarding the state's Application for Refund submitted in the Vickers second stage refund proceeding would be modified.
Oct. 3, 1994	Glen M. Jameson, Lakewood, CO	VFA–0001	Appeal of an information request denial. *If granted:* The July 16, 1994 Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded, and Glen M. Jameson would receive access to "Names/Numbers of Former PAI Corporation Employees".
Oct. 4, 1994	Central American Petroleum Co., Cameron, MO	VEE–0001	Exception to the reporting requirements. *If granted:* Central American Petroleum Co. would not be required to file Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Products Sales Report."
Oct. 7, 1994	H and R Texaco Station, Memphis, TN	RR321–168	Request for modification/rescission in the Texaco refund proceeding. *If granted:* The April 4, 1992 Decision and Order, Case Number RF321–11317, issued to H and R Texaco Station regarding the firm's Application for Refund submitted in the Texaco refund proceeding would be modified.

REFUND APPLICATIONS RECEIVED

[October 3, 1994 to October 7, 1994]

Date received	Name of refund proceeding/name of refund applicant	Case Number
10/04/94	Koch Industries, Inc	RF345–31
10/04/94	Tennessee Farmers Cooperation	RF344–20
10/04/94	Southern States Coop., Inc	RF344–21
10/04/94	Growmark, Inc	RF344–22
10/04/94	MFA Oil Company	RF344–23
10/05/94	Toppers Oil Corp	RF326–329

[FR Doc. 94–29967 Filed 12–5–94; 8:45 am]

BILLING CODE 6450–01–P

Western Area Power Administration

Proposed Principles of Integrated Resource Planning for Use in Resource Acquisition and Transmission Planning

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed principles and request for public comments.

SUMMARY: Western Area Power Administration (Western) proposes to use principles of integrated resource planning (IRP) in its acquisition of resources (supply-side and demand-side) and in its transmission planning program. Western has developed the proposal contained in this notice for public consideration. After considering public comment on this proposal, Western will adopt final principles of

IRP as the policy under which project-specific resource acquisition and transmission planning procedures will be developed. These project-specific procedures will be developed through separate public processes.

DATES: Western seeks comments on the proposed principles outlined in this notice. To be considered, comments need to be received by March 7, 1995.

In addition to publication in the **Federal Register**, Western is mailing this notice to parties it has identified as likely to be interested, including those who have expressed an interest in the public involvement processes for Western's power marketing and transmission planning programs. Western will also send information on these principles to those who request it.

At this time, Western plans to hold one public information and comment meeting to provide information about and to accept public comment on these proposed principles. This public meeting will be held in Denver, Colorado, at 1 p.m., January 12, 1995, at the Stapleton Plaza Hotel, 3333 Quebec Street. Additional public meetings at other locations will be considered. Written comments will also be accepted. A summary of comments received and Western's responses will be provided in a subsequent **Federal Register** notice and to parties indicating they wish to continue receiving information about this process.

FURTHER INFORMATION: To receive information on these principles, and/or to make requests to receive subsequent mailings on this process, contact: Mr. Michael S. Cowan, Director, Division of Power Operations and Resources, Western Area Power Administration, P.O. Box 3402, Golden, CO 80401–0098, (303) 275–1630.

Background

On August 9, 1994, Western provided notice of its proposed Energy Planning and Management Program (Program), 59 FR 40543, concerning requirements for Western's customers to undertake integrated resource planning consistent with the statutory requirements of the Energy Policy Act of 1992. In that notice, Western committed to develop and use principles of IRP in its resource acquisition and transmission planning programs. The separate public process to develop IRP principles for Western's programs begins with publication of these draft principles.

The draft principles outlined in this notice differ from those proposed for Western's customers. Western's resource aquisitions are primarily short-term purchases of supplemental resources to firm variable hydropower generation, not aquisition's of resources to meet long-term load growth through the principles set forth in section 114 of the Energy Policy Act of 1992. The principles have also been modified so that they can be applied to Western's transmission planning process, which does not deal with new generation resources, only new or upgraded transmission facilities.

Western is currently involved in other public processes that can have an impact on future purchase power requirements. These processes are the Replacement Resources Process, pursuant to the Grand Canyon Protection Act of 1992 (Public Law 102–575); the Central Valley Project 2004 Power Marketing Environmental Impact Statement (EIS); and the Salt Lake City Area Integrated Projects Power Marketing EIS. The principles being developed under this public process will be applied when acquiring resources related to the decisions from these other public processes. These principles will serve as the policy under which specific procedures are developed as each project identifies the need to acquire resources or increase Western's transmission capability.

Scope

The proposed formal principles of IRP would apply specifically to:

1. Resource acquisitions involving a commitment to purchase a resource continuously or a commitment to make recurring purchases. Normally, formal principles would not be applied to unpredictable seasonal purchases, day-to-day economy energy purchases, and other short-term transactions.

2. New or upgraded transmission system construction with a 1995 total cost estimate in excess of $5 million for an individual project. This 1995 cost level would be adjusted each year using the construction cost index.

Where practicable, principles of IRP will also be applied informally to other Western transmission projects and/or resource acquisitions.

Proposed Principles of Integrated Resource Planning

I. Resource Acquisition Principles: Western's resource acquisition activities would be determined by project-specific power marketing plans, hydropower production capability, and the application of the following proposed principles of IRP:

1. Western will consider a full range of resource options, both supply-side and demand-side, as well as renewable resource options.

2. On a project-by-project basis, Western, in concert with interested stakeholders, will develop (1) methods and procedures to determine the need for resource acquisition and (2) criteria to be used in evaluating power resource alternatives.

3. Evaluation criteria will address cost, environmental impact, dependability, dispatchability, risk, diversity, and the ability to verify demand-side alternatives. Evaluation criteria will be reviewed as the need for resources changes or when long-term commitments to purchase power expire.

4. Evaluation criteria will be consistent with Western's power marketing policy, which states that Federal power is to be marketed in such a manner as to encourage the most widespread use thereof at the lowest possible rates to consumers consistent with sound business principles. The policy, found in Delegation Order No. 0204–108 (58 FR 59716, November 10, 1993), is derived from section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s.

5. Resource acquisition planning will be consistent with power marketing plans and associated contractual obligations.

6. Resource acquisition decisions will be documented and made available to Western's power customers and the public.

II. Transmission Planning Principles: Western's transmission planning is conducted to assess the capability of the Federal transmission system to provide adequate and reliable electric service to its customers and the interconnected power grid. The principles of IRP that will apply to Western's transmission planning are as follows:

1. Western will conduct early and wide public involvement to confirm the purpose and need of a proposed transmission project. Western proposes that a public meeting be held early in the planning process once the need for system modifications has been identified and prior to start of the National Environmental Policy Act (NEPA) process.

2. At the public meeting, Western will describe the need to be met and seek comments on alternative ways to address the need, including demand-side management, new construction, or upgrade of existing facilities.

3. Western will notify interested parties, including power customers, residents of the area, environmental groups, various resource suppliers including renewable generation entities, and other transmission utilities in the area, as well as other participants in the project if it is a joint project.

4. Alternatives that are feasible will be evaluated for cost, general environmental impacts, and system reliability concerns in coordination with interested parties.

5. The results of this evaluation will be made available to Western's power customers and the public.

Transmission facilities needed for reliability will be based on mitigating problems related to power system operations or replacing unsafe, aged, worn out, or inefficient equipment.

Western is committed to join the Western Regional Transmission Association and has joined the Southwest Regional Transmission Association (SWRTA). Both groups will promote coordinated planning and efficient use of transmission capacity and will provide another means for involvement by Western's customers. As appropriate, Western can invite other interested parties to attend SWRTA meetings as guests of Western. It is anticipated that some form of regional transmission group will be established in the Mid-continent Area Power Pool. This will also facilitate public involvement in considering Western's future transmission needs.

Public Process

The public process to determine the principles of integrated resource planning that Western will incorporate into its resource acquisition and transmission planning processes begins with publication of this notice.

Comments on these proposed principles are being sought during a 90-day comment period. Following this comment period, the principles to be adopted will be published in the **Federal Register**. This public process ends with publication of final principles in the **Federal Register**. Final principles will be effective 30 days after publication.

Environmental Evaluation

Western is seeking comment on the IRP principles outlined in this notice through a public process. Methods, procedures, and criteria for implementing these principles have yet to be developed and will be project-specific. Western is committed to initiating an appropriate public process under NEPA and its implementing regulations for these project-specific actions at the earliest possible time. The potential environmental effects of the methods, procedures, and criteria will be evaluated in addition to analyzing the effects of the acquisition of resources in these subsequent processes.

Determination Under Executive Order 12866

DOE has determined this is not a significant regulatory action because it does not meet the criteria of Executive Order 12866, 58 FR 51735. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Issued at Golden, Colorado, November 10, 1994.

J.M. Shafer,

Administrator.

[FR Doc. 94–29706 Filed 12–5–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5116–7]

Public Water System Supervision Program Revision for the State of Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given in accordance with the provision of section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300f et seq., and 40 CFR part 142, subpart B, the National Primary Drinking Water Regulations (NPDWR), that the State of Minnesota is revising its approved Public Water System Supervision (PWSS) primacy program. The Minnesota Department of Health (MDH) has adopted drinking water regulations for Lead and Copper, 44 synthetic organic chemicals (SOCs), 12 inorganic chemicals (IOCs), and 8 volatile organic chemicals (VOCs) that correspond to the NPDWR for Lead and Copper, SOCs, IOCs, and VOCs, and promulgated by the U.S. Environmental Protection Agency (USEPA) on June 7, 1991 (56 FR 26460–26564), on January 30, 1991 (56 FR 3526–3597), as amended on July 1, 1991 (56 FR 30266–30281), and on July 17, 1992 (57 FR 31776–31849). The USEPA has completed its review of Minnesota's PWSS primacy program revision and has determined that these sets of state program revisions are not less stringent than the corresponding Federal regulations.

The USEPA has determined that the Minnesota rule revisions meet the requirements of the Federal rule. Therefore, the USEPA has determined that these sets of state program revisions are no less stringent than the corresponding Federal regulations and is proposing to approve the MDH's rule revisions.

All interested parties are invited to submit written comments on these proposed determinations, and may request a public hearing on or before January 5, 1995. If a public hearing is requested and granted, the corresponding determination shall not become effective until such time following the hearing, at which the Regional Administrator issues an order affirming or rescinding this action. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator.

Requests for public hearing should be addressed to: Ron Murawski, (WD–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determinations and of information that the requesting person intends to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of Minnesota. A notice will be sent to the person(s) requesting the hearing as well as to the State of Minnesota. The hearing notice will include a statement of purpose, information regarding the time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and should the Regional Administrator not elect to hold a hearing on his own motion, these determinations shall become effective on January 5, 1995. Please bring this notice to the attention of any persons known by you to have an interest in these determinations.

All documents related to these determinations are available for

inspection between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Minnesota Department of Health, Drinking Water Protection Section, 925 Delaware Street Southeast, P.O. Box 59040, Minneapolis, Minnesota 55459–0040

State Docket Officer: Mr. Richard D. Clark, (612) 627–5180

Safe Drinking Water Branch, Drinking Water Section, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590

FOR FURTHER INFORMATION CONTACT: Ron Murawski, Region 5, Drinking Water Section at the Chicago address given above, telephone 312/886–2940.

(Sec. 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Signed this 21st day of November, 1994.

Robert Springer,

Acting Regional Administrator, USEPA, Region 5.

[FR Doc. 94–29976 Filed 12–5–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5117–1]

Public Information Visitor Center (PIC): Temporarily Closed

AGENCY: Notice of the Headquarters Public Information Center temporarily closed.

SUMMARY: The Headquarters Public Information Visitor Center will be closed from December 7 thru December 21, 1994 for recarpeting.

FOR FURTHER INFORMATION CONTACT: Gloris J. Butler, Program Manager, Public Information Center, Office of Information Resource Management, Information Management and Services Division at (202)260–3639.

Michael L. Miller,

Acting Chief, Information Access Branch.

[FR Doc. 94–29975 Filed 12–5–94; 8:45 am]

BILLING CODE 6560–50–P

[OPPTS–140228; FRL–4923–9]

Pacific Environmental Services, Inc.; Access to Trade Secret Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Pacific Environmental Services, Inc. (PES), of Herndon, VA for access to information submitted to EPA pursuant to sections 303, 311, 312, 313, and 322 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Some of the information may be claimed or determined to be trade secret information. EPA is issuing this notice to inform all submitters of trade secret information under the aforementioned EPCRA sections that EPA will provide PES personnel access to trade secret information on a need-to-know basis.

DATES: Access to the trade secret information submitted by EPA will occur no sooner than December 13, 1994.

FOR FURTHER INFORMATION CONTACT: Steven D. Newburg-Rinn, Information Management Division (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NE–G102, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260–3757.

SUPPLEMENTARY INFORMATION: Under EPCRA, industry must report information on the presence, use, production, and manufacture of certain chemicals to EPA. Under section 322 of EPCRA, facilities must send trade secrecy claims regarding their section 303, 311, 312, and 313 submittals to EPA.

PES is a subcontractor to Radian Corporation, 455 Horsepen Road, Suite 250, Herdon, VA 22071, under contract number 68–D40092 with EPA. PES will assist the Office of Pollution Prevention and Toxics in processing the information submitted by industry in response to the requirements of sections 303, 311, 312, 313, and 322 of EPCRA. PES staff will conduct reviews of EPCRA submissions at the EPCRA Reporting Center where submissions are received and processed. PES will review selected submissions for technical accuracy and contact submitters regarding potential discrepancies.

EPA has determined that PES will require access to trade secret information under EPCRA to perform their contractual duties, and in doing so, PES personnel will sign nondisclosure agreements and follow all required security procedures. All access to EPCRA trade secret information will take place at the EPCRA Reporting Center. Upon termination of their contract, or prior to termination of their contract at EPA's request, PES will return all materials to EPA. Clearance to access to EPCRA trade secret information under this contract is scheduled to expire on September 30, 1995.

Dated: November 29, 1994.

Linda A. Travers,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–29971 Filed 12–5–94; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–140229; FRL–4924–1]

Radian Corporation; Access to Trade Secret Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized Radian Corporation (Radian), of Herndon, VA for access to information submitted to EPA pursuant to sections 303, 311, 312, 313, and 322 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), also known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). Some of the information may be claimed or determined to be trade secret information. EPA is issuing this notice to inform all submitters of trade secret information under the aforementioned EPCRA sections that EPA will provide Radian Corporation personnel access to trade secret information on a need-to-know basis.

DATES: Access to the trade secret information submitted by EPA will occur no sooner than December 13, 1994.

FOR FURTHER INFORMATION CONTACT: Steven D. Newburg-Rinn, Information Management Division (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NE—G102, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260–3757.

SUPPLEMENTARY INFORMATION: Under EPCRA, industry must report information on the presence, use, production, and manufacture of certain chemicals to EPA. Under section 322 of EPCRA, facilities must send trade secrecy claims regarding their section 303, 311, 312, and 313 submittals to EPA.

Under contract number 68–D4–0092, Radian will assist the Office of Pollution Prevention and Toxics in processing the information submitted by industry in response to the requirements of sections 303, 311, 312, 313, and 322 of EPCRA. Radian Corporation staff will conduct reviews of EPCRA submissions at the EPCRA Reporting Center where submissions are received and processed. Radian Corporation will review selected submissions for technical accuracy and contact submitters regarding potential discrepancies.

EPA has determined that Radian Corporation will require access to trade secret information under EPCRA to perform their contractual duties, and in doing so, Radian Corporation personnel will sign nondisclosure agreements and follow all required security procedures. All access to EPCRA trade secret information will take place at the EPCRA Reporting Center. Upon termination of their contract, or prior to termination of their contract at EPA's request, Radian will return all materials to EPA. Clearance to access to EPCRA trade secret information under this contract is scheduled to expire on September 30, 1999.

Dated: November 29, 1994.

Linda A. Travers,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–29972 Filed 12–5–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5116–8]

Proposed Administrative Settlement Under the Comprehensive Environmental Response, Compensation, and Liability Act

AGENCY: U.S. Environmental Protection Agency.

ACTION: Request for public comment.

SUMMARY: The U.S. Environmental Protection Agency is proposing to enter into a *de minimis* settlement pursuant to section 122(g)(4) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9622(g)(4). This proposed settlement is intended to resolve the liabilities under CERCLA of 65 *de minimis* parties for response costs incurred and to be incurred at the Eastern Diversified Superfund Site, Hometown, Pennsylvania.

DATES: Comments must be provided on or before January 5, 1995.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, and should refer to: *In Re Eastern Diversified Superfund Site*, Hometown, Pennsylvania, U.S. EPA Docket No. III–94–30–DC.

FOR FURTHER INFORMATION CONTACT: Helen Keplinger (Mail Code–2244) (202) 260–7116, U.S. Environmental Protection Agency, Office of Site Remediation Enforcement, Room 3219–MALL, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Notice of *De Minimis* Settlement: In accordance with section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Eastern Diversified Superfund Site, in Hometown, Pa. The agreement was proposed by EPA Region III on July 29, 1994. Subject to review by the public pursuant to this Notice, the agreement has met with the approval of the Attorney General or her designee, United States Department of Justice. Below are listed the parties who have executed binding certifications of their consent to participate in this settlement:

1. Abe Solomon
2. Alabama Power Company
3. Alcan Aluminum Corporation
4. Aluminum Company of America "ALCOA"
5. American Flexible Conduit
6. Atlantic Richfield
7. Atlas Powder—n/k/a ICI Explosives USA Inc.
8. Baker Iron & Metal
9. Belden Wire & Cable Company
10. Berk-tek
11. Charles Bluestone
12. Boston Insulated Wire Cable Systems, Inc.
13. Brand Rex
14. C & R Waste
15. Cambridge I & M
16. Cerro Wire and Cable Co., Inc.
17. Chester Cable (Alcatel)
18. Coatsville I & M
19. Colonial Metals Co.
20. Consolidated Edison Company
21. Cyprus Wire
22. David Markowitz Metal Co., Inc.
23. Defense Property (Defense Logistics Agency)
24. Duke Power
25. Duquesne Light Co.
26. East Penn
27. Essex Group, Inc.
28. General Cable
29. M. Glosser & Sons Inc.
30. Goldberg Brothers, Inc.
31. H. D. Metal Company, Inc.
32. ICI Americas
33. I. Richman and Co., Inc.
34. I T T Royal Electric by ITT Corp.
35. Jacob Max
36. Kalas Manufacturing
37. Kane Brothers Scrap Iron & Metal Co., Inc.
38. Kerite Company
39. Levin Brothers
40. Lynn Electronics
41. Maryland Metals, Inc.
42. Metalsco, Inc.
43. Mohawk Wire & Cable for Hendrix Wire & Cable Co.
44. Meyers Bros. Inc.
45. Okonite
46. Olin Chemicals
47. Packard Electric Div. General Motors Corp.
48. Penn-Del Metal Recycling Corp.
49. Phelps Dodge Corporation
50. Philadelphia Wire
51. Phillips Cable
52. Prestolite
53. Reynolds Metals Company
54. Schiavone-Bonomo Corporation
55. Seaward Construction Company, Inc.
56. Simon Wrecking
57. Southwire Company
58. Staiman Brothers, Inc.
59. Suisman & Blumenthal
60. Tamaqua Cable Products Corp.
61. Tennessee Valley Authority
62. TW Communication Corporation
63. United I & M
64. United Refining & Smelting Co., Inc.
65. U. S. Alum.

These 65 parties collectively have agreed to pay $3,930,469.96 subject to the contingency that EPA may elect not to complete the settlement if comments received from the public during this comment period disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Money collected from *de minimis* parties will be used for past response costs incurred at or in connection with the Site, projected future response costs to be incurred at or in connection with the Site, and includes a premium to cover the risk that unknown conditions are discovered or information previously unknown to EPA is received.

EPA is entering into this agreement under the authority of sections 122(g) and 107 of CERCLA. Section 122(g) authorizes early settlements with *de minimis* parties to allow them to resolve their liabilities at Superfund Sites without incurring substantial transaction costs. Under this authority, EPA proposes to settle with a number of potentially responsible parties at the Eastern Diversified Superfund Site, each of whom is responsible for less than four percent of the volume of hazardous substance disposed of at the Site. EPA issued a draft settlement proposal on June 6, 1994, invited comments and challenges to the volumetric ranking. On July 29, 1994, EPA issued a final settlement proposal embodied in the Administrative Order on Consent which included several modifications made in response to comments by *de minimis* parties in letters to EPA and during negotiations with the Agency. The proposed settlement reflects and was agreed upon based on conditions known to parties on July 29, 1994. *De minimis* settling parties will be required to pay their volumetric share of the Government's past response costs and the estimated future response costs at the Eastern Diversified Metals Site excluding any federal claims for natural resource damages or any State claims.

The settlement as it is now proposed includes an adjustment to the volumetric share of an eligible *de minimis* party; this adjustment was made after the final settlement proposal

was sent to all eligible parties on July 29, 1994, in response to additional evidence provided by this party or discovered by EPA. The party affected is Schiavone-Bonomo, a/k/a Schiavone-Bros.

The Environmental Protection Agency will receive written comments relating to this Agreement for thirty (30) days from the date of publication of this Notice. A copy of the proposed Administrative Order on Consent may be obtained from Harry R. Steinmetz (3HW11) in EPA's Region III Office, 841 Chestnut Building, Philadelphia, PA 19107, (telephone: 215/597–1192).

Stanley Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 94–29970 Filed 12–5–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

November 25, 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) 418–0214. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, Room 10214 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0496.

Title: ARMIS Operating Data Report.

Report Number: FCC Report 43–08.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit.

Frequency of Response: Annual reporting requirement.

Estimated Annual Burden: 50 responses, 160 hours average burden per response, 8,000 hours total annual burden.

Needs and Uses: FCC Report 43–08 is one of several reports comprising the automated reporting system. It is an annual report which consists of statistical schedules previously contained in FCC Form M which are needed by the Commission to monitor network growth, usage, and reliability. The information contained in the automated reports provides the necessary detail to enable this Commission to fulfill its regulatory responsibilities. Automated reportingeatly enhances the Commission's ability to process and analyze the extensive amounts of data that are needed to administer its rules. Automating and organizing data as submitted to the Commission facilitates the timely and efficient analyses of revenue requirements and rate of return, provides an improved basis for auditing and other oversight functions and enhances the Commission's ability to quantify the effects of policy proposals. This submission is an extension of the current OMB approval - no changes to requirements.

OMB Number: None.

Title: Application for AM Broadcast Station License.

Form Number: FCC Form 302–AM.

Action: New collection.

Respondents: Non-profit institutions, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 400 responses; 639.88 hours average burden per response; 255,952 hours total annual burden.

Needs and Uses: On 7/16/92, the OMB approved for use a new FCC Form 302–FM (3060–0506) to be used by licensees and permittees to apply for a new or modified FM license. The FCC Form 302–FM was created through the Total Quality Management (TQM) process. At the time of approval, the current FCC Form 302 was to be used only for the AM and TV services. At this time, the Commission is separating the AM and TV services into separate forms. The FCC Form 302–TV will keep the current OMB control number (3060–0029). The FCC Form 302–AM is being submitted as a new collection. Licensees and permittees of AM broadcast stations are required to file FCC Form 302–AM to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities of these stations. Additionally, when changes are made to an AM station which alter the resistance of the antenna system, a license must initiate a determination of the operating power by the direct method. The results of this are reported to the Commission using the FCC Form 302–AM. The data is used by FCC staff to confirm that the station has been built to terms specified in the outstanding construction permit, and to update FCC station files. Data is then extracted from FCC Form 302–AM for inclusion in the subsequent license to operate the station.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–29939 Filed 12–5–94; 8:45 am]

BILLING CODE 6712–01–F

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

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 Commission's 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) 418–0210. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, room 10236 NEOB, Washington, DC 20503.

Note: The Commission requested expedited review of this item by December 12, 1994, under the provisions of 5 CFR 1320.18.

OMB Number: 3060–0612

Title: Voluntary Collection of Customer Satisfaction for Several External Customer Groups of the Federal Communications Commission Using Focus and Interviews

Action: Reinstatement, with change, of a previously approved collection for which approval has expired

Respondents: Individuals or households, Business or other for profit, Not-for profit institutions, federal government, and state, local, or tribal government

Frequency of Response: One time survey

Estimated Annual Burden: 130 responses; 2 hours average burden per response; 260 hours total annual burden

Needs and Uses: The FCC will conduct a voluntary survey to improve customer service to several external customer service groups—common carrier providers, local franchising authorities, wireless radio applicants and licensees, broadcast applicants and licensees, and the general public. The FCC will conduct focus groups which will provide the data that will be used to develop questionnaire

surveys and set customer service standards. Representatives from these customer groups will be invited to participate in either focus groups or interviews. A maximum number of nine focus groups will be held, three with each group. Structured interviews—either in-person or via telephone—will be held with local franchising authorities and the general public. Approximately 20 interviews will be held with each group for a total of 40 interviews. Participants will be invited by using the attached telephone script. Each focus group and interview will last about two hours, participants will be asked 12 open-ended questions. Participants will not be given questions in advance. Out-of-pocket expenses that result from participation will not be reimbursed. During the focus groups and telephone interviews, data will be gathered on: (1) Problems, (2) suggestions to improve services, (3) services customers would like, and (4) services customers do not want. This data will be used to develop survey questionnaires and customer service standards.

Federal Communications Commission.

William F. Caton,

Acting secretary.

Focus Group and Interview Protocol

Introduction

Why FCC is Surveying Customers

- National Performance Review
- Executive Order 12862
- Align services with customer needs

What this Surveying Entails

- Talking with customers directly to assess their customer service needs

Question 1: What products and services do you receive from the FCC?

Question 2: When did you directly interact with the FCC?

Question 3: Which office at the FCC did you directly interact with?

Question 4: Have there been any issues or significant problems with the products or services provided to you by the FCC? *(question will be asked for each relevant product and service).*

Question 5: How would you suggest the FCC improve? *(question will be asked for each relevant product and service).*

Question 6: What positive experiences have you had in your interactions with the FCC?

Question 7: What kinds of products and services should the FCC provide for you?

Question 8: Do you currently have any need of products or services not currently provided by the FCC?

Question 9: Does the FCC currently provide a product or service that is not particularly useful to you?

Question 10: Would you pay more for services the FCC currently provides?

Question 11: Would you pay more for additional services?

Question 12: How would you feel about the FCC raising the cost of their services?

Wrap-up of Discussion and Thank-you for Participating.

Language for Focus Group Customer Segment Calls

Hello, My name is _____ and I am calling from the FCC.

The Federal Communications Commission is conducting a survey of their customers to determine the kind and quality of services they want and their level of satisfaction with existing services. We are inviting various representatives to participate in focus groups to obtain their ideas as to how the FCC can improve. We've hired Booz-Allen & Hamilton to conduct these focus groups. We would like to have your company represented. The best individual to send would be the one who interacts most with the FCC on your company's behalf. We will use the results of the focus groups to set customer service standards and to develop a customer service plan.

We will be holding the focus groups at the Booz-Allen & Hamilton offices in Bethesda, MD. During the focus groups, you will be asked a series of questions relating to the licensing/application process at the FCC, your particular experiences with the FCC and what types of improvements you would recommend. We expect the focus groups to last approximately two hours. Will you be able to attend? We will send you a confirmation letter that includes directions to Booz-Allen offices. Thank you for your time. We look forward to hearing your suggestions.

Language for Telephone Interviews Customer Segment Calls

Hello, My name is _____ and I am calling from the FCC.

The Federal Communications Commission is conducting a survey of their customers to determine the kind and quality of services they want and their level of satisfaction with existing services. We are inviting various representatives to participate in telephone interviews to obtain their ideas as to how the FCC can improve. We've hired Booz-Allen & Hamilton to conduct these interviews. We would like to have your company represented. The best individual for us to speak with would be the one who interacts most with the FCC on your company's behalf. We will use the results of the interviews to set customer service standards and to develop a customer service plan.

Booz-Allen & Hamilton will be calling your representative. We would like to schedule a convenient date and time now. During the interview, you will be asked a series of questions relating to the licensing/application process at the FCC, your particular experiences with the FCC and what types of improvements you would recommend. We expect the interview to last approximately two hours. Will you be able to participate? We will send you a confirmation letter that includes the date and time of the interview. Thank you for your time. We look forward to hearing your suggestions.

[FR Doc. 94–30049 Filed 12–5–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Bank of Boston Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has 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.

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 December 19, 1994.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of Boston Corp.*, Boston, Massachusetts; to acquire Ganis Credit Corporation, Newport Beach, California, and thereby indirectly acquire 50 percent of Thor Credit Corporation, Newport Beach, Florida, and engage in consumer finance activities, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 29, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-29894 Filed 12-5-94; 8:45 am]

BILLING CODE 6210-01-F

John W. Coots, 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 December 19, 1994.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *John W. and Margaret Coots Trust; John W. Coots, Jr., and Margaret Ann Palmer, Co-Trustees*; both of Platte City, Missouri; to acquire 36.2 percent of the voting shares of Wells Bancshares, Inc., Platte City, Missouri, and thereby indirectly acquire Wells Bank of Platte City, Platte City, Missouri. In addition Vanetta Ruth Renz Trust; Vanetta R. Renz and Jimmy C. Renz, Co-Trustees, both of Platte City, Missouri, to acquire an additional 5.72 percent, for a total of 27.15 percent, of the voting shares of Wells Bancshares, Inc., Platte City, Missouri, and thereby indirectly acquire Wells Bank of Platte City, Platte City, Missouri.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. *Lois Bir*, Dallas Texas; to acquire 31.94 percent; Herman Duhr, Jr., Bremond, Texas, to retain 9.42 percent; Calvin Wiese, Robinson, Texas, to acquire 4.79; and Cooper Wiese, Calvert, Texas, to acquire 4.79 percent, of the voting shares of Farmers & Merchants Bancshares, Inc., Mart, Texas, and thereby indirectly acquire Farmers & Merchants National Bank, Mart, Texas.

Board of Governors of the Federal Reserve System, November 29, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-29895 Filed 12-5-94; 8:45 am]

BILLING CODE 6210-01-F

Shawmut National 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 December 30, 1994.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Shawmut National Corporation*, Hartford, Connecticut and Boston, Massachusetts; to acquire 100 percent of the voting shares of Shawmut Bank New York, N.A., Schenectady, New York, a *de novo* bank. In addition to this application, Northeast Federal Corporation, Hartford, Connecticut has applied to become a bank holding company by acquiring Shawmut Bank New York, Schenectady, New York.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Comerica Incorporated*, Detroit, Michigan and Comerica California Incorporated, San Jose, California; to acquire 100 percent of the voting shares of University Bank & Trust Company, Palo Alto, California.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Wes-Tenn Bancorp, Inc.*, Covington, Tennessee; to acquire 100 percent of the voting shares of West Tennessee Financial Corporation, Selmer, Tennessee, and thereby indirectly acquire Community Bank of West Tennessee, Selmer, Tennessee.

D. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *Commercial Bancorp*, Salem, Oregon; to merge with West Coast Bancorp, Newport, Oregon, and thereby indirectly acquire The Bank of Newport, Newport, Oregon. In addition, Commercial Bancorp has applied to acquire an option for 19.9 percent of the voting shares of West Coast Bancorp.

2. *West Coast Bancorp*, Newport, Oregon; to acquire an option for 19.9 percent of the voting shares of Commercial Bancorp, Salem, Oregon, and thereby indirectly acquire The Commercial Bank, Salem, Oregon, and Valley Commerical Bank, Forest Grove, Oregon.

Board of Governors of the Federal Reserve System, November 29, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-29896 Filed 12-5-94; 8:45 am]

BILLING CODE 6210-01-F

Commerce Bancshares, Inc., 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 December 30, 1994.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Commerce Bancshares, Inc., Kansas City, Missouri, and CBI Security Corporation, Kansas City, Missouri; to acquire 100 percent of the voting shares of Cotton Exchange Bancshares, Inc. Kennett, Missouri, and thereby indirectly acquire Cotton Exchange Bank, Kennett, Missouri.

2. Commerce Bancshares, Inc., Kansas City, Missouri, and CBI Illinois, Inc., Kansas City, Missouri; to acquire 100 percent of the voting shares of Peoples Mid-Illinois Corporation, Bloomington, Illinois, and thereby indirectly acquire The Peoples Bank, Bloomington, Illinois.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Commercial Financial Corp., Seguin, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First Commercial Bank, N.A., Seguin, Texas.

2. Kidd Partners, Ltd., Chandler, Texas; to become a bank holding company by acquiring 90.4 percent of the voting shares of Chandler Bancorp, Inc., Chandler, Texas, and thereby indirectly acquire Citizens State Bank, Chandler, Texas.

Board of Governors of the Federal Reserve System, November 30, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–29923 Filed 12–5–94; 8:45 am]

BILLING CODE 6210–01–F

Marshall & Ilsley Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has 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.

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 December 20, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Marshall and Ilsley Corporation, Milwaukee, Wisconsin; to acquire through its subsidiary, M&I Data Services, Inc., Milwaukee, Wisconsin, and thereby engage in certain assets and assume certain liabilities of Software Alliance Corporation, Berkeley, California, related to software distribution and servicing of software products, pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 30, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–29922 Filed 12–5–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Meeting of the Executive Committee of the U.S. Advisory Board on Child Abuse and Neglect

AGENCY: Administration for Children and Families, DHHS.

ACTION: Notice of meeting.

SUMMARY: The Executive Committee of the U.S. Advisory Board on Child Abuse and Neglect will hold a meeting in room 423–A, Humphrey Building, Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC, from 9:00 a.m., Tuesday, December 13, through 5:00 p.m., Wednesday, December 14, 1994.

This meeting is open to the public. If a sign language interpreter is needed, you may contact David Siegel at (202) 401–9215.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Gosdeck, Special Projects Specialist, U.S. Advisory Board on Child Abuse and Neglect, room 303–D, Humphrey Building, Washington, DC 20201, (202) 690–8604.

SUPPLEMENTARY INFORMATION: During this meeting, the Executive Committee of the Advisory Board will discuss the draft 1994 report on child maltreatment-related fatalities.

Dated: November 29, 1994.

Preston Bruce,

Executive Director, U.S. Advisory Board on Child Abuse and Neglect.

[FR Doc. 94–29942 Filed 12–5–94; 8:45 am]

BILLING CODE 4184–01–P

Centers for Disease Control and Prevention

[CDC-512]

Assessment of Knowledge of the Relationship Between Folic Acid Consumption and the Prevention of Spina Bifida and Anencephaly

Summary

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1995 funds for a sole-source grant with the March of Dimes Birth Defects Foundation for the evaluation of the effectiveness of public health programs to prevent birth defects through an assessment of the current state of knowledge among reproductive-age women relative to folic acid consumption and the prevention of spina bifida and anencephaly. Approximately $75,000 is available in FY 1995 to fund this project. It is expected that the award will begin on or about February 1, 1995, and will be made for a 12-month budget period within a project period up to three years. Funding estimates are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

The primary purpose of this project is for the March of Dimes to provide an assessment of the current state of knowledge and behavior among U.S. women of reproductive age relative to folic acid consumption and the prevention of SBA, as well as other pregnancy-related health issues.

The assessment will be done by conducting a study of reproductive-age women (ages 18–45). It is envisioned that results from the study will be used to direct planning for national, State and local SBA prevention programs, and will provide a baseline from which to later evaluate progress in knowledge and behavior relative to folic acid consumption.

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 areas of Environmental Health, Maternal and Infant Health, and Surveillance and Data Systems. (To order a copy of "Healthy People 2000," see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority: This program is authorized under Section 301 (42 U.S.C. 241) of the PHS Act.

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 Applicant

Assistance will be provided only to the March of Dimes Birth Defect Foundation, White Plains, New York for this project. No other applications are solicited. The program announcement and application kit have been sent to the March of Dimes Birth Defects Foundation.

The March of Dimes Birth Defect Foundation is the most appropriate and qualified institution to conduct the work under this grant for the following reasons:

1. The Genetic Testing and Gene Therapy Survey, completed in 1992, was commissioned, managed, and disseminated by the March of Dimes. Based on 1,000 telephone interviews with a cross section of adults, the survey has been instrumental in the development of public policy and educational interventions since its release. The experience gained by the March of Dimes during the conduct of this national survey makes it the *only* national volunteer organization with the level of expertise required to undertake and disseminate an analogous survey of reproductive-age women's awareness of folic acid and other pregnancy-related issues.

2. The history of success of the research efforts supported by the March of Dimes is incomparable. The March of Dimes has played a key role in significant advances in the understanding and prevention of birth defects since Dr. Jonas Salk, with funding from the March of Dimes, developed the vaccine that led to the conquest of polio in the 1950's.

3. The March of Dimes is the *only* volunteer organization which has as its primary goal the improvement of the health of babies by preventing birth defects and infant mortality. This organizational goal parallels the CDC's health promotion and prevention goals outlined in "Healthy People 2000."

4. During the promotion of preventions such as Polio, Rubella and Rh vaccines, a remarkable climate of trust was established between the March of Dimes and women of childbearing age. The credibility and name recognition earned by the March of Dimes through these past efforts greatly increases the likelihood that women will participate in an assessment of the level of knowledge and behavior regarding the consumption of folic acid.

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

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 is 93.283.

Other Requirements

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations, 45 CFR Part 46, regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please refer to Announcement 512 and contact Adrienne S. Brown, 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.

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 SUMMARY may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402-9325, telephone (202) 783-3238.

Dated: November 29, 1994.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–29920 Filed 12–5–94; 8:45 am]

BILLING CODE 4163–18–P

Food and Drug Administration

Advisory Committee; Renewals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the renewal of certain FDA advisory committees by the Commissioner of Food and Drugs. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463 (5 U.S.C. app. 2)).

DATES: Authority for these committees will expire on the dates indicated below unless the Commissioner formally determines that renewal is in the public interest.

Name of the committee	Date of expiration
Allergenic Products Advisory Committee	July 9, 1996
Cardiovascular and Renal Drugs Advisory Committee	August 27, 1996
Endocrinologic and Metabolic Drugs Advisory Committee	August 27, 1996
Oncologic Drugs Advisory Committee	September 1, 1996
Anti-Infective Drugs Advisory Committee	October 7, 1996
Dermatologic and Ophthalmic Drugs Advisory Committee (Formerly Dermatologic Drugs Advisory Committee)	October 7, 1996
Biological Response Modifiers Advisory Committee	October 28, 1996

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

Dated: November 29, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–29989 Filed 12–5–94; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of health

National Cancer Institute; Amended Notice of the Meetings of the National Cancer Advisory Board and Its Subcommittees

Notice is hereby given of a change in the meeting of the National Cancer Advisory Board on December 6, 1994, at 8 a.m. in Building 31C, Conference Room 10, National Institutes of Health, 9000 Rockville Pike, Bethesda, MD which was published in the **Federal Register** (59 FR 58848) on November 15, 1994.

The entire meeting was to have been open to the public, but in accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed from 5 p.m. to adjournment for discussion of activities carried out by and through the National Cancer Institute which will include a discussion of extramural/intramural programmatic and personnel policies of a sensitive nature. These discussions could disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: November 30, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–30021 Filed 12–5–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Office of the Assistant Secretary for Health, Title III, Part I, of the Public Health Service Act; Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health on January 14, 1981, by the Secretary of Health and Human Services, the Assistant Secretary for Health has delegated to the Administrator, Health Resources and Services Administration, all of the authorities under Title III, Part I, of the Public Health Service Act (42 U.S.C. 274K), as amended, pertaining to the National Bone Marrow Donor Registry, excluding the authorities to issue regulations, to submit reports to the Congress or a congressional committee, to establish advisory committees or councils, or to select members to advisory or councils.

Redelegation

This authority may be redelegated.

Prior Delegations

This delegation superseded the March 7, 1991, delegation to the National Institutes of Health pertaining to the National Bone Marrow Donor Registry. All other delegations and redelegations under Title III of the Public Health Service Act shall continue in effect, provided they are consistent with this delegation.

Effective Date

This delegation is effective upon date of signature.

Dated: November 4, 1994.

Philip R. Lee,

Assistant Secretary for Health.

[FR Doc. 94–29868 Filed 12–5–94; 8:45 am]

BILLING CODE 4160–15–M

Social Security Administration

[Social Security Ruling SSR 94–6]

Disability—Workers' Compensation Offset—Excluding Legal Expenses Incurred by Claimant in Connection With Initial Award of Workers' Compensation Benefits—Washington

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 94–6. The issue is whether legal expenses incurred by the claimant in connection with an initial workers' compensation (WC) award in the State of Washington were properly excluded by the Social Security Administration (SSA) from the WC offset calculation required by section 224 of the Social Security Act. SSA regulations provide that legal expenses paid or incurred in connection with a WC award or settlement are excluded to the extent such expenses are consonant with State law. Washington State law appears to permit an attorney who successfully represents a claimant in obtaining an initial award of WC benefits to charge a fee of up to 30 percent of the benefits awarded. Therefore, such attorney fees, if paid or incurred by the claimant, may be excluded from the WC offset provisions. Although this Ruling concerns the State of Washington, it clearly illustrates SSA's longstanding policy in these matters.

EFFECTIVE DATE: December 6, 1994.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security

Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the Federal Register to that effect.

(Catalog of Federal Domestic Assistance Programs Nos. 93.802 Social Security—Disability Insurance; 93.803 Social Security—Retirement Insurance; 93.805 Social Security—Survivors Insurance; 93.806 Special Benefits for Disabled Coal Miners.)

Dated: November 10, 1994.

Shirley S. Chater,

Commissioner of Social Security.

Section 224 of the Social Security Act (42 U.S.C. 424a) disability—workers' compensation offset—excluding legal expenses incurred in connection with initial award of workers' compensation benefits—Washington

20 CFR 404.408(d)

Section 224 of the Social Security Act (the Act) requires an offset of title II disability insurance benefits if the worker is also entitled to workers' compensation (WC) benefits. Social Security Administration (SSA) regulations, 20 CFR 404.408(d), further provide that legal expenses paid or incurred in connection with a WC award or settlement are excluded from the computation of the WC offset to the extent such expenses are consonant with State law.

Under the WC laws of the State of Washington, an attorney may charge a reasonable fee of not more than 30 percent of the increase in the award secured by the attorney's services. An "increase" in a Washington WC award can include initial awards that increase the amount of the WC from zero to the amount awarded. Therefore, such attorney fees, if paid or incurred by the worker, may be excluded from the WC offset provisions of section 224 of the Act.

A question has arisen as to whether legal expenses incurred by the claimant in connection with an initial WC award in the State of Washington were properly excluded from SSA's offset calculation.

Pursuant to SSA regulations at 20 CFR 404.408(d), legal expenses paid or incurred in connection with a WC settlement are excluded to the extent such expenses are consonant with State law. This regulation reflects Congress' intent that, since workers' compensation awards are generally understood to include compensation for legal expenses, for the purposes of offset, SSA would not include any part of the WC lump sum or benefit which is equal to the amount of such expenses paid or incurred by the worker. (See S. Rep. No. 404, 89th Cong., 1st Sess. (1965).) Under the WC laws of the State of Washington, an attorney may charge a reasonable fee of not more than 30 percent of the increase in the award secured by the attorney's services.

We believe one could reasonably consider the initial award to be an increase in the workers' compensation award from nothing to the amount awarded. Under such an interpretation, the attorney who successfully represents a claimant in obtaining an initial award of workers' compensation benefits would be permitted to charge a fee of up to 30 percent of the benefits awarded.

There are three reasons supporting this interpretation.

First, contact with the appropriate Washington State agencies revealed no prohibition on charging attorney fees in connection with establishing the initial award of benefits.

Second, there have been a number of cases presented to SSA in which attorney fees were charged to the claimants for services in obtaining the initial award of WC benefits. We do not believe it would be appropriate to conclude, without compelling evidence, that these WC attorneys acted in direct contravention of the State's WC laws.

Third, in *Regnier* v. *Department of Labor and Industries*, 749 P.2d 1299, 1301 (Wash. 1988), Washington's highest court described R.C.W. 51.52.120 as allowing the department "to determine what is a reasonable fee for a lawyer to charge a claimant for assistance in *establishing* an industrial insurance claim," a description which would seem clearly to encompass the obtaining of an initial award of benefits. (Emphasis added.)

Because Washington State law lacks a clear prohibition on the charging of attorney fees in connection with initial claims for WC benefits, other than the 30 percent cap, the amounts up to that limit paid by the claimants to their attorneys for services in the WC claims may be considered to be consonant with State law and thus are excluded for purposes of SSA's offset pursuant to 20 CFR 404.408(d).

[FR Doc. 94–29936 Filed 12–5–94; 8:45 am]

BILLING CODE 4190–29–P

[Social Security Ruling SSR 94–5p]

Title XVI: SSI Treatment of Department of Veterans Affairs Payments to Fiduciaries

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security Ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 94–5p. This Ruling explains the continued longstanding policy that payments made by the Department of Veterans Affairs (VA) to an individual who acts as a fiduciary for another are not income or resources to the fiduciary for the purpose of determining his or her eligibility for or amount of benefits under the supplemental security income (SSI) program.

The Commissioner also gives notice that this Ruling supersedes SSR 82–31. SSR 82–31 (C.E. 1981–1985, p. 777) contained policy in addition to that concerning VA payments to fiduciaries, regarding the treatment of veterans benefits made to SSI claimants where VA augments the benefits because the recipient has dependents. The policy on the treatment of VA augmented benefits is no longer applicable because of regulations promulgated on this date.

EFFECTIVE DATE: December 6, 1995.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Division of Regulations and Rulings, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION:

Although we are not required to do so pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Program 93.807—Supplemental Security Income)

Dated: September 22, 1994.

Shirley S. Chater,

Commissioner of Social Security.

Policy Interpretation Ruling

Title XVI: SSI Treatment of Department of Veterans Affairs Payments to Fiduciaries

This Ruling supersedes Program Policy Statement (PPS) No. 65 (Social Security Ruling (SSR) 82–31, Title XVI: SSI Treatment of Veterans Administration Payments to SSI Eligibles/Fiduciaries, Cumulative Edition 1981–1985, p. 777).

Purpose: To state supplemental security income (SSI) policy with respect to Department of Veterans Affairs (VA) payments made to fiduciaries.

Citations (Authority): Section 1612(a)(2)(B) of the Social Security Act; 20 CFR 416.1102 and 416.1121, 38 U.S.C. Veterans Benefits.

Pertinent History: Social Security Administration (SSA) policy provides that VA disability compensation or pension benefit received by an eligible individual is unearned income to that individual (and is a resource if retained into the month following that of receipt). Income and resources are used in determining SSI eligibility. Income is used in determining the amount of SSI benefits payable.

Benefits which are paid to an individual as a fiduciary (a party who receives and manages benefits on behalf of another) are not available for the fiduciary's own use and, therefore, are not counted as unearned income of the fiduciary in the month of receipt or as a resource thereafter for the purpose of determining the fiduciary's eligibility for or amount of SSI benefits.

There are situations where a person may be receiving VA benefits as a beneficiary and also as a fiduciary for another. For example: A World War II disabled veteran in receipt of his own VA compensation may also be in receipt of VA benefits in a separate check as a fiduciary on behalf of his incompetent Vietnam veteran son; a widow in receipt of her own VA pension may also be in receipt of VA benefits in a separate check as a fiduciary on behalf of her grandchild; or the child of a deceased veteran may be in receipt of dependents' educational assistance, and also in receipt of dependency and indemnity compensation as a fiduciary on behalf of his or her brother or sister.

Policy Statement: Payments made by the VA to an individual in his or her capacity as a fiduciary on behalf of another are not income or resources to the fiduciary for the purpose of determining the fiduciary's eligibility for or amount of benefits under the SSI program. For SSI purposes, such VA payments are income or resources of the individual for whom the VA payments are made.

Effective Date: This is longstanding SSA policy which continues to apply to VA payments to fiduciaries.

Documentation: Appointment of a fiduciary and the amounts being paid must be documented. When a person is receiving payment as a fiduciary, the check legend will show the name of the fiduciary followed by a phrase which indicates the fiduciary's relationship. The most common phrases are "wife of," "guardian of," and "custodian of the child(ren) of." Other documentation may include a VA award letter which shows the same name and phraseology cited above or a copy of VA Form 27–4703, Fiduciary Agreement.

Cross-References: Program Operations Manual System, Part 05, sections SI 00810.120, and SI 00830.300–00830.320.

[FR Doc. 94–29937 Filed 12–5–94; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–94–3844]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th St. SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 28, 1994.

Kay F. Weaver,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Loan Level Reporting for the GNMA Mortgage-Backed Securities Program.

Office: Government National Mortgage Association.

Description of the Need for the Information and its Proposed Use: GNMA needs to collect loan level data from its more than 600 issuers to continue performing risk analyses, compliance monitoring, and cost analyses regarding its mortgage-backed securities program.

Form Number: None.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: Quarterly.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	620		4		5		12,400

Total Estimated Burden Hours: 12,400.

Status: Extension with changes.

Contact: George Anderson, HUD, (202) 708–4141, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: November 28, 1994.

[FR Doc. 94–29886 Filed 12–5–94; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. N–94–3845]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Key F. Weaver, Reports Management Officer , Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submission will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 28, 1994.

David S. Cristy,

Acting Director, Information Resources Management Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: National Low Income Housing Tax Credit (LIHTC) Database and Analysis.

Office: Policy Development and Research.

Description of the Need for the Information and its Proposed Use: This research will collect basic data on the universe of projects developed with Federal Low Income Housing Tax Credits (LIHTC). The resulting database will be used by HUD for current analysis of the locations of LIHTC projects and will serve as the sampling frame for future, more in-depth studies of the tax credit.

Form Number: None.

Respondents: State or Local Governments.

Frequency of Submission: One-Time.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	56		1		24		1,345

Total Estimated Burden Hours: 1,345.
Status: New.
Contact: Stacy Jordan, HUD, (202) 708–0426, Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: November 28, 1994.

[FR Doc. 94–29887 Filed 12–5–94; 8:45 am]

BILLING CODE 4210–01–M

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. D–94–1080; FR–3835–D–01]

Redelegation and Designation of Authority; Supersedure of Authority;

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of redelegation and designation of authority, and of supersedure of authority.

SUMMARY: In this notice, the Assistant Secretary for Housing-Federal Housing Commissioner redelegates authority to three positions within the Single Family Mortgage Division—the Assistant General Counsel, the Chief Attorney for the Loan Management and Claims Section, and the Chief Attorney for the Loan Origination Section. In addition, the Assistant Secretary for Housing-Federal Housing Commissioner redelegates authority to Matthew C. Forman, Evelyn M. Wrin, and Jeffrey H. Swartzbaugh. The authority redelegated to each of the named positions and individuals is the authority to convey and execute certain single family mortgage documents relating to real or personal property or any interest therein acquired pursuant to the National Housing Act.

EFFECTIVE DATE: November 22, 1994.

FOR FURTHER INFORMATION CONTACT: Bruce S. Albright, Office of General Counsel, Room 9258, Department of Housing and Urban Development, Washington, DC 20410, (202) 708–0303. A telecommunications device for the hearing impaired (TDD) is available at 202–708–3259. [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 204(g) of the National Housing Act (12 U.S.C. 1710(g)) empowers the Secretary of Housing and Urban Development to delegate his or her authority to convey and to execute deeds of conveyance, deeds of release, assignments and satisfactions of mortgages, and any other written instrument relating to real or personal property or any interest therein acquired by the Secretary pursuant to the National Housing Act. These responsibilities were delegated to the Assistant Secretary for Housing-Federal Housing Commissioner, with authority to redelegate, on June 18, 1976 at 41 FR 24755.

In the past, the Assistant Secretary for Housing-Federal Housing Commissioner has exercised his authority to redelegate these responsibilities. However, the most recent redelegation designates five individuals who are no longer available to carry out these duties. Therefore, it is necessary to supersede that redelegation, and to redelegate authority to new positions and individuals. In this redelegation and designation, the Assistant Secretary for Housing-Federal Housing Commissioner lists the positions and individuals authorized to convey and execute certain deeds and other documents relating to real or personal property or any interest therein acquired pursuant to the National Housing Act.

Accordingly, the Assistant Secretary for Housing-Federal Housing Commissioner redelegates as follows:

Section A. Authority Redelegated

The authority to convey and to execute deeds of conveyance, deeds of release, assignments and satisfactions of mortgages, and any other written instrument relating to real or personal property or any interest therein acquired by the Secretary of Housing and Urban Development pursuant to the National Housing Act is redelegated to the following positions and individuals, each of whom is hereby designated Assistant Federal Housing Commissioner:

1. The Assistant General Counsel for the Single Family Mortgage Division;

2. The Chief Attorney for the Loan Management and Claims Section, Single Family Mortgage Division;

3. The Chief Attorney for the Loan Origination Section, Single Family Mortgage Division; and

4. Matthew C. Forman, Evelyn M. Wrin, and Jeffrey H. Swartzbaugh, each of whom is an attorney in the Office of the General Counsel.

Section B. Authority Superseded

This Redelegation and Designation of Authority supersedes the Redelegation of Authority at 50 FR 20859, dated May 20, 1985.

Authority: Sec. 7(d) of the Department of Housing and Urban Development (42 U.S.C. 3535(d); sec. 204(g) of the National Housing Act (12 U.S.C. 1710(g)); 36 FR 5005 (1971); 41 FR 24755 (1976).

Dated: November 22, 1994.

Nicolas P. Retsinas,
Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–29889 Filed 12–5–94; 8:45 am]

BILLING CODE 4210–27–M

[Docket No. D–94–1079; FR–3834–D–01]

Redelegation of Authority

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the Assistant Secretary for Housing-Federal Housing Commissioner redelegates to the Deputy Assistant Secretary for Multifamily Housing Programs, who retains this authority and redelegates to the Director, Office of Insured Multifamily Housing Development, the authority to endorse for mortgage insurance Secretary-held multifamily mortgage loans. This responsibility is being redelegated to assist in the management of the workload.

EFFECTIVE DATE: November 22, 1994.

FOR FURTHER INFORMATION CONTACT: Gerald H. Salzman, Office of General Counsel, Room 9234, Department of Housing and Urban Development, Washington, DC 20410, (202) 708–2975. A telecommunications device for the hearing impaired (TDD) is available at 202–708–3259. [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: In recent years, the volume of FHA-insured multifamily mortgages that have reverted to FHA, primarily through defaults has grown substantially. Servicing these assigned multifamily mortgages has consumed a disproportionately large share of FHA staff time and resources. This, in turn, has diminished FHA's capacity to monitor the privately-held multifamily mortgages it insures, which thereby increases the potential for further defaults and losses.

HUD has determined to sell the multifamily mortgages it now owns so that the Agency can focus more of its asset management staff and resources toward proactive oversight of the Agency's insured mortgage portfolio. To assist in carrying out the responsibilities attendant to selling Secretary-held multifamily mortgages, pursuant to this delegation and redelegation, the Assistant Secretary for Housing-FHA Commissioner is redelegating authority to endorse for mortgage insurance Secretary-held multifamily mortgage

loan documents. This redelegation will assist the Agency in managing its workload generated through the sale of multifamily mortgages.

Accordingly, the Assistant Secretary for Housing-Federal Housing Commissioner redelegates as follows:

Section A. Authority Redelegated

The Assistant Secretary for Housing-Federal Housing Commissioner redelegates to the Deputy Assistant Secretary for Multifamily Housing Programs, who retains this authority and redelegates to the Director, Office of Insurance Multifamily Housing Development, the power and authority to endorse, or under his or her direction to direct the endorsement of documents necessary to effectuate mortgage insurance for Secretary-held multifamily mortgages.

Section B. Authority to Further Redelegate

The authority redelegated pursuant to Section A., above, may be further redelegated.

Authority: Sec. 7(d) of the Department of Housing and Urban Development (42 U.S.C. 3535(d).

Dated: November 22, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94-29888 Filed 12-5-94; 8:45 am]

BILLING CODE 4210-27-M

[Docket No. D-94-1081; FR-3838-D-01]

Revocation and Redelegation of Authority

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner (HUD).

ACTION: Notice of Revocation and Redelegation of Authority.

SUMMARY: This notice revokes the Redelegation of Authority published within the **Federal Register** Notice of Revocation and Redelegation of Authority (59 FR 18282), published April 15, 1994; this notice revokes all powers and authorities currently redelegated by the Assistant Secretary for Housing-Federal Housing Commissioner, to and through Regional Housing Directors to Housing Development Division Directors and Housing Management Division Directors in Regional Offices and in Category A and B Field Offices, and to Housing Division Directors in the Anchorage, AK, and Charleston, WV Field Offices, and to housing officials in Category C Field Offices including any powers and authorities further redelegated.

Nothing in this revocation and redelegation of authority affects the power and authority previously redelegated to the Directors of the HUD-FHA Debt Management Centers in Albany, NY, Seattle, WA, and Chicago, IL, including the redelegation of authority published in the **Federal Register** on July 7, 1994 at 59 FR 34857 (which superseded in its entirely the redelegation of authority signed on October 25, 1991 and published in the **Federal Register** on November 1, 1991 at 56 FR 56236).

This notice then redelegates to the Deputy Assistant Secretary for Single Family Housing, the Deputy Assistant Secretary for Multifamily Housing, and to housing officials in Field Offices as appropriate and specified below, those powers and authorities necessary to carry out Office of Housing—Federal Housing Administration (FHA) programs. Any revocation or modification of this redelegation of authority, other than further redelegations as provided for in this notice, will be published in the **Federal Register.** Some powers and authorities still rest with the Assistant Secretary-Federal Housing Commissioner, or other Headquarters officials. Only program powers and authorities listed in this delegation are redelegated.

EFFECTIVE DATE: December 11, 1994.

FOR FURTHER INFORMATION CONTACT: Robert G. Hunt, Director, Management Services Division, or Charles Patterson, Chief, Program Analysis Branch, Management Services Division, United States Department of Housing and Urban Development, 451 7th Street, SW., room 9116, Washington, DC 20410, (202) 708-0826. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: In November of 1993, the Secretary announced the reorganization of HUD's field structure to improve HUD's performance and provide HUD's customers—members of the public and program beneficiaries—more efficient service and less bureaucracy by empowering HUD's employees to more effectively serve these customers. In implementing these objectives, the Secretary determined to remove the Regional organizational layer and provide officials at lower organizational levels full authority to carry out program functions, with these field office officials reporting directly to program officials at Headquarters.

On April 15, 1994, the Department published a Notice revoking and redelegating program authority to meet the objectives of the reorganization for the Office of Housing (59 FR 18282). That notice indicated that HUD would be issuing further guidance to field staff concerning their specific functions and responsibilities under the programs. This document contains that guidance, and revokes the redelegation contained within the April 15 notice.

Under the reorganization, field offices are categorized by Housing as AA (Super A), A, B, C+, C, and D offices. Each of the field offices are listed below by these categories. The geographic areas that constitute the specific jurisdictions of each field office will be addressed in a notice to be published and distributed separately from this delegation. The program areas of the Office of Housing—FHA include single family housing programs, multifamily housing programs, and nursing home and hospital mortgage insurance programs. This notice lists the programs in each of these program areas (see Part II below headed PROGRAMS) and the program functions (see Part III below headed FUNCTIONS) which are being redelegated. Depending on the category of the field office and other factors, there are slight variations, as further specified below, as to which program area is being handled in a particular field office and as to which HUD officials are being redelegated the authority to carry out the program functions.

Nothing in this revocation and redelegation of authority affects the power and authority previously redelegated to the Directors of the HUD-FHA Debt Management Centers in Albany, NY, Seattle, WA, and Chicago, IL, including the redelegation of authority published in the **Federal Register** on July 7, 1994 at 59 FR 34857 (which superseded in its entirety the redelegation of authority signed on October 25, 1991 and published in the **Federal Register** on November 1, 1991 at 56 FR 56236).

Accordingly, the Assistant Secretary for Housing-Federal Housing Commissioner revokes and redelegates authority as follows:

Section A. Authority Revoked

The Assistant Secretary for Housing—Federal Housing Commissioner revokes all authority currently redelegated from the Assistant Secretary for Housing-Federal Housing Commissioner to and through Regional Housing Directors to Housing Development Division Directors and Housing Management Division Directors in Regional Offices and in Category A and B Field Offices, and to Housing Division Directors in the Anchorage, AK, and Charleston, WV Field Offices, and to housing officials in Category C Field Offices, including any

powers and authorities further redelegated.

Section B. Authority Redelegated

I. To Whom Authority Redelegaged

a. The Assistant Secretary for Housing—Federal Housing Commissioner redelegates to the Office of Housing Directors in the following Category AA (Double A) offices the powers and authorities needed to carry out those program functions listed in Part III of this redelegation for the Office of Housing—FHA single family housing programs, multifamily housing programs, and nursing home and hospital mortgaged insurance programs. These programs are listed below within Part II of this section.

With regard to carrying out multifamily housing functions, in most cases, each Office of Housing Director may exercise his or her authority only on multifamily properties located within the office's geographic boundaries. However, in the few exceptions noted below in parentheses within the list of Category *AA* offices, the Office of Housing Director is also given the authority to carry out specified multifamily housing functions for properties located in other geographic areas. The geographic areas that constitute the specific jurisdictions of each field office will be further addressed in a notice to be published and distributed separately from this redelegation.

(1) Category *AA* (Double A) Field Offices

Boston, MA
New York, NY (includes all Multifamily Asset Disposition functions for Buffalo, NY, and Newark, NJ)
Philadelphia, PA (includes Multifamily Asset Disposition functions 1–3 and 9–13, from the Multifamily Asset Disposition functions list for Baltimore, MD, Pittsburgh, PA Richmond, VA, Washington, DC, and Charleston, WV)
Atlanta, GA
Jacksonville, FL
Chicago, IL
Detroit, MI
Kansas City, KS
St. Louis, MO
Denver, CO
Ft. Worth, TX (includes all Multifamily Asset Management and Asset Disposition functions for C+ offices Albuquerque, NM, and Dallas, TX, and all Multifamily Asset Disposition functions for A offices Little Rock, AR, and San Antonio, TX, and all Multifamily Asset Management functions for C+ office Shreveport, LA)
San Francisco, CA (includes all Multifamily Asset Management and Asset Disposition functions for C+ offices Las Vegas, NV, and San Diego, CA)
Los Angeles, CA
Seattle, WA

b. The Assistant Secretary for Housing–Federal Housing Commissioner redelegates to the Deputy Assistant Secretary for Single Family Housing, who retains his or her authority and further redelegates to the Directors of Single Family Housing Divisions in the following offices, the powers and authorities needed to carry out those program functions listed in Part III of this redelegation for the Office of Housing–FHA single family housing programs. These programs are listed below within Part II of this section. In addition, the Assistant Secretary for Housing–Federal Housing Commissioner redelegates to the Deputy Assistant Secretary for Multifamily Housing Programs, who retains his or her authority and further redelegates to the Directors of Multifamily Housing Divisions in the following offices, the powers and authorities needed to carry our those program functions listed in Part III of this redelegation for the Office of Housing–FHA multifamily housing programs. The legal citations for these programs are listed below in Part II of this Section B.

Unless otherwise noted, each Director, Multifamily Housing Division, in a Category A or B Office exercises authority with regard to all multifamily housing functions within the geographic boundaries of his or her particular field office. The exceptions note that Oklahoma City, OK, and Houston, TX, are redelegated authority to act on properties outside their jurisdictions. All other exceptions note that a Multifamily Housing Division Director does not have authority over some asset disposition or asset management functions; instead, authority for those functions is redelegated to the offices noted in parentheses within the lists of Category *A* and Category *B* Offices.

(1) Category *A* Field Offices

Hartford, CT
Buffalo, NY (except Multifamily Asset Disposition functions which are redelegated to New York, NY, as noted above)
Newark, NJ (except Multifamily Asset Disposition functions which are redelegated to New York, NY, as noted above)
Baltimore, MD (except Multifamily Asset Disposition functions which are redelegated to Philadephia, PA, as noted above)
Pittsburgh, PA (except Multifamily Asset Disposition functions which are redelegated to Philadelphia, PA, as noted above)
Richmond, VA (except Multifamily Asset Disposition functions which are redelegated to Philadelphia, PA, as noted above)
Washington, DC (except Multifamily Asset Disposition functions which are redelegated to Philadelphia, PA, as noted above)
Birmingham, AL
Columbia, SC
Greensboro, NC
Jackson, MS
Knoxville, TN
Louisville, KY
Caribbean, San Juan, PR
Columbus, OH
Indianapolis, IN
Minneapolis/St. Paul, MN
Milwaukee, WI
Little Rock, AR (except Multifamily Asset Disposition functions which are redelegated to Fort Worth, TX, as noted above)
New Orleans, LA (except Multifamily Asset Disposition functions which are redelegated to the Multifamily Division Director, Houston, TX)
Oklahoma City, OK (includes Tulsa, OK, Multifamily Asset Management and Disposition functions)
San Antonio, TX (except Multifamily Asset Disposition functions which are redelegated to Fort Worth, TX, as noted above)
Omaha, NE
Honolulu, HI
Portland, OR
Anchorage, AK

(2) Category *B* Field Offices

Manchester, NH
Providence, RI
Charleston, WV (except those Multifamily Asset Disposition functions which are redelegated to Philadelphia, PA, as noted above)
Nashville, TN
Cleveland, OH
Cincinnati, OH
Grand Rapids, MI
Houston, TX (includes Multifamily Asset Disposition functions for New Orleans, LA, above and Shreveport, LA, below)
Des Moines, IA
Phoenix, AZ
Sacramento, CA

c. The Assistant Secretary for Housing–FHA Commissioner redelegates to the Deputy Assistant Secretary for Single Family Housing, who retains his or her authority and further redelegates to the Directors of Single Family Housing Divisions in the following offices, the powers and

authorities needed to carry out those program functions listed in Part III of this redelegation for the Office of Housing–FHA single family housing programs. The legal citations for these programs are listed below in part II of this Section B.

No authority for Multifamily housing functions is redelegated to HUD officials in either the C+ or the C Field Offices. In the case of the C+ offices, the offices have multifamily housing staff, outstationed from another field office, who report to the Director, Office of Housing in a Category AA Office or the Director, Multifamily Division, in another field office, as noted below in parentheses.

(1.) Category *C+*

Albuquerque, NM (Fort Worth, TX, Housing Director)
Dallas, TX (Fort Worth, TX, Housing Director)
Shreveport, LA (All authority for Asset Disposition functions is delegated to the Houston, TX, Multifamily Housing Director. All authority for Multifamily Asset Management functions is delegated to Fort Worth, TX, Housing Director)
Tulsa, OK (Oklahoma City, OK, Multifamily Division Director)
Las Vegas, NV (San Francisco, CA, Housing Director)
San Diego, CA, (San Francisco, CA, Housing Director)

(2.) Category *C* Field Offices

Albany, NY
Camden, NJ
Coral Gables, FL
Memphis, TN
Orlando, FL
Tampa, FL
Flint, MI
Lubbock, TX
Helena, MT
Salt Lake City, UT
Fresno, CA
Reno, NV
Santa Ana, CA
Tucson, AZ
Boise, ID
Spokane, WA

d. The following offices are not redelegated powers or authorities, and report to the Director, Single Family Housing Division in the offices shown in parentheses:

(1.) Category *D* Field Offices

Bangor, ME (Manchester, NH)
Burlington, VT (Manchester, NH)
Wilmington, DE (Philadelphia, PA)
Springfield, IL (Chicago, IL)
Casper, WY (Denver, CO)
Fargo, ND (Denver, CO)
Sioux Falls, SD (Denver, CO)

II. Programs Under Which Authority Redelegated

The following are the programs of the Office of Housing–FHA:

(a.) *Multifamily Housing Programs:*

1. Multifamily Rental Housing for Moderate Income and Displaced Families Mortgage Insurance Program (Section 221(d)(3) and (4), National Housing Act (12 U.S.C. 1715*l*(d)(3) and (4)).

2. Multifamily Rental Housing Mortgage Insurance Program (Section 207 of the National Housing Act (12 U.S.C. 1713)).

3. Existing Multifamily Housing Mortgage Insurance Program (Section 223(f) of the National Housing Act (12 U.S.C. 1715n(f)).

4. Refinancing of Existing Insured Mortgages (Section 223(a)(7) of the National Housing Act (12 U.S.C. 1715n(a)(7)).

5. Reinsurance Pilot Program (Section 542(b) of the Housing and Community Development Act of 1992 (*see*, 12 U.S.C. 1707, Historical and Statutory Notes)).

6. Housing Finance Agency Risk Sharing Pilot Program (Section 542(c) of the Housing and Community Development Act of 1992 (*see*, 12 U.S.C. 1707, Historical and Statutory Notes)).

7. Single Room Occupancy Projects Mortgage Insurance Program (Sections 221(d) (3) and (4) of the National Housing Act (12 U.S.C. 1715*l*(d), pursuant to authority in Section 223(g) of the National Housing Act (12 U.S.C. 1715n(g)).

8. Manufactured Home Parks Mortgage Insurance Program (Section 207 of the National Housing Act (12 U.S.C. 1713)).

9. Cooperative Housing Mortgage Insurance Program (Section 213 of the National Housing Act (12 U.S.C. 1715e)).

10. Rehabilitation and Neighborhood Conservation Housing Insurance (Section 220 of the National Housing Act (12 U.S.C. 1715k)).

11. Supplemental Loans for Multifamily Projects Mortgage Insurance Program (Section 241 of the National Housing Act (12 U.S.C. 1715z–6)).

12. Operating Loss Loans (Section 223(d) of the National Housing Act (12 U.S.C. 1715n(d)).

13. Nursing Homes, Intermediate Care Facilities, and Board and Care Homes Mortgage Insurance Program (Section 232 of the National Housing Act (12 U.S.C. 1715w)).

14. Assisted Living Facilities Mortgage Insurance Program (Section 232 of the National Housing Act (12 U.S.C. 1715w, pursuant to authority in Section 511 of the Housing and Community Development Act of 1992)). (Redelegation of this program is effective upon program regulations being published.)

15. Mortgage Insurance for Group Practice and Medical Practice Facilities (Title XI, National Housing Act (12 U.S.C. 1749aaa *et seq.*)).

16. Housing for the Elderly Mortgage Insurance Program (Section 231 of the National Housing Act (12 U.S.C. 1715v)).

17. HOPE 2: Homeownership of Multifamily Units (Subtitle B of Title IV of the National Affordable Housing Act of 1990 (42 U.S.C. 12871 *et seq.*)).

18. Direct Loans for Housing for the Elderly or Handicapped (Section 202 of the Housing Act of 1959 (12 U.S.C. 1701q)).

19. Supportive Housing for the Elderly (Section 202 of the Housing Act of 1959) (12 U.S.C. 1701q, as amended by Section 801 of the National Affordable Housing Act)).

20. Supportive Housing for Persons with Disabilities (Section 811 of the National Affordable Housing Act (42 U.S.C. 8013)).

21. Congregate Housing Services (Title IV of the Housing and Community Development Amendments of 1978).

22. Section 802 of the National Affordable Housing Act (42 U.S.C. 8011 *et seq.*)), as amended by Section 604 of the Housing and Community Development Act of 1992.

23. Service Coordinators for Assisted Housing (Subtitle E of Title VI of the Housing and Community Development Act of 1992; Section 805 of the National Affordable Housing Act, as amended by Section 677 of the Housing and Community Development Act of 1992).

24. Housing Development Grants (Section 17 of the U.S. Housing Act of 1937 (42 U.S.C. 1437o).

25. Special Purpose Grants (Public Laws 101–507, 102–139, 102–389 and 103–327).

26. Section 8 New Construction and Substantial Rehabilitation (Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f note)).

27. Multifamily Coinsurance Program (Section 244 of the National Housing Act (12 U.S.C. 1715z–9)).

28. Section 8 Loan Management Set Aside Program (Section 8 of the U.S. Housing Act of 1937, as amended by Section 101 of the Multifamily Housing Property Disposition Reform Act of 1994 (42 U.S.C. 1437f)).

29. Rent Supplement Program (Section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s)).

30. Section 236 Rental Housing Interest Reduction and Rental

Assistance Program (Section 236 of the National Housing Act (12 U.S.C. 1715z–1)).

31. Below Market Interest Rate Rental Housing Program (Sections 221(d)(3) and 221(d)(5) of the National Housing Act (12 U.S.C. 1715*l*(d) (3) and (5)).

32. Flexible Subsidy Operating Assistance Program (Section 201 of the Housing and Community Development Amendments of 1978, as amended by Section 103 of the Multifamily Housing Property Disposition Reform Act of 1994 (12 U.S.C. 1715z–1a)).

33. Flexible Subsidy Capital Improvement Loan Program (Section 201 of the Housing and Community Development Amendments of 1978, as amended by Section 103 of the Multifamily Housing Property Disposition Reform Act of 1994 (12 U.S.C. 1715z–1a)).

34. Federally-Assisted Drug Elimination Grants (Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901), as amended by Section 581 of the National Affordable Housing Act of 1990 and Section 161 of the Housing and Community Development Act of 1992 (42 U.S.C. 11901)).

35. Housing in Military Impacted Areas (Section 238(c) of the National Housing Act (12 U.S.C. 1715z–3(c)).

36. Section 8 Assistance for Property Disposition Resales (Section 8 of the U.S. Housing Act of 1937, as amended (42 U.S.C. 1437f)).

37. Management and Disposition of HUD-Owned Multifamily Housing Projects (Section 203 of the Housing and Community Development Amendments of 1978, as amended by Section 101 of the Multifamily Property Disposition Reform Act of 1994 (12 U.S.C. 1701z–11)).

38. Emergency Low-Income Housing Preservation Program (Title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715*l* note)).

39. Low-Income Housing Preservation and Resident Homeownership Program (Subtitle A of Title VI of the National Affordable Housing Act of 1990 (12 U.S.C. 4101 *et seq.*)).

(b) *Single Family Housing Programs:*

1. One-to-Four-Family Home Mortgage Insurance (Section 203, National Housing Act (12 U.S.C. 1709(b)).

2. Rehabilitation Mortgage Insurance (Section 203(k), National Housing Act (12 U.S.C. 1709(k)).

3. Homeownership Assistance for Moderate Income and Displaced Families (Section 221(d)(2), National Housing Act (12 U.S.C. 1715*l*(d)(2)).

4. Mortgage Insurance for Service Members (Section 222, National Housing Act (12 U.S.C. 1715m)).

5. Mortgage Insurance in Declining Neighborhoods (Section 223(e), National Housing Act (12 U.S.C. 1715n(e)).

6. Mortgage Insurance on Condominium Units (Section 234(c), National Housing Act (12 U.S.C. 1715y)).

7. Mortgage Insurance for Special Credit Risks (Section 237, National Housing Act (12 U.S.C. 1715z–2)).

8. One-to-Four-Family Mortgage Insurance in Military Impacted Areas (Section 238(c), National Housing Act (12 U.S.C. 1715z–3(c)).

9. Single Family Home Mortgage Coinsurance (Section 244, National Housing Act (12 U.S.C. 1715z–9)).

10. Mortgage Insurance for Graduated Payment Mortgages (Section 245, National Housing Act (12 U.S.C. 1715z–10)).

11. Mortgage Insurance for Adjustable Rate Mortgages (Section 251, National Housing Act (12 U.S.C. 1715z–16)).

12. Mortgage Insurance for Home Equity Conversion Mortgages (Section 255, National Housing Act (12 U.S.C. 1715)).

13. Counseling for Homebuyers, Homeowners, or Tenants (Section 106, Housing and Urban Development Act of 1968 (12 U.S.C. 1701x)).

14. Mortgage Insurance on Single Family Cooperative Units (Section 213, National Housing Act (12 U.S.C. 1715e)).

15. Mortgage and Major Home Improvement Loan Insurance for Urban Renewal Areas (Section 220(h), National Housing Act (12 U.S.C. 1715k(h)).

16. Single Family Mortgage Insurance in Disaster Areas (Section 203(h), National Housing Act (12 U.S.C. 1709(h)).

17. Insurance for Purchase of Fee Simple Title from Lessors (Section 240, National Housing Act (12 U.S.C. 1715z–5)).

18. Single Family Mortgage Insurance on Hawaiian Homelands (Section 247, National Housing Act (12 U.S.C. 1715z–12)).

19. Single Family Mortgage Insurance on Indian Reservations (Section 248, National Housing Act (12 U.S.C. 1715z–13)).

20. Mortgage Insurance for Shared Appreciation Mortgages (Section 252, National Housing Act (12 U.S.C. 1715z–17)).

21. Mortgage Insurance for Homeownership Assistance Mortgage Refinances (Section 235(r), National Housing Act (12 U.S.C. 1715z)).

22. Expenditures to Correct Structural Defects in Mortgaged Homes (Section 518, National Housing Act (12 U.S.C. 1735b)).

23. Mortgage Insurance for Single Family Cooperative Housing (Section 203(n), National Housing Act (12 U.S.C. 1709n)).

24. Mortgage Insurance Growing Equity Mortgages (Section 245(a), National Housing Act (12 U.S.C. 1715z–10)).

25. Mortgage Insurance Experimental Housing (Section 233, National Housing Act (12 U.S.C. 1715x)).

26. Mortgage Insurance in Outlying Areas (Section 203(i), National Housing Act (12 U.S.C. 1709(i))).

27. Mortgage Insurance in Urban Renewal Areas (Section 220(d)(3)(A)(i), National Housing Act (12 U.S.C. 1715k(d)(3)(A)(i)).

28. Mortgage Insurance for Armed Service Housing (Section 809/810, National Housing Act (12 U.S.C. 1748h–1, 1748h–2)).

29. Property Disposition Program (Section 204(g), National Housing Act (12 U.S.C. 1710(g))).

30. Assignment Program (Section 230(b), National Housing Act (12 U.S.C. 1715u(b))).

31. Property Improvement Loan Insurance Program (Section 2 of Title I of the National Housing Act (12 U.S.C. 1703)).

32. Manufactured Home Loan Insurance Program (Section 2 of Title I of the National Housing Act (12 U.S.C. 1703)).

(c) *Hospital Mortgage Insurance Programs:*

1. Mortgage Insurance for Hospitals Program (Section 242 of the National Housing Act (12 U.S.C. 1715z–7)).

2. Supplemental Loans for Hospitals Mortgage Insurance Program (Section 241 of the National Housing Act (12 U.S.C. 1715z–6)).

3. Refinancing of Existing Insured Hospital Mortgages (Section 223(a)(7) of the National Housing Act (12 U.S.C. 1715n(a)(7))).

4. Operating Loss Loans (Section 223(d) of the National Housing Act (12 U.S.C. 1715n(d))).

III. Functions for Which Authority Is Redelegated

(a) Multifamily Housing Program Functions

Powers and authorities redelegated under the Multifamily Housing Programs, listed above, include:

(i) *General Multifamily Housing Functions.*—1. Issuing waivers of Department directives not mandated by statute or regulation.

2. Signing documents as necessary to carry out enumerated functions.

(ii) *Multifamily Production.*—1. Approving fee/contract appraisers and inspectors.

2. Determining acceptability of project sites.

3. Issuing Site Appraisal and Market Analysis (SAMA) approvals.
4. Issuing conditional or firm commitments for FHA mortgage insurance or capital advances.
5. Issuing initial or final endorsements for FHA mortgage insurance or capital advances.
6. Issuing firm approval letters and mortgage insurance endorsements for Risk-Sharing program.
7. Executing cost certifications and determining maximum insurable mortgages or maximum capital advances.
8. Executing Regulatory Agreements.
9. Issuing construction inspection reports and requiring corrective actions and escrows as needed.
10. Approving construction advances and change orders.
11. Approving per unit mortgage limits in excess of base amounts, up to statutory maximums.
12. Making final decisions on subsidy layering reviews for projects in development or authorizing Housing Finance Agencies (HFAs) to make these decisions. (Redelegation of this function is effective upon Headquarters providing administrative instructions.)

(iii) *Multifamily Asset Management and Funding.*

A. Cross-Cutting Servicing and Compliance

1. Approving/Disapproving owner's choice of management agent or owner's decision to self-manage.
2. Establishing management agent fee ranges and add-on fees.
3. Approving/disapproving management fees that owners and agents negotiate.
4. Approving changes in project ownership (Transfer of Physical Assets (TPAs)).
5. Signing 9 and 12-month guarantee inspections and approving releases from escrows.
6. Processing and deciding all forms of rent increases, including special additional adjustments of Annual Adjustment Factors (AAF) projects.
7. Deciding owner appeals of decisions on rent increase requests.
8. Authorizing payment of project monthly subsidy billings, including approving of Section 8 special claims.
9. Authorizing offsets to monthly subsidy billings.
10. Executing repayment agreements for collection of overpaid rental subsidies or delinquent excess income.
11. Authorizing releases from the residual receipts accounts, including using residual receipts to fund service coordination.
12. Authorizing releases from the replacement reserve accounts.
13. Executing partial releases of security.
14. Determining acceptability of monthly or annual financial statements and requiring corrective action related to those statements.
15. Reviewing performance of project management and assigning performance ratings on project management reviews and physical inspections.
16. Reviewing and rating subsidy contract administrator's performance.
17. Determining which principals should be flagged in 2530 system.
18. Approving Limited Denial of Participation.
19. Approving exceptions, authorizing admission of low-income families under "post-81" Section 8 contracts that are subject to the very low-income rule.
20. Determining which projects will receive Loan Management Set-Asides (LMSA), Flexible Subsidy Operating Assistance, or Flexible Subsidy Capital Improvement Loans.
21. Executing Flexible Subsidy and LMSA contracts and amendments and Section 8 Annual Contributions Contract (ACC) amendments.
22. Authorizing disbursement of Flexible Subsidy funds.
23. Acknowledging receipt of Default and Election to Assign Notices.
24. Executing second mortgage documents following Headquarters' approvals of partial payment of claims.
25. Making final decisions on subsidy layering reviews for projects in management or authorizing HFAs to make these decisions. (Redelegation of this function is effective upon Headquarters providing administrative instructions.)
26. Approving current bond refunders.
27. Determining terms of workout on insured or HUD-held mortgages when workout does not involve a Financial Adjustment Factor (FAF) refunder.
28. Executing workouts on insured or HUD-held mortgages.
29. Approving Title II Plans-of-Action and executing Title II Use Agreements.
30. Granting preliminary and final approval of Title VI Plans-of-Action and executing Title VI Use Agreements.
31. Authorizing foreclosure of HUD-held mortgages. (Includes notifying mortgagor of HUD's decision to foreclose and deciding owners' appeals of the initial foreclosure decisions.)
32. Signing hazard insurance loss drafts.
33. Determining Housing's proposal for resolving audit findings.
34. Closing audit finding on field office matters.

B. Multifamily Housing for Elderly Persons or Persons with Disabilities

1. Reviewing and rating Section 202 and Section 811 applications.
2. Exercising regulatory option to approve Section 811 application for more than number of units handbook allows.
3. Authorizing Section 811 sponsor to serve only one type of disability.
4. Authorizing change in disability group to be served by group home/independent living facility under Sections 202, 162, 811 programs.
5. Selecting Sections 202 and 811 applications to be funded.
6. Approving extensions of Sections 202 and 811 fund reservations to dates no more than 36 months beyond initial reservation date.
7. Executing Section 202 regulatory agreements and development and funding documents.
8. Approving/disapproving mortgagors' requests to prepay Section 202 mortgages when note contains a prepayment right.
9. Executing new Congregate Housing Services Program (CHSP) grants.
10. Executing extensions, amendments, close-outs, or terminations of existing CHSP grants.
11. Executing Section 8 contracts for service coordinators.
12. Approving use of residual receipts for service coordinators.

C. Multifamily Grants

1. Rating and, where specified in program regulations, ranking of applications for competitive grant programs.
2. Processing applications in noncompetitive grant programs.
3. Executing and amending grant agreements.
4. Approving Line of Credit Control System (LOCCS) drawdowns.
5. Monitoring compliance with grant agreements and terminating agreements for non-performance.
6. Executing close-out/settlements of grants.

(iv.) *Multifamily Asset Disposition.*—
1. Determining terms of foreclosure sale.
2. Directing Office of General Counsel to commence foreclosure.
3. Determining services (statement of work) to be included in Project Managers' contracts.
4. Establishing maximum rents and charges Project Managers may levy.
5. Approving budgets for rehabilitation work and operating costs, including personnel and salaries.
6. Authorizing project managers to spend amounts or to subcontract for goods or services not authorized in budgets.

7. Authorizing rehabilitation work.
8. Authorizing advertisements of properties for sale.
9. Approving disposition plans.
10. Approving purchasers, in conjunction with foreclosures or sales, of HUD-owned properties.
11. Approving sales documents.
12. Executing Annual Housing Assistance Program (AHAP) and Housing Assistance Program (HAP) contracts.
13. Making final decisions on subsidy layering reviews required in conjunction with foreclosure sales or sales of HUD-owned projects or authorizing HFAs to make these decisions. (Redelegation of this function effective upon Headquarters providing administrative instructions.)

(b.) Single Family Housing Program Functions

Powers and authorities redelegated under the single family housing programs, listed above, include:

(i) *General Single Family Housing Functions.*—1. Issuing waivers of Department directives not mandated by statute or regulation.
2. Signing documents as necessary to carry out enumerated functions.

(ii) *Single Family Development.*—1. Identifying/maintaining local codes to meet Minimum Property Standards (MPS).
2. Approving Direct Endorsement (DE) lenders and underwriters.
3. Reviewing/approving DE test cases.
4. Reviewing endorsement packages.
5. Executing Mortgage Insurance Certificates (MICs).
6. Performing appraisal field reviews.
7. Performing architectural field reviews.
8. Performing pre-endorsement reviews for mortgage credit.
9. Performing detailed underwriting reviews for mortgage credit.
10. Processing Appraisals for HUD processed cases.
11. Processing credit underwriting process for HUD processed cases.
12. Assigning case numbers per requests.
13. Receiving/logging appraisals.
14. Receiving/logging endorsement packages.
15. Recording post-endorsement reviews.
16. Performing subdivision processing/condominium processing improved areas.
17. Approving Mortgagees (initial).
18. Maintaining fee panels/lenders lists of appraisers, inspectors, technical reviewers, endorsements processors, 203K lenders, and Home Equity Conversion Mortgage (HECM) lenders.
19. Monitoring contract reviews.
20. Reviewing claim/default statistics.
21. Monitoring individual lender performance.
22. Contracting:
—Originating procurement process.
—Preparing Requests for Proposals (RFP).
—Staffing selection panels.
—Monitoring contractor performance.
—Reviewing/approving invoices.
—Monitoring contract costs.

(iii) *Single Family Loan Servicing.*—(1) Reviewing servicing/mortgagee servicing.
2. Processing requests for assignment.
3. Hearing appeals
4. Performing Secretary-held mortgage servicing functions:
—Section 235 recertification.
—Processing of tax payments.
—Forebearance agreements.
—Foreclosure processing.
—Monitoring of hazard insurance coverage and payment of insurance proceeds for damaged properties.
—Debt collection.
—Section 235 recaptures.
—Compromise offers.
—Write-offs.
—Asset sale assignment recordations.
5. Servicing defaulted mortgages and foreclosures:
—Approving forbearances.
—Pre-foreclosure Sales (facilitating participation, and granting variances from established criteria).
—Reviewing proposed deeds-in-lieu of foreclosure in cases where Field Offices approval is required.
—Deficiency Judgments (targeting, compromising, collection/referral).
6. Servicing current insured mortgages.
7. Conducting Housing Counseling Agencies programs:
—Monitoring housing counseling activities of all HUD-approved counseling agencies.
—Recruiting, training, and approving agencies.
—Referring defaulting mortgagors and other HUD clients to agencies.
—Reviewing semiannual reports.
—Providing technical assistance.
—Preparing for and conducting the Annual Performance Review.
—For agencies receiving grants, reviewing monthly vouchers, performance reports, and final reports.
—Preparing for, conducting, and reporting on follow-up activity.
—Processing and awarding grants.
—Training and certifying of counselors.
—Reviewing and approving Housing Counseling vouchers.

(iv) *Single Family Property Disposition.*—1. Occupied Conveyance-Preacquisition:
—Processing occupied conveyances.
—Determining fair market rent.
—Approving conveyance of damaged properties.
—Executing leases.
—Approving/disapproving preservation and protection limits.
—Approving extensions of time to convey.
2. Acquisition:
—Processing HUD Form–27011s, Single Family Application for Insurance Benefits.
—Approving titles.
—Reconveying title.
—Establishing tax records.
3. Inventory maintenance:
—Establishing disposition program.
—Monitoring and reviewing appraisals.
—Preparing Statements of Work for contracting out for repairs and services.
—Inspecting repair work.
—Processing bills for payments to contractors.
—Monitoring Real Estate Asset Managers.
—Monotirong defective paint inspections and treatments.
—Collecting, compromising, suspending and terminating debts pursuant to Departmental debt collection policies and procedures.
—Paying real estate taxes.
—Inspecting on-site properties.
—Reviewing damaged properties.
—Denying claims.
4. Sales:
—Advertising properties.
—Conducting bid openings.
—Conducting industry meetings.
—Preparing brokers' information packages.
—Accepting and rejecting sales offers.
—Monitoring lead-based paint testing and results.
—Monitoring closing agents.
—Monitoring closing agents on-site.
—Reviewing and approving requests to close from purchaser.
—Following up on liquidated damages payments.
—Reviewing and approving closing documents.
—Executing deeds.
—Processing post closing complaints.
—Determining forfeiture of earnest money deposits.
—Evaluating requests from HUD employees or their relatives to purchase HUD-owned properties.
5. Administering Homeless Initiative:
—Identifying Properties.
—Leasing.

—Collecting rent and taxes.
—Inspecting rented properties.

(v) *Title I Property Improvement Loans.*—Reviewing credit underwriting for property improvement loans that will result in any borrower having a total unpaid principal obligation that exceeds $25,000.

(vi) *Title I Manufactured Home Purchase Loans.*—Appraising manufactured home lots to be used in determining the total principal obligations for loans to purchase manufactured home lots, or manufactured homes and lots in combination.

(c) Hospital Mortgage Insurance Program Functions

Powers and authorities redelegated under the hospital mortgage insurance programs, listed above, include:

(i) *General Hospital Mortgage Insurance Functions.*—

1. Issuing waivers of Departmental directives not mandated by statute or regulation.

2. Signing documents as necessary to carry out enumerated functions.

(ii) *Hospital Mortgage Insurance Development.*—1. Issuing conditional or firm commitments for FHA mortgage insurance, pursuant to HHS recommendation and instructions from Headquarters.

2. Issuing initial or final endorsements for FHA mortgage insurance.

3. Determining maximum insurable mortgages, upon receipt of approved cost certification from HHS.

5. Executing Regulatory Agreements.

6. Approving construction advances and change orders, pursuant to recommendation from HHS.

(iii) *Hospital Mortgage Insurance Servicing and Compliance Activities.*—1. Approving changes in project ownership (Transfer of Physical Assets (SPAs)), pursuant to recommendation from HHS.

2. Executing partial releases of security, pursuant to recommendations from HHS and approval from Headquarters, when appropriate.

3. Reviewing performance of project management and assigning performance ratings on project management reviews and physical inspections.

4. Acknowledging receipt of Default and Election to Assign Notices and Mortgage Assignment.

5. Executing workouts on insured or HUD-held mortgages, pursuant to recommendations from HHS and approval from Headquarters.

6. Authorizing foreclosure of HUD-held mortgages, pursuant to recommendations from HHS and approval from headquarters. (Includes notifying mortgagor of HUD's decision to foreclose and deciding owners' appeals of the initial foreclosure decisions.)

7. Determining Housing's proposal for resolving audit findings on Field Office matters, in consultation with Headquarters.

8. Closing audit findings on Field Office matters, in consultation with Headquarters.

(iv) *Hospital Property Disposition.*—The following property disposition activities for hospitals are handled by Field Offices in consultation with Headquarters:

1. Determining terms of foreclosure sale.

2. Directing Office of General Counsel to commence foreclosure.

3. Determining services (statement of work) to be included in Project Managers' contracts.

5. Approving budgets for rehabilitation work and operating costs, including personnel and salaries.

6. Authorizing project managers to spend amounts or to subcontract for goods or services not authorized in budgets.

7. Authorizing rehabilitation work.

8. Authorizing advertisements of properties for sale.

9. Approving purchasers of HUD-owned properties.

10. Approving sales documents.

Section C. Authority Excepted

Category D Field office officials are not redelegated authority under this Notice. The authority redelegated in Section B above also does not include the authority to issue or waive regulations.

Section D. Authority to Further Redelegate

The Authority redelegated in Section B above may be further redelegated in writing by the appropriate Field Office staff to other Field Office staff so as to maximize office efficiency. In cases where authority is redelegated to staff not reporting to that Field Office official, prior concurrence of the Assistant Secretary, or appropriate DAS, is required.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. Section 3535 (d).

Dated: November 30, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–29928 Filed 12–5–94; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Renewal of the Public Advisory Group Charter; Exxon Valdez Oil Spill

AGENCY: Department of the Interior, Office of the Secretary.

SUMMARY: This notice is published in accordance with 41 CFR Part 101–6, section 101–6.1015(a), Committee establishment, reestablishment, or renewal.

Following the recommendation and approval of the EXXON VALDEZ Oil Spill Trustee Council, the Secretary of the Interior hereby renews the EXXON VALDEZ Oil Spill Public Advisory Group Charter to continue for two years, to October 22, 1996.

FOR FURTHER INFORMATION CONTACT: Douglas Mutter, Department of the Interior, Office of Environmental Policy and Compliance, 1689 "C" Street, Suite 119, Anchorage, Alaska, (907) 271–5011.

SUPPLEMENTARY INFORMATION:

On March 24, 1989, the T/V EXXON VALDEZ ran aground on Bligh Reef in Prince William Sound in Alaska spilling approximately 11 million gallons of North Slope crude oil. Oil moved into the Gulf of Alaska, along the Kenai coast to Kodiak Island and the Alaska Peninsula—some 600 miles from Bligh Reef. Massive clean-up and containment efforts were initiated and continued to 1992. On October 8, 1991, an agreement was approved by the United States District Court for the District of Alaska that settled claims of the United States and the State of Alaska against the Exxon Corporation and the Exxon Shipping Company for various criminal and civil violations. Under the civil settlement, Exxon companies agreed to pay to the governments $900 million over a period of 10 years.

The EXXON VALDEZ Oil Spill Trustee Council was established to manage the funds obtained from the civil settlement of the EXXON VALDEZ Oil Spill. The Trustee Council is composed of three State of Alaska trustees (Attorney General; Commissioner, Department of Environmental Conservation; and Commissioner, Department of Fish and Game) and three Federal representatives appointed by the Federal Trustees (Secretary, U.S. Department of Agriculture; the Administrator of the National Oceanic and Atmospheric Administration; and the Secretary, U.S. Department of the Interior).

The Public Advisory Group was created by Paragraph V.A.4 of the Memorandum of Agreement and Consent Decree entered into by the United States of America and the State of Alaska on August 27, 1991, and approved by the United States District Court for the District of Alaska in settlement of *United States of America* v. *State of Alaska,* Civil Action No. A91–081 CV. The Public Advisory Group was chartered by the Secretary of the Interior on October 23, 1992, and functions solely as an advisory body, and in compliance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. (1988)).

The Public Advisory Group was established to advise the Trustee Council, and began functioning in October 1992. The Public Advisory Group consists of 17 members representing the following principal interests: Sport hunting and fishing, environmental, public-at-large (5), recreation users, local government, science/academic, conservation, subsistence, commercial fishing, aquaculture, commercial tourism, forest products, and Native landowners. Members were appointed to serve a two-year term.

To carry out its advisory role, the Public Advisory Group makes recommendations to, and advises, the Trustee Council in Alaska on the following matters:

All decisions related to injury assessment, restoration activities, or other use of natural resource damage recovery monies obtained by the governments, including all decisions regarding:

a. Planning, evaluation and allocation of available funds;

b. Planning, evaluation and conduct of injury assessment; and

c. Planning, evaluation and conduct of restoration activities.

Trustee Council intentions regarding the importance of obtaining a diversity of viewpoints are stated in the Public Advisory Group Background and Guidelines (March 1993, updated June 1994): "The Trustee Council intends that the Public Advisory Group be established as an important component of the Council's public involvement process." The Council continues, stating their desire that "* * * a wide spectrum of views and interest are available for the Council to consider as it evaluates, develops, and implements restoration activities. It is the Council's intent that the diversity of interests and views held by the Public Advisory Group members contribute to wide ranging discussions that will be of benefit to the Trustee Council."

In order to ensure that a broad range of public viewpoints continues to be available to the Trustee Council, and in keeping with the settlement agreement, the continuation of the Public Advisory Group for another two-year period is recommended.

Certification

I hereby certify that the renewal of the Charter of the Public Advisory Group, an advisory committee to make recommendations to and advise the EXXON VALDEZ Oil Spill Trustee Council in Alaska, is necessary and in the public interest in connection with the performance of duties mandated by the settlement of *United States* v. *State of Alaska*, No. A91–081 CV, and is in accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended and supplemented.

Dated: November 30, 1994.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 94–29982 Filed 12–5–94; 8:45 am]

BILLING CODE 4310–10–M

Bureau of Land Management

[AK–964–1410–01–P; 95–00163]

Alaska; Notice for Publication; Alaska Native Claims Selection

November 10, 1994.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that decision to issue conveyance under the provisions of Sec. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(e), will be issued to Doyon, Limited. The lands involved are in the vicinity of McGrath, Alaska.

Serial number	Approximate land description	Acreage
AA–8103–71.	Secs. 2 to 11, 14 to 23, T. 30 N., R. 34 W., Seward Meridian, Alaska.	12,725
AA–8103–97.	Secs. 1, 12, 13, and 24, T. 30 N., R. 35 W., Seward Meridian, Alaska.	2,005

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Fairbanks Daily News-Miner. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599, ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until January 5, 1995 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

James F. Moore,

Land Law Examiner, Branch of Northern Adjudication.

[FR Doc. 94–29877 Filed 12–5–94; 8:45 am]

BILLING CODE 4310–JA–P

[UT–040–05–1430–01]

Virgin River Management Framework Plan, Utah; Proposal Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent

SUMMARY: This notice is to advise the public that the Bureau of Land Management (BLM) is proposing to do a plan amendment for the Virgin River Management Framework Plan (MFP) located in Washington County, Utah.

DATES: The comment period for this proposed plan amendment will commence with publication of this notice. Comments must be submitted on or before January 5, 1995.

FOR FURTHER INFORMATION CONTACT: Dale Ross, Realty Specialist, Dixie Resource Area Office, 225 North Bluff Street, St. George, UT 84770. Existing planning documents and information are available at the above address or telephone (801) 673–4654. Comments on the proposed plan amendment should be sent to the above address.

SUPPLEMENTARY INFORMATION: The BLM is proposing to amend the Virgin River MFP which included lands in Washington County, Utah. The proposed amendment would be to make certain public land available for disposal pursuant to the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.), for a local government entity in Washington County for the purpose of constructing wastewater-treatment lagoons. The city of Springdale has requested expansion of existing sewer lagoons which service Zion National Park, Springdale, and Rockville. The present lagoons no longer meet demand, and it is anticipated that during the upcoming

spring tourist season, the lagoons will far exceed current capacity. A conformance review was conducted; and, while the request was found not consistent with the Virgin River MFP, the Bureau of Land Management (BLM) believes that it has merit and therefore proposes to conduct an environmental assessment to determine environmental consequences and impacts on the existing planning decisions and the proposed amendment.

The public land being considered for disposal, comprising 73.25 acres, is described as follows:

Salt Lake Meridian, Utah

T. 42 South, R. 11 West,
Section 4, lots 17, 18 and 20;
Section 5, lots 9 and 10 the SE¼NE¼SW¼NE¼, E½SE¼SW¼NE¼, and the NE¼NE¼NW¼SE¼.

Mat Millenbach,

State Director.

[FR Doc. 94–29900 Filed 12–5–94; 8:45 am]

BILLING CODE 4310–DQ–P

[AZ–010–2740; A–28816]

Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Arizona

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The following public lands in Mohave County, Arizona have been examined and found suitable for classification for lease or conveyance to the Littlefield School District under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The Littlefield School District proposes to use the lands for a school and community center.

Gila and Salt River Meridian

T. 41 N., R. 15 W., Sec. 33, SE¼SW¼.

The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Arizona Strip District, 390 N. 3050 E., St. George, UT 84770.

Upon publication of this notice in the **Federal Register,** the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Arizona Strip District Office, 390 North 3050 East, St. George, UT 84470.

SUPPLEMENTARY INFORMATION: This classification terminates Classification AZ–010–4212–11; AZA–24627, published in the **Federal Register**, Vol. 55, No. 207, Thursday, October 5, 1990, as far as it relates to the above described lands.

Roger G. Taylor,

District Manager.

[FR Doc. 94–29981 Filed 12–5–94; 8:45 am]

BILLING CODE 4310–32–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Privacy Act; Routine Use for Disclosure to Internal Revenue Service

AGENCY: Agency for International Development, USAID.

ACTION: Notice of an amendment of a Privacy Act system of records.

SUMMARY: The Agency for International Development is adding a general routine use for the release from specific systems of records to the Internal Revenue Service to obtain debtors' mailing addresses and to offset a Federal debt against a debtor's income tax refund.

FOR FURTHER INFORMATION CONTACT: Jan Miller, Office of General Counsel, 202/647–6380, Fax 202/647–8557.

SUPPLEMENTARY INFORMATION: USAID's "Statement of General Routine Uses" is amended by adding the following:

14. A record in the following systems of records may be disclosed, as a routine use, to the Internal Revenue Service (a) to obtain mailing addresses of debtors in order to collect a Federal debt; and (b) to offset a Federal debt against the debtor's income tax refund:

Claims Records (AID–20), Employee Payroll Records (AID–15), Litigation Records (AID–26), and Travel and Transportation Records (AID–19).

Dated: November 23, 1994.

Thomas E. Huggard,

Director, Office of Administrative Services.

[FR Doc. 94–29977 Filed 12–5–94; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–12 (Sub-No. 155X)]

Southern Pacific Transportation Company—Abandonment Exemption—San Joaquin and Calaveras Counties, CA

Southern Pacific Transportation Company (SPT) has filed a verified notice under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon the 39.30-mile segment of the Kentucky House Branch between milepost 103.54, at or near the Lodi rail station, and milepost 142.84, at or near the Kentucky House rail station, in San Joaquin and Calaveras Counties, CA.[1]

SPT has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in complainant's favor within the last 2 years; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 and 1152.50(d)(1) (notice to government agencies), and 49 CFR 1105.12 (newspaper publication) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether employees are adequately protected, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective January 5, 1995,[2] unless stayed or a statement of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve

[1] By decision in *Southern Pacific Transportation Company—Discontinuance of Service Exemption—In San Joaquin and Calaveras Counties, CA,* Finance Docket No. 30395 (ICC served Mar. 14, 1984), the Commission exempted SPT's discontinuance of service over that portion of the involved line segment between milepost 111.00, at or near Lockeford, and milepost 142.84, which had been damaged by a land slide and embargoed since June 21, 1983.

[2] The Office of Proceedings did not receive the results of the initial analysis of SPT's environmental report from the Commission's Section of Environmental Analysis until November 29, 1994. Because of this delay, the publication date (and all of the dates based thereon appearing in this notice of exemption) had to be adjusted accordingly.

environmental issues,[3] statements of intent to file an OFA under 49 CFR 1152.27(c)(2),[4] and trail use/rail banking requests under 49 CFR 1152.29[5] must be filed by December 15, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 27, 1994.[6] An original and 10 copies of any such filing must be sent to the Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. In addition, one copy must be served on Gary A. Laakso, Southern Pacific Transportation Company, Southern Pacific Building, One Market Plaza, Room 846, San Francisco, CA 94105.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

SPT has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Commission's Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by December 9, 1994. A copy of the EA may be obtained by writing to SEA (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 30, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 94-29955 Filed 12-5-94; 8:45 am]

BILLING CODE 7035-01-P

[3] The Commission will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Commission in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Commission may take appropriate action before the exemption's effective date.

[4] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[5] The Commission will accept late-filed trail use requests so long as the abandonment has not been consummated and the abandoning railroad is willing to negotiate an agreement.

[6] A premature request for a public use condition filed by Pacific Gas and Electric Company on November 21, 1994, will be addressed in a subsequent decision.

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act and the Resource Conservation and Recovery Act

In accordance with Department policy, 28 CFR § 50.7, and with Section 122(d)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9622(d)(2), notice is hereby given that on November 21, 1994 the United States filed a complaint and lodged with the United States District Court for the Western District of New York a proposed consent decree in *United States* v. *Booth Oil Co., Inc.*, Civil Action No. 94-CV-0849A(M). The proposed consent decree involves the cleanup and reimbursement of response costs in connection with the Niagara County Refuse Superfund Site in Niagara County, New York. This settlement is between the United States and twelve potentially responsible parties ("the Settling Defendants").

The agreement requires the Settling Defendants to undertake certain remedial work relating to contamination at the Site, as set forth in EPA's September 1993 Record of Decision for the Site. The settlement also requires the Settling Defendants to pay more than $72,000 of EPA's past response costs and all future response costs incurred by the United States in connection with the performance of this remedial work.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Booth Oil Co., Inc.*, DOJ Ref. # 90-11-2-948.

The proposed consent decree may be examined at the Office of the United States Attorney, 138 Delaware Ave., Buffalo, NY 14202; the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, New York, NY 10278; and the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. To request a copy, please refer to the referenced case and enclose a check in the amount of $52.00 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94-29873 Filed 12-5-94; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Dext Company of Maryland*, C.A. No. WN92-1884 (D.Md.) was lodged on November 23, 1994, with the United States District Court for the District of Maryland. The consent decree addresses alleged violations of Section 113 of the Clean Air Act, 42 U.S.C. § 9413, which occurred at the Dext Company of Maryland ("Dext") plant in Baltimore, Maryland. Specifically, Dext allegedly violated the Maryland State Implementation Plan ("SIP") because it emitted particulate matter into the ambient air and failed to reduce sufficiently emissions from its plant of volatile organic compounds. In settlement of the alleged violations, Dext has agreed to install a wet scrubbing system at the plant and to pay a civil penalty of $100,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Dext Company of Maryland*, DOJ Ref. # 90-5-2-1-1701.

The proposed consent decree may be examined at the office of the United States Attorney, 101 West Lombard Street, Baltimore, Maryland 21201-2692; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $12.00 (25 cents per page

reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–29872 Filed 12–5–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, and Section 122(d)(2) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9622(d)(2), notice is hereby given that a proposed consent decree in *United States, et al.*, v. *Ford Motor Company*, Civil Action No. 91–CV–130–B, was lodged on November 8, 1994, with the United States District Court for the District of New Hampshire. The proposed decree resolves the United States' claims under CERCLA against defendant Ford Motor Company ("Ford") with respect to the Tibbetts Road Superfund Site, in Barrington, New Hampshire. Ford is a generator that arranged to have hazardous substances sent to the Site for disposal. Under the terms of the proposed decree, Ford will perform the groundwater cleanup remedy selected by EPA for the Site, and will reimburse certain past and future response costs incurred or to be incurred by the United States and the State of New Hampshire. Ford will also pay $480,000 to the Swains Lake Village Water District for upgrading the alternate drinking water supply system and will pay 75% of the operation and maintenance costs of the system until the groundwater remedy is completed and performance standards are achieved.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States, et al.*, v. *Ford Motor Company*, DOJ Ref. # 90–11–2–341A.

The proposed consent decree may be examined at the office of the United States Attorney, 55 Pleasant Street, Concord, New Hampshire 03301; the Region I Office of the Environmental Protection Agency, John F. Kennedy Federal Building, Boston, Massachusetts; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $131.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce Gelber,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–29871 Filed 12–5–94; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Amendments to Modified Consent Decree Pursuant to the Clean Water Act

In accordance with 28 CFR 50.7, notice is hereby given that on November 18, 1994, a proposed modification to the Modified Consent Decree in *United States of America* v. *Lynn Water and Sewer Commission*, Civil Action No. 76–2184–WAG, entitled Amendments to Modified Consent Decree (Combined Sewer Overflows), was lodged with the United States District Court for the District of Massachusetts. This action seeks the Lynn Water and Sewer Commission's compliance with its National Pollutant Discharge Elimination System ("NPDES") permit and the Clean Water Act, including compliance with regard to the Commission's combined sewer overflows ("CSOs"). The proposed modification to the consent decree requires the Commission to clean and repair its Western Interceptor, design and construct a sewer separation project in the Eastern Avenue area, design and construct sewer separation projects in the Summer Street and Cottage Street areas, design a consolidation conduit to eliminate its combined sewer overflows into Nahant Bay, and implement various CSO-related monitoring projects and best management practices.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, should refer to *United States of America* v. *Lynn Water and Sewer Commission*, D.J. Ref. 90–5–1–1–545B.

The proposed Amendments to Modified Consent Decree may be examined at the office of the United States Attorney, 1003 J.W. McCormack P.O. & Courthouse, Boston, Massachusetts 02109 and at the Region I office of the Environmental Protection Agency, One Congress St., Boston, Massachusetts 02203. The proposed Amendments to Modified Consent Decree may also be examined at the Consent Decree Library, 1120 G. St., N.W., 4th Floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed Amendments to Modified Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G. St., N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $2.75 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Joel Gross,

Acting Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 94–29876 Filed 12–5–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Consistent with Department of Justice policy, 28 CFR 50.7, notice is hereby given that on November 21, 1994, a proposed consent decree in *United States* v. *Port of Tacoma* Case No. (W.D. Wash.) was lodged with the United States District Court for the Western District of Washington. The consent decree resolves claims against the Port of Tacoma, brought under Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), 42 U.S.C. 9607, for the recovery of past and future response costs incurred and to be incurred on six parcels of properties (Settlement Properties), which will be transferred from the Port of Tacoma to the United States to hold in trust for the Puyallup Tribe of Indians.

This settlement is also brought in reference to the Puyallup Land Settlement Agreement which was incorporated into federal law by the Washington Indian (Puyallup) Land Claims Settlement Act of 1989, 25 U.S.C. 1773. The Consent Decree sets forth the roles and responsibilities of the Puyallup Tribe, the Port and EPA with regard to the Settlement Properties and provides for the payment of $65,690 in

past costs and all future costs to be incurred.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, PO Box 7611, Ben Franklin Station, Washington, DC 20044, and refer to *United States* v. *Port of Tacoma*, DOJ number 90–11–2–737.

The Consent Decree may be examined at the Offices of the United States Attorney for the Western District of Washington, 3600 Seafirst Fifth Avenue Plaza, 800 Fifth Avenue, Seattle, Washington, at the Region 10 Office of the United States Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (telephone number (202) 624–0892). A copy of the proposed consent decree may be obtained by mail or in person from the Consent Decree Library. When requesting a copy of the consent decree, please enclose a check in the amount of $15.50 (25 cents per page reproduction costs) payable to the "Consent Decree Library". When requesting a copy please refer to *United States* v. *Port of Tacoma* (W.D. Wash.), DOJ Case number 90–11–2–737.

Joel Gross,

Acting Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–29874 Filed 12–5–94; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 25, 1994, Ansys, Inc., 2 Goodyear, Irvine, California 92718, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Phencyclidine (7471)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than January 5, 1995.

Dated: November 29, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–29945 Filed 12–5–94; 8:45 am]

BILLING CODE 4410–09–M

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on October 27, 1994, The Binding Site, Inc., 5889 Oberlin Drive, Suite 101, San Diego, California 92121, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
3,4-Methylenedioxymethamphetamine (7405).	I
Normorphine (9313)	I
Methamphetamine (1105)	II
Amobarbital (2125)	II
Secobarbital (2315)	II
Benzoylecgonine (9180)	II
Ethylmorphine (9190)	II
Methadone intermediate (9254)	II

The firm plans to import the above listed substances in milligrams quantities for labelling with enzymes, fluorophores and radioisotopes for immunoassays.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than January 5, 1995.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: November 23, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–29946 Filed 12–5–94; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated November 1, 1994, and published in the **Federal Register** on November 9, 1994, (59 FR 55856), Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003 Nolte Drive, West Deptford, New Jersey 08066, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of Difenoxin (9168), a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to Section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and Title 21, Code of Federal Regulations,

Section 1301.54(e), the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: November 23, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–29947 Filed 12–5–94; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on October 11, 1994, Upjohn Company, 7171 Portage Road, M.L. 7011–126–5, Kalamazoo, Michigan 49001, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the Schedule I controlled substance 2,5-Dimethoxyamphetamine (7396).

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than January 5, 1995.

Dated: November 29, 1994.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 94–29948 Filed 12–5–94; 8:45 am]

BILLING CODE 4410–09–M

Immigration and Naturalization Service

[INS No. 1615E–94]

RIN 1115–AC30

Expiration of Deferred Enforced Departure for Nationals of El Salvador

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of the expiration of deferred enforced departure (DED) for nationals of EL Salvador.

SUMMARY: The Immigration and Naturalization Service ("the Service" or "INS") will allow the expiration on December 31, 1994, of the deferred enforced departure (DED) previously granted to certain nationals of El Salvador. After consultation with appropriate agencies of the Government and consideration of the totality of the impact of the expiration of DED for Salvadorans, it has been concluded that the political and human rights situation inside El Salvador has improved significantly and can no longer serve as a basis for the continuation of DED.

EFFECTIVE DATE: December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Ronald Chirlin, Senior Immigration Examiner, Immigration and Naturalization Service, Examinations Division, 425 I Street, NW, Room 3214, Washington, DC 20536, Telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION:

Background

Section 303 of the Immigration Act of 1990, Public Law 101–649, dated November 29, 1990, designated El Salvador for Temporary Protected Status (TPS) for a period of eighteen (18) months beginning January 1, 1991, and ending June 30, 1992. Eligible nationals of El Salvador who registered under this special TPS program were required to register by October 31, 1991, and to reregister as required in order to extend TPS benefits.

Temporary Protected Status ended on June 30, 1992. However, on June 26, 1992, the Commissioner of the Immigration and Naturalization Service announced in the Federal Register at 57 FR 28700 that the deportation of eligible nationals of El Salvador who had registered for TPS would not be enforced before June 30, 1993. On June 8, 1993, the Service announced in the Federal Register at 58 FR 32157 a further extension until December 31, 1994, of deferred enforced departure (DED) for eligible Salvadorans. The two announcements were made at the direction of former President Bush and President Clinton respectively. Both these grants of DED were based on the serious negative effects that a large repatriation would have had on the then evolving situation in El Salvador.

After consultation with appropriate agencies of the Government and consideration of the totality of the impact of the expiration of DED for Salvadorans, it has been concluded that the political and human rights situation inside El Salvador has improved significantly and can no longer serve as a basis for the continuation of DED.

Automatic Extension of Employment Authorization

In order to ensure an opportunity for Salvadoran beneficiaries of DED to apply for an employment authorization document (EAD), the Service is granting an automatic extension until September 30, 1995, of the validity of any EAD which expires on December 31, 1994, and was previously issued to a DED Salvadoran pursuant to 8 CFR 274a.12(a)(11). Affected Salvadorans should apply for their new EADs at least 3 months before the expiration of the automatic extension (that is, no later than June 30, 1995) in order to ensure continuous employment authorization.

Employers of DED Salvadorans

Employers of DED Salvadorans whose employment authorization is automatically extended may not refuse to accept, for purposes of verifying or reverifying employment eligibility until September 30, 1995, an employment authorization document (EAD), Form I–688B, bearing an expiration date of December 31, 1994, (or extension sticker punched for December 1994) and containing a notation "274a.12(a)(11)" or "274a.12(a)(12)" on the face of the document under "Provision of Law." Employers are reminded that this action does not affect the right of a worker to present any other legally acceptable document as proof of work authorization.

Impact of Decision

The Service believes that the decision to end DED will have a delayed and gradual impact on members of the Salvadoran community in the United States who currently hold DED status. Under the settlement agreement reached in *American Baptist Churches* v. *Thornburgh*, 760 F. Supp. 796 (N.D. Cal. 1991) ("*ABC*") affected Salvadorans will be able to maintain legal employment authorization pending a review of their asylum applications. Those *ABC* class members who have not filed asylum applications will have an opportunity to do so. In addition to the rights afforded under the *ABC* agreement, many Salvadorans have adjusted and will continue to adjust status to lawful permanent residence on the basis of family relationships and other grounds.

All Salvadorans who initially registered for TPS, regardless of whether they later registered for DED, are *ABC* class members. As *ABC* class members, they are entitled to certain rights under

the agreement. On or about March 31, 1995, the Service will send class members a notice advising that they must submit an initial asylum application (Form I–589) with the INS appropriate service center within 90 days, if they have not filed an asylum application previously. A previously filed asylum application may be supplemented. Class members also have the option of filing a new asylum application even if they had previously filed for asylum. Class members may supplement a previously filed or newly filed asylum application until the date of the decision by the asylum officer.

Obtaining Further Employment Authorization

With Salvadoran DED ending, *ABC* class members may obtain further employment authorization based on a "pending" asylum application. Special procedures apply to class members who seek work authorization under the agreement. Class members seeking employment authorization must identify themselves as *ABC* class members. They must have an asylum application on file or must file a completed asylum application (Form I–589) with Form I–765, Application for Employment Authorization. Eligible class members who apply for employment authorization under this agreement are not subject to the "non-frivolous" standard required under 8 CFR 208.7(a). Form I–765, with or without an asylum application as appropriate, must be filed directly with the service center having jurisdiction over the applicant's place of residence for asylum-related applications. However, if the original asylum application was filed with an immigration judge in exclusion or deportation proceedings, applications for employment authorization and asylum should be filed at the appropriate local INS office until directed otherwise.

Class members generally must pay the employment authorization application fee, currently seventy dollars ($70). However, when an *initial* application for employment authorization is filed based on an asylum application which is found to satisfy the non-frivolous test, such an initial employment authorization application can be filed and approved without payment of the filing fee under the general asylum regulations now in effect. Also, eligible class members who can demonstrate that they fall within the poverty guidelines at 45 CFR 1060.2 will not be required to pay the fee.

In summary, new asylum applications are *required* only from those who have *never* filed for asylum before. All other class members may choose to rely on any asylum application filed previously. Class members may supplement a previously filed or newly filed asylum officer. Applicants who must have continuous documentation of employment authorization should apply as early as possible with the appropriate service center or local office. It is not necessary to wait until the planned *ABC* notices are sent or until the class member's individual *ABC* notice is received. Such an application for employment authorization must be based on an asylum application.

Dated: November 29, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Services.

[FR Doc. 94–30088 Filed 12–2–94; 1:17 pm]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–220]

Niagara Mohawk Power Corp., Nine Mile Point Nuclear Station Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of 10 CFR part 50, Appendix J, Paragraph III.D.1.(a), Type A Tests, issued to Facility Operating License No. DPR–63, the Niagara Mohawk Power Corporation (the licensee) for operation of the Nine Mile Point Nuclear Station Unit No. 1, located in Oswego, New York.

Environmental Assessment

Identification of the Proposed Action

This Environmental Assessment has been prepared to address potential environmental issues related to the licensee's application of August 26, 1994. The proposed action would exempt the licensee from the requirement of 10 CFR part 50, Appendix J, Paragraph III.D.1.(a), to the extent that a one-time schedular extension would permit the second 10-year period for performance of the third Type A test be extended to correspond with the end of the current inservice inspection interval (ISI).

The Need for the Proposed Action

During the first 10-year service period (1974–1984) Type A tests were conducted as required by 10 CFR part 50 Appendix J. Due to the lengthy outage for the replacement of reactor recirculation piping, the first ISI 10-year interval was extended to June 1986. In addition, an extended refueling outage (January 1987 to July 1990), caused the second 10-year ISI interval to be extended to December 1998. These actions decoupled the Type A test schedule from the ISI schedule.

Unlike Section XI of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code), Appendix J of 10 CFR part 50 does not contain any provisions for adjusting the 10-year service period for extended outages. Two Type A tests have already been performed (May 1990 and April 1993) during the current second 10-year service period. The current 10-year service period ends December 1994. The next refueling outage (RFO13) is currently scheduled for February 1995. Performing the Type A test during the 1995 refueling outage would result in only 22 months of operation since the last Type A test. Appendix J could be interpreted to require another Type A test during the last outage in the ISI interval. NMPC has proposed to extend the second 10-year service period to correspond with the end of the current ISI interval. Due to Nine Mile Point Unit 1's 24-month operating cycle, the final refueling outage of the current ISI interval is scheduled for 1997 (RFO14).

Granting the proposed Exemption would result in an interval of approximately 46 months between successive Type A tests. Such an interval would be consistent with the NRC staff's current position (as reflected in the NRC's Improved Standard Technical Specifications, NUREG–1433) of requiring Type A tests to be performed every 40 ± 10 months. It would also bring the Appendix J Type A test schedule back into alignment with the 10-year ISI schedule.

Environmental Impacts of the Proposed Action

The proposed one-time exemption would not increase the probability or consequences of accidents previously analyzed and the proposed one-time exemption would not affect facility radiation levels or facility radiological effluents. The licensee has analyzed the results of previous Type A tests performed at the Nine Mile Point Nuclear Station Unit No. 1, and has provided the methodology used in extrapolating the previous Type A test data to the proposed one-time increase in the surveillance interval. The licensee has provided a sound basis for concluding that the proposed one-time extension of the Type A test interval would maintain the containment leakage rates within acceptable limits while bringing the Type A test schedule

back into alignment with the 10-year ISI schedule. Accordingly, the Commission has concluded that the one-time extension does not result in a significant increase in the amounts of any effluents that may be released nor does it result in a significant increase in individual or cumulative occupational radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption only involves Type A testing on the containment. They do not affect nonradiological plant effluents and have no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the action would be to deny the request for exemption. Such action would not reduce the environmental impacts of plant operations.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the "Final Environmental Statement Related to the Operation of Nine Mile Point Nuclear Station Unit No. 1," dated January 1974.

Agencies and Persons Consulted

The NRC staff consulted with the New York State official regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the licensee's letter dated August 26, 1994, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Dated at Rockville, MD, this 30th day of November 1994.

For the Nuclear Regulatory Commission.

Michael L. Case,

Acting Director, Project Directorate I–I, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–29927 Filed 12–5–94; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–277 and 50–278]

Peach Bottom Atomic Power Station, Units 2 and 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations for Facility Operating License Nos. DPR–44 and DPR–56, issued to Philadelphia Electric Company (the licensee), for operation of the Peach Bottom Atomic Power Station (PBAPS), Units 2 and 3, located in York County, Pennsylvania.

Environmental Assessment

Identification of Proposed Action

The proposed action would allow implementation of a hand geometry biometric system of site access control such that photograph identification badges can be taken offsite.

The proposed action is in accordance with the licensee's application dated September 8, 1994 as supplemented by letter dated October 28, 1994, for exemption from certain requirements of 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power plant reactors against radiological sabotage."

The Need for the Proposed Action

Pursuant to 10 CFR 73.55, paragraph (a), the licensee shall establish and maintain an onsite physical protection system and security organization.

Paragraph (1) of 10 CFR 73.55(d), "Access Requirements," specifies that "licensee shall control all points of personnel and vehicle access into a protected area * * *" It is specified in 10 CFR 73.55(d)(5) that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." It also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *".

Currently, unescorted access into protected areas of the PBAPS is controlled through the use of a photograph on a combination badge and keycard. (Hereafter, these are referred to as badges). The security officers at the entrance station use the photograph on the badge to visually identify the individual requesting access. The badges for both licensee employees and contractor personnel who have been granted unescorted access are issued upon entrance at the entrance/exit location and are returned upon exit. The badges are stored and are retrievable at the entrance/exit location. In accordance with 10 CFR 73.55(d)(5), contractor individuals are not allowed to take badges offsite. In accordance with the plants' physical security plans, neither licensee employees nor contractors are allowed to take badges offsite.

The licensee proposes to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at the entrance/exit location and would allow all individuals with unescorted access to keep their badges with them when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to permit contractors to take their badges offsite instead of returning them when exiting the site.

The Commission has completed its evaluation of the proposed action. Under the proposed system, each individual who is authorized for unescorted entry into protected areas would have the physical characteristics of their hand (hand geometry) registered with their badge number in the access control system. When an individual enters the badge into the card reader and places the hand on the measuring surface, the system would record the individual's hand image. The unique characteristics of the extracted hand image would be compared with the previously stored template to verify authorization for entry. Individuals, including licensee employees and contractors, would be allowed to keep their badge with them when they depart the site.

Based on a Sandia repot entitled "A Performance Evaluation of Biometric Identification Devices" (SAND91—0276 UC—906 Unlimited Release, Printed June 1991), and on its experience with the current photo-identification system, the licensee stated that the false acceptance rate of the proposed hand geometry system is comparable to that

of the current system. The licensee stated that the use of the badges with hand geometry system would increase the overall level of access control. Since both the badge and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process. Potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas. The licensee will implement a process for testing the proposed system to ensure continued overall level of performance equivalent to that specified in the regulation. The Physical Security Plan for PBAPS will be revised to include implementation and testing of the hand geometry access control system and to allow licensee employees and contractors to take their badges offsite.

The access process will continue to be under the observation of security personnel. A numbered picture badge identification system will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges will continue to de displayed by all individuals while inside the protected area.

Environmental Impacts of the Proposed Action

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluent that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluent and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the action would be to deny the request. Such action would not change any current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement related to the operation of Peach Bottom Atomic Power Station, Units 2 and 3," dated April 1973.

Agencies and Persons Consulted

The NRC staff consulted with the State of Pennsylvania regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated September 8, 1994 and October 28, 1994, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the State Library of Pennsylvania, (REGIONAL DEPOSITORY) Government Publications Section, Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania, 17105.

Dated at Rockville, Md. this 29th day of November 1994.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94-29928 Filed 12-5-94; 8:45 am]

BILLING CODE 7590-01-M

Texas Utilities Electric Co.; Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Correction.

SUMMARY: This document corrects a general notice appearing in the **Federal Register** on November 23, 1994 (59 FR 60399), in which the NRC is considering issuance of an amendment to Facility Operating License Nos. NPF-87 and NPF-89, issued to Texas Utilities Electric Company for operation of the Comanche Peak Steam Electric Station, Units 1 and 2 located in Somervell County, Texas. This notice is necessary to correct an erroneous date.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415-7163.

On page 60400, in the first sentence of the third full paragraph in the first column, the date "December 28, 1994" should be changed to read "December 23, 1994.".

Dated at Rockville, MD, this 30th day of November 1994.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 94-29926 Filed 12-5-94; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Regulatory Reform—Federal Acquisition Regulatory System

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Request for public comments.

SUMMARY: In response to the report from the National Performance Review (NPR), the Office of Federal Procurement Policy has been working with various senior level individuals in the Executive Branch to implement the recommendations relating to acquisition regulatory reform. Thus far our primary focus has been the governmentwide regulation, the Federal Acquisition Regulation (FAR). We are now seeking comments and suggestions related to agency supplementation from the public.

DATES: Written comments must be received in the Office of Federal Procurement Policy on or before January 5, 1995.

ADDRESSES: Written comments should be submitted to Susan E. Alesi, Special Assistant for Regulations, Office of

Federal Procurement Policy, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Susan E. Alesi at 202–395–6803, Office of Federal Procurement Policy.

SUPPLEMENTARY INFORMATION: On September 7, 1993, the Vice President released the report of the NPR which required simplification of the procurement process through regulatory reform. Up to this point, the focus of this reform effort has been the governmentwide regulation, the FAR. In the course of developing a plan for regulatory reform of the FAR, we have learned that there is almost a consensus that a problem exists with agency supplementation. In many cases the supplementation is not only that issued by procurement offices but also directives issued by other offices within agencies and departments which have an impact on procurement.

Consequently, we are now seeking from the public comments and suggestions related to agency supplementation. Also, providing examples will make comments far more useful. In particular, we would like to know the following:

1. Do you believe that a problem exists with agency supplementation? If so, please describe specifically what you believe the problems are that the supplements create. Please provide examples where possible.

2. Is the problem with other directives within the agency or department which impact procurement as well as the FAR supplement? Please give examples.

3. If you have answered question 1 and/or 2 in the affirmative, do these problems exist in both Defense and the civilian agencies?

4. What recommendations would you offer to resolve any problems you have described? Please be specific and give examples where possible.

Dated: October 27, 1994.

Steven Kelman,

Administrator.

[FR Doc. 94–29956 Filed 12–5–94; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Acting Agency Clearance Officer: Richard T. Redfearn, (202) 942–8800

Upon written request copy available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549

Adoption of Amendments:
Rule 10b–10
File No. 270–389

Adoption of Rule and Proposed Amendments:
Rule 11Ac1–3
File No. 270–382

Amendments:
Rule 15c2–12
File No. 270–330

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 34501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted for Office of Management and Budget approval the following previously approved rules:

The adoption of the amendments to rule 10b–10 requires broker-dealers effecting transactions in securities to provide written notification to the customer at or before the completion of the transaction that discloses information about the transaction. it is estimated that 3,900 broker-dealers currently spend 84.6 million hours complying with Rule 10b–10 annually.

The adoption of Rule 11Ac1–3 requires enhanced disclosure of payment for order flow practices on customer confirmations, and account statements, as well as opening new accounts.

The proposed amendments to Rule 11Ac1–3 require broker-dealers receiving payment for order flow to provide customers additional information regarding the value of the compensation received. It is anticipated that approximately 2,206 broker-dealers will spend a total of 46,381 burden hours complying with the reporting and recordkeeping requirements of the proposed amendment to Rule 11Ac1–3.

The amendments to Rule 15c2–12 make it unlawful for a broker, dealer, or municipal securities dealer to act as an underwriter of an issue of municipal securities unless the issuer or its designated agent has undertaken in a written agreement or contract for the benefit of the holders of such municipal securities to provide certain information to information repositories, and prohibits brokers, dealers, and municipal securities dealers from recommending transactions in municipal securities unless they have procedures in place that provide reasonable assurance that they will receive promptly any notices of material events with respect to those securities. It is anticipated that approximately 12,003 brokers, dealers, municipal securities dealers, issuers of municipal securities, and nationally recognized municipal securities information repositories or state information depositories will spend a total of 95,860 hours complying with Rule 15c2–12 annually.

General comments regarding the estimated burden hours should be directed to the Clearance Officer of the Securities and Exchange Commission at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to Richard T. Redfearn, Acting Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549 and Clearance Officer for the Securities and Exchange Commission, Office of Management and Budget (Project Nos. 3235–0444; 3235–0435; and 3235–0372), Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: November 28, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–29931 Filed 12–5–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35024; File No. SR–NASD–94–13, Amendment No. 3]

Self-Regulatory Organizations; Notice of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to the NASD's Proposed N•PROVE System for Price Improvement and Execution of Small Orders

November 29, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 21, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") an amendment to a proposed rule change previously published for comment.[2] The amendment is described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] *See* Securities Exchange Act Release No. 34145 (June 1, 1994), 59 FR 29649 (June 8, 1994) (notice of filing, incorporating Amendment No. 1) and Securities Exchange Act Release No. 34453 (July 28, 1994), 59 FR 39808 (Aug. 4, 1994) (notice of Amendment No. 2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is amending its proposed rules governing the operation of The Nasdaq Primary Retail Order View and Execution System ("N•PROVE"), a new system developed by The Nasdaq Stock Market, Inc. (Nasdaq) for the execution of small-sized customer orders that provides individual investors enhanced limit order protection and important price improvement opportunities through an enhanced automated system. Specifically, the NASD is proposing a variety of amendments to N•PROVE designed to: (1) Enhance the operational efficiency of the system; (2) increase the breadth of exposure of limit orders entered into the system priced between the inside bid or offer, which increased limit order exposure will facilitate greater opportunities for order interaction within the inside market on Nasdaq; (3) further improve the opportunities for price improvement available through N•PROVE; (4) expand the types of orders (*i.e.*, short sales) that may be entered into N•PROVE, and, thereby, afford a broader spectrum of retail orders in Nasdaq an opportunity to take advantage of N•PROVE's price improvement and limit order protection features; and (5) facilitate the efforts of NASD members to provide their customers with the same quality of order execution that they would have received had their orders been entered into N•PROVE. Following is the text of the proposed rule change. (Additions are italicized; deletions are bracketed.)

Rules of Operation and Procedures for the N•PROVE System

(1) Definitions

a.–g. No change.

h. The term "preferenced order" shall mean an order entered into N•PROVE and directed to a particular market maker *or an order entered by a market maker that is self-preferenced.* Each market maker has the ability to select order entry firms from which it will accept preferenced orders.

(2)–(3) No Change

(4) Participant Obligations in N•PROVE

a. Market Makers

1. No change.

2. Participation as an N•PROVE market maker obligates the firm, upon presentation of [preferenced or] *a designated,* unpreferenced *market order or marketable limit* order[s] *(as that term is defined in subsection (5)c. below)* through the service, to execute [those] *such* order[s]; provided, however, that for *a designated,* unpreferenced order[s], the N•PROVE market maker shall have an opportunity,[a] consistent with Rule 11Ac1–1 promulgated under the Act to decline the order[; if no action is taken the order will be automatically executed against the market maker]. The market maker may decline to execute the *designated,* unpreferenced N•PROVE order only if the market maker has executed an order (or is in the process of executing an order) in the security and has updated its quotation (or is in the process of updating its quotation) for the security. *An N•PROVE market maker that receives an undesignated, unpreferenced market order or marketable limit order (as that term is defined in subsection (5)c. below) through N•PROVE also may decline such order consistent with Rule 11Ac1–1 promulgated under the Act. If a market maker rejects a designated, unpreferenced N•PROVE order and no other market maker accepts the order within the 15-second period, upon expiration of the 15-second period, the system will automatically execute the order against the market maker next in rotation who received the order on an undesignated basis that has not rejected the order.* [If a market maker rejects the N•PROVE order, it will be displayed to all other market makers at the inside quotation simultaneously and executed against the market maker that accepts the order, or if no market maker accepts the order, the next market maker in rotation that has not rejected the order will receive the execution.] If all market makers reject *an unpreferenced* [the] order because they have had an execution (or are in the process of effecting a trade) and have updated their quotations (or are in the process of updating their quotations), the order will be *automatically executed against the market maker next in rotation at the new inside quotation.* [delivered to the first market maker at the new inside quote on Nasdaq and that market maker will not be able to reject that order].

With the exception of those instances where a market order or marketable limit order has matched with a limit order and is processed according to the procedures contained in subsection (5)c. below, participation as an N•PROVE market maker obligates the firm, upon presentation of a preferenced market order or marketable limit order through the service, to automatically execute such order at the inside bid or offer displayed by Nasdaq when the order is processed through N•PROVE. N•PROVE market makers *are* [will also] not [be] permitted to reject orders preferenced to the firm pursuant to a preferencing arrangement acknowledged by the market maker.

The system will transmit to the market maker on the Nasdaq Workstation screen and printer, if requested, or through a computer interface, as applicable, an execution report generated following each execution.

3. *Notwithstanding subsection (5)c. below, a*[A]n N•PROVE market maker that improves the best bid or offer in Nasdaq is eligible to receive all unpreferenced orders entered into N•PROVE *on an exclusive basis* (for a specific period of time or number of executions as established by the NASD[b]) so long as the market maker manually accepts the orders prior to automatic execution of the orders.

4.–6. No change.

7. *Aside from market makers entering self-preferenced orders into N•PROVE, f*[F]or each security in which a market maker is registered, the market maker may not enter orders on an agency basis into N•PROVE, unless a locked or crossed market exists for that security. This prohibition against use of N•PROVE does not obviate the market maker's duty to give its agency orders best execution in the prevailing market, according to the Board of Governor's Interpretation on Executions of Retail Transactions, Article III, Section 1 of the NASD Rules of Fair Practice.

8. No change.

9. Notwithstanding the provisions of subsection (8) above, (i) a market maker that obtains an excused withdrawal pursuant to Part V of Schedule D to the NASD By-Laws prior to withdrawing from N•PROVE may reenter N•PROVE according to the conditions of its withdrawal; and (ii) a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency, and is thereby withdrawn from participation in ACT and N•PROVE for Nasdaq [National Market] securities, may reenter N•PROVE after a clearing arrangement has been reestablished and the market maker has complied with ACT participant requirements. Provided however, that if the Association finds that the ACT market maker's failure to maintain a clearing arrangement is

[a] This period of time shall initially be established as 15 seconds, but may be modified upon appropriate notification to N•PROVE participants.

[b] The parameters for market makers receiving priority in the rotation when they have created an improved inside market have been initially established as five minutes or five executions (whichever occurs first) after one or more market makers have changed their quote to equal the improved price. The NASD may modify these parameters upon notification to members.

voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Schedule D and these rules.

10. No change.

b. N•PROVE Order Entry Firms

1.–5. No change.

[6. No short sales may be entered into N•PROVE.]

(5) Execution of N•PROVE Orders

a. Orders in Nasdaq equity securities entered into N•PROVE may be preferenced or unpreferenced. *Preferenced market orders will be automatically executed against the preferenced market maker pursuant to subsection (4)a.2. above. Preferenced limit orders to buy (sell) will not be treated as preferenced orders unless the limit order price is at or above (below) the inside offer (bid), in which case the orders will be automatically executed against the preferenced market maker pursuant to subsection (4)a.2. above. Preferenced odd-lot orders (orders of less than 100 shares) that are market orders or marketable limit orders also will be automatically executed against the preferenced market maker.* [Preferenced orders will be delivered to the designated market maker. Except as provided in subparagraph (c) below, unpreferenced orders will be delivered to market makers at the current inside bid or offer in rotation.]

Unpreferenced market orders and limit orders will be processed according to the procedures established in subsections (5)b. and c. below. Unpreferenced o[O]dd-lot orders [(orders of less than 100 shares)] *that are market orders or marketable limit orders* will be automatically executed in N•PROVE *against the market maker next in rotation at the inside market* and execution reports will be delivered to the order entry firm and the market maker.

b. Limit orders may be entered into N•PROVE. A limit order priced at the Nasdaq inside market *(e.g., the bid side for a sell order)* when the order is delivered to an N•PROVE market maker will be handled as a market order. Limit orders priced *away from* [outside] the Nasdaq inside *bid or offer (as the case may be)* [market] will be stored in the N•PROVE limit order file, and when the inside market equals or betters the limit price, the order will be handled as a market order. Limit orders priced *within* [better than] the inside market upon entry *or thereafter* will establish the *minimum* price at which subsequent incoming market orders on the other side of market *will* [may] be priced and executed (e.g., a sell order priced between the best bid and offer would improve the price of an incoming buy order). *All Nasdaq Level 2 and 3 subscribers* [Market makers] will receive notification *on their quote retrieval screens* of the existence of a limit order priced better than the inside market *along with an indication of which side of the market it is on.* [on their quote retrieval screens,] *regardless of whether the limit order is preferenced or unpreferenced* [; provided, however, that notification of the existence of a preferenced limit order will only be delivered to the designated market maker]. *A separate dissemination of N•PROVE limit orders priced between than the inside market consisting of the price of the highest priced limit order to buy and the price of the lowest priced limit order to sell and the aggregate size of all orders at such prices also will be made available to securities information processors.* A limit order priced better than the inside market on Nasdaq shall be automatically executed against a subsequent limit order on the opposite side of the market at a price equal or superior to the limit price of the initial limit order (a sell (buy) limit order priced at or below (above) a limit order to buy (sell)), up to the size of the initial limit order or the subsequent limit order, whichever is smaller, and without the participation of a market maker.

c. Market orders may be entered into N•PROVE. *For preferenced market orders, if there is no limit order residing in N•PROVE priced between the inside market on the opposite side of the market from the market order, the order will be automatically executed against the preferenced market maker at the inside bid or offer (buy orders will be executed at the best offer and sell orders at the best bid) displayed in Nasdaq when the order becomes subject to N•PROVE's order execution methodology. For unpreferenced market orders, except as provided in subsection (4)a.3. above, if there is no limit order residing in N•PROVE priced between the inside market on the opposite side of the market from the market order, the order will be broadcast to all N•PROVE market makers at the applicable inside market (i.e., market makers at the inside bid will receive market orders to sell and market makers at the inside offer will receive market orders to buy) displayed in Nasdaq when the order becomes subject to N•PROVE's order execution methodology for acceptance within 15 seconds, with the market maker next in rotation for an N•PROVE execution receiving an indicator that the system will execute the order against him should be fail to reject the order or if no other market maker accepts the order (for purposes of these rules, market orders with such notifications appended to them are referred to as "designated, unpreferenced orders" and orders without such a notification are referred to as "undesignated, unpreferenced orders"). If a market maker rejects a designated, unpreferenced N•PROVE order and no other market maker accepts the order within the 15-second period, upon expiration of the 15-second period, the system will automatically execute the order against the market maker next in rotation who received the order on an undesignated basis that has not rejected the order. If all market makers decline the order consistent with Rule 11Ac1–1 promulgated under the Act, the order will be automatically executed against the market maker next in rotation at the new inside quotation.* [A market order will be delivered to a market maker for execution at the current inside market (buy orders will be executed at the best offer and sell orders at the best bid)].

If a limit order has previously been entered into N•PROVE at a price superior to the best bid or offer, the incoming market order will be repriced to *a price equal to the limit order price plus 1/16th of a point in the case of a limit order to buy or the limit order price minus a 1/16th of a point in the case of a limit order to sell* [match the price of the limit order] and will be displayed for 15 seconds to all market makers whose current quotation equals the applicable inside quote[, in the case of an unpreferenced market maker in the case of a preferenced order]. If no market maker accepts the incoming market order within the 15-second period, the market order will be automatically executed against the limit order *at the limit order price. In addition, if adding (subtracting) 1/16th of a point to the price of a limit order to buy (sell) would cause the acceptance price of the market order to sell (buy) to be at or above (below) the current inside offer (bid), then the market order and the limit order will be automatically executed against each other at the limit order price without the participation of a market maker.* [All market orders entered into N•PROVE will be executed in compliance with market maker obligations as established in subsection (4).]

(6)–(9) No Change

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the amendment to 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 NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On March 28, 1994, the NASD proposed rules governing the operation and procedures for a new service for the delivery, handling and execution of individual investors' small-sized agency orders.[3] The N•PROVE service, operated by Nasdaq, will provide automated executions of individual investors' small agency orders in Nasdaq equity securities, and will offer small retail investors new opportunities for price improvement of market orders. The new service will also heighten protections for individual investors' limit orders while enhancing the ability of market makers to monitor and maintain competitive quotations accessible to investors participating in an automated execution environment.

The purpose of this proposal is to modify N•PROVE to further enhance the operational efficiency of the system and enhance the limit order protection and price improvement benefits of N•PROVE to retail investors. As described in more detail below, the NASD proposes to enhance the operational efficiency of N•PROVE by collapsing the current proposal for three rounds of N•PROVE order processing for unpreferenced orders into one 15-second round. With this streamlined order execution procedure, N•PROVE will be less susceptible to the development of order queues during peak volume periods and retail investors will have greater assurance that they will receive a timely execution through N•PROVE. The NASD also proposes to further enhance the price improvement opportunities afforded small retail investors through N•PROVE by modifying N•PROVE's order processing algorithm for the execution of matched market orders and limit orders. In addition, the NASD proposes to modify the limit order processing features N•PROVE to provide for a broader, more detailed dissemination of N•PROVE limit order information. With these changes, market participants will have a greater opportunity to interact with limit orders in N•PROVE, thereby enhancing the limit order protection and price improvement features of N•PROVE. Following is a more detailed description of these proposed changes.

1. Collapsing of N•PROVE Order Processing Rounds

As currently designed, the execution of unpreferenced market and marketable limit orders may involve up to three 15-second rounds in N•PROVE.[4] In light of these three rounds of N•PROVE order processing, some comment letters submitted to the SEC regarding N•PROVE have expressed concern that it may take 45 seconds to process each order entered into N•PROVE.[5] These commenters believe that executing N•PROVE orders in 45-second intervals will create substantial order queues that will paralyze the system and result in investors receiving significantly delayed executions through N•PROVE at prices wholly unrelated to the quotes that were displayed when their orders were entered into the system.

Given market makers' obligations to adhere to Rule 11Ac1–1 promulgated under the Act, the NASD believes most N•PROVE orders would be executed during Round 1 and that it would be extremely rare for an N•PROVE order to ever go beyond Round 2 order processing. As a result, the NASD does not believe that the commenters concerns are realistic. Nevertheless, while the NASD does not believe that prolonged order queues will develop under the current configuration of N•PROVE, the NASD thinks it is appropriate to take prudent steps to ensure that such order queues do not develop. Accordingly, with one limited exception discussed below, the NASD proposes to collapse the three rounds of N•PROVE order processing into one 15-second round.

Specifically, under the revised order processing methodology, unpreferenced market orders entered into the system will be broadcast to all N•PROVE market makers at the applicable inside market for acceptance within 15 seconds, with the market maker next in rotation for an N•PROVE execution receiving an indicator that the system will execute the order against him should he fail to reject the order or if no other market maker accepts the order (market orders with such notifications appended to them are referred to as "designated, unpreferenced orders" and orders without such a notification are referred to as "undesignated, unpreferenced orders").[6] If a market maker rejects a designated, unpreferenced N•PROVE order and no other market maker accepts the order within the 15-second period, upon expiration of the 15-second period, the system will automatically execute the order against the market maker next in rotation who received the order on an undesignated basis that has not rejected the order. If all market makers decline the order consistent with Rule 11Ac1–1 promulgated under the Act, the order will be automatically executed against the market maker next in rotation at the new inside quotation. Thus, with this proposal, Rounds 1 and 2 would be effectively collapsed into one round and Round 3 would be eliminated because orders rejected by all market makers would be executed automatically at the new inside market.

Accordingly, with this one-round order processing format, the NASD believes even more strongly that significant order queues will not occur in N•PROVE, during normal trading days or peak volume days, and that investors will receive timely executions at prices at or superior to the quotes

[3] See Securities Exchange Act Release No. 34145 (June 1, 1994), 59 FR 29649 (June 8, 1994).

[4] In Round 1, an unpreferenced order will be routed to the market maker at the inside bid or offer that is next in line for an N•PROVE execution. The market maker may manually execute the order or allow the system to automatically execute the order after 15 seconds. If the market maker has effected a trade (or is in the process of executing a trade in that security) and has updated its quotation (or is in the process of updating), it may reject the N•PROVE unpreferenced order. When, consistent with the requirements of Rule 11Ac1–1 under the Act, an order is rejected by the first market maker in rotation, the order will enter Round 2 and will automatically be displayed to all remaining market makers at the inside quote. All of these market makers will have the opportunity to execute the order during a 15 second period. If no market maker manually accepts the order, it will be automatically executed against the first market maker in rotation. In the unlikely event that all of these market makers reject the order during Round 2 pursuant to a valid exception from Rule 11Ac1–1, the order will be executed automatically by the first market maker in rotation quoting at the new inside market. This is called Round 3.

[5] *See, e.g.*, letters from John C. Coffee, Jr., Adolf A. Berle Professor of Law, Columbia University in the City of New York, to Jonathan G. Katz, Secretary, SEC, dated August 22, 1994 ("Coffee Letter"); and Simon S. Kogan, J.D., L.L.M., Attorney at Law, to Jonathan G. Katz, dated August 26, 1994.

[6] Market orders matched against limit orders (preferenced or unpreferenced) priced between the inside bid or offer also will be processed pursuant to this one-round order processing procedure. *See infra* Section 5 for a more detailed description of how market orders matching with limit orders will be processed under the NASD's proposed revision to N•PROVE.

displayed when they entered their orders into N•PROVE.

The NASD proposes, however, to retain the ability of N•PROVE market makers to improve upon the inside bid or offer and achieve a "priority market maker" status; thus, providing a meaningful incentive for market makers to narrow their spreads. In particular, as currently proposed, when a market maker improves its bid or offer to better the inside best bid or offer and it becomes a "priority market maker." Thereafter, for a short period of time (initially established as five minutes or five executions, whichever occurs first, after one or more market makers have changed their quote to equal the improved price) all unpreferenced N•PROVE orders will be directed only to that market maker for acceptance within 15 seconds. The priority market maker will retain its "priority" status only if it does not reject an order, allow the system to automatically execute an order after 15 seconds, or a new inside has been established. Even if other market makers adjust their quotes to match the new inside quote established by the priority market maker, the priority market maker will be able to maintain its priority status, provided the priority market maker manually accepts each order within 15 seconds.

Because of the retention of the "priority market maker" feature, it is conceivable that an order rejected by a priority market maker could take 30 seconds to receive an execution in N•PROVE. The NASD notes, however, that this potential delay will be limited to a single order directed to a priority market maker and that a delay will occur only if the market maker declines the order in compliance with Rule 11Ac1–1 promulgated under the Act. If a priority market maker allows one order to execute against him automatically after 15 seconds or it manually accepts all orders, all orders sent to the market maker on a priority basis will receive an execution within 15 seconds. Moreover, unless the priority market maker declines an order at the last second, the maximum length of time the order will be delayed will be less than 30 seconds. Accordingly, in weighing the de minimis costs to the marketplace resulting from the possibility that a maximum of one order directed to any given priority market maker will be delayed for no more than 30 seconds, if at all, against the benefits to the marketplace derived from providing market makers with an incentive to narrow their spreads and improve the prices at which individual investors may execute their orders, the NASD believes it is appropriate and consistent with the maintenance of fair and orderly markets to retain the priority market maker feature of N•PROVE.

2. Automatic Execution of Preferenced Market Orders

Consistent with the NASD's desire to minimize the potential for order queues in N•PROVE, the NASD is proposing to modify N•PROVE to provide that preferenced market orders or marketable limit orders will be automatically executed against the preferenced market maker at the inside bid or offer displayed on Nasdaq when the order is processed through N•PROVE.[7] As explained in more detail in Section 5 below, preferenced market orders will only be automatically executed if they did not match against a limit order residing in N•PROVE.

3. Modifications to N•PROVE's Execution Algorithm for Limit Orders to Provide Greater Limit Order Protection and Enhanced Price Improvement Opportunities

As currently proposed, if a limit order is entered into N•PROVE at a price between the spread, the next incoming market order on the opposite side of the market (*e.g.*, the limit order is to sell stock and the market order is to buy stock) would automatically "pass over" or read the limit order file to see if there are any orders residing in the limit order file at prices superior to the best bid or offer in the Nasdaq marketplace. If a limit order resides in the file at a superior price, then the market order will be flashed on the screen at that superior price for acceptance within a brief 15-second period, instead of at the inside bid or offer. In that event, all market makers at the inside quotation would have the opportunity for 15 seconds to execute the market order at the superior limit price. If no market maker elected to execute the order at that improved price, the system would execute the orders against each other at the limit price.

Several comment letters submitted to the SEC regarding N•PROVE have expressed concern that this order processing methodology places limit orders at an unfair disadvantage.[8] In particular, these commenters maintain that the limit orders, which provide liquidity to the marketplace at prices inside the best bid or offer, are disadvantaged because market makers can trade through them by taking out the market order at the limit order price within 15 seconds and deprive the limit order of an execution for an indefinite period of time. To address this concern, the NASD is proposing to modify N•PROVE to provide that market makers must improve upon the limit order price if they want to execute the matched market order.[9] Specifically, under the proposal,[10] if a limit order is residing in N•PROVE priced superior to the best bid or offer, any incoming market order on the opposite side of the market will be repriced to a price equal to the limit order price plus 1/16th of a point in the case of a limit order to buy or the limit order price minus a 1/16th of a point in the case of a limit order to sell. The market order will then be displayed for 15 seconds to all market makers whose current quotation equals the applicable inside quote.[11] If no market maker accepts the incoming market order within the 15-second period, the market order will be automatically executed against the limit order at the limit order price. In addition, if adding (subtracting) 1/16th of a point to the price of a limit order to buy (sell) would cause the acceptance price of the market order to sell (buy) to be at or above (below) the current inside offer (bid), then the market order and the limit order will be automatically executed against each other at the limit order price without the participation of a market maker.[12]

The NASD believes the proposal strikes a reasonable balance between the concern that matched limit orders could remain unexecuted while market makers are able to trade at the limit order price without executing the limit order and the need to preserve the liquidity of the market by ensuring that market makers have an ability to

[7] Previously, preferenced market makers had 15 seconds to accept a preferenced market order. They could not decline the orders and, if they failed to accept them within 15 seconds, the orders would be automatically executed against them.

[8] *See, e.g.*, letter from Lawrence R. Glosten, Associate Professor, Columbia University Graduate School of Business, to Jonathan G. Katz, Secretary, SEC, dated August 24, 1994; and Coffee Letter, *supra* note 3.

[9] As discussed *infra* at Section 5, preferenced limit orders matching against market orders will be processed the same way as unpreferenced limit orders.

[10] In this connection, the NASD notes the contribution of the Board of the Securities Traders Association in the formulation and endorsement of this concept.

[11] For example, if the inside market for a security is 10—10¼ and a limit order to buy at 10⅛ is residing in the N•PROVE limit order file when a market order to sell is entered into the system, N•PROVE will reprice the market order to 10 3/16 for flash display and acceptance to all market makers in that security at the inside bid or offer.

[12] For example, if the inside market for a security is 10—10¼ and a limit order to buy at 10 3/16 is residing in the N•PROVE limit order file when a market order to sell is entered into the system, these orders will be automatically executed against each other at a price of 10 5/16.

interact with customer orders. In this connection, the NASD notes that one of the cornerstones of the success of Nasdaq's competing dealer system has been the availability of market maker capital to satisfy investors' liquidity demands and that this capital is critically dependent on the ability of market makers to interact with customer order flow. The NASD also notes that the proposal will provide an even greater opportunity for price improvement for market orders matching against limit orders, as market makers will have to accept them at a price at least a 1/16th of a point superior to the price at which they otherwise would have matched against the limit orders. In sum, the NASD believes the proposal significantly enhances the price improvement and limit order protection features of N•PROVE and eliminates the possibility that a pending limit order will remain unexecuted while other public customer orders receive executions at the order's limit price, while preserving the liquidity and orderliness of Nasdaq by allowing a minimal, yet essential, opportunity for market makers to interact with retail order flow.

4. Broader Dissemination of N•PROVE Limit Order Information

The NASD is proposing several amendments to N•PROVE and other Nasdaq services to achieve a broader, more detailed dissemination of N•PROVE limit order information. The NASD believes these system modifications will facilitate the ability of market participants to readily observe and react to limit orders entered into N•PROVE priced better than the inside market, which, in turn, will maximize order interaction in N•PROVE and maximize the price improvement and limit order protection benefits available to investors through N•PROVE.

First, the NASD proposes to create a separate feed of N•PROVE limit order information to vendors. This feed will consist of the price of the highest priced limit order to buy and the price of the lowest priced limit order to sell that are inside the best bid or offer displayed in Nasdaq, along with the aggregate size of all limit orders at such prices. Second, the NASD proposes to modify the "NPRV" indicator displayed when a limit order is residing in N•PROVE between the spread to indicate which side of the market the limit order is on. Third, the NASD is proposing to modify the functionality of Nasdaq Workstation I and Nasdaq Workstation II so that subscribers can readily obtain information on all limit orders residing in N•PROVE, including those limit orders priced within the inside market on Nasdaq. This ready display of N•PROVE limit order information will be accomplished with one key stroke in the Nasdaq Workstation I environment and one mouse click in the Nasdaq Workstation II environment. Fourth, the NASD is proposing to develop a separate feed of N•PROVE transaction information and limit order information to registered market makers. Specifically,, the feed to the market makers will include all N•PROVE orders, cancellations, corrections, and executions. With this information, which is in response to a comment letter received by the SEC regarding N•PROVE,[13] market makers will be able to assure their customers that they are receiving the same quality of execution that they would have received had their orders been entered into N•PROVE. Accordingly, with this feed, while a market maker's customer order may not interact directly with a limit order in N•PROVE, it would benefit indirectly from the existence of the limit order in N•PROVE. In sum, the NASD believes these changes will enhance the limit order protection and price improvement benefits available to retail investors through N•PROVE.

5. Modifications to the Processing of Preferenced Limit Orders

As currently proposed, while preferenced limit orders are able to take advantage of the limit order protection feature of N•PROVE, the existence of these orders are known only to the preferenced market makers. Unlike unpreferenced limit orders, when a preferenced market order is entered between the spread, it does not activate the N•PROVE limit order indicator and it is not retrievable by other market makers in the summary scan of pending N•PROVE limit orders. In addition, when a preferenced limit order is matched against an incoming market order, the matched market order is only displayed to the preferenced market maker for acceptance. Accordingly, in order to afford preferenced limit orders the same opportunity for order interaction that is afforded unpreferenced limit orders, the NASD proposes to amend N•PROVE to provide that preferenced limit orders priced within the inside bid or offer on Nasdaq will be processed the same way as unpreferenced limit orders.[14] However, once the price of a preferenced limit order to buy (sell) is at or above (below) the inside offer (bid), it will be automatically executed against the preferenced market maker. The NASD also proposes to amend the N•PROVE rules to reiterate and clarify that market makers may enter orders into N•PROVE on self-preferenced basis and that these orders will be processed like preferenced orders.

6. Inclusion of Short Sales in N•PROVE

As currently proposed, short-sales would be prohibited through N•PROVE, just as they are prohibited through the NASD's Small Order Execution System rules currently in effect. In light of the SEC's approval of the NASD's proposed short-sale rule in June 1994,[15] coupled with N•PROVE's order acceptance feature that enables market makers to handle exposure to transactions such as short sales by permitting them to reject trades if they have already traded, however, the NASD believes it is appropriate to permit short sales through N•PROVE. By so doing, the NASD will expand the spectrum of retail orders that are available to take advantage of N•PROVES's price improvement and limit order protection benefits. Nevertheless, while N•PROVE will provide a 15-second period for a market maker to react to an N•PROVE order, the NASD remains concerned that this 15-second period is sufficiently short the there remains a risk of destabilizing short term trading through the service. Accordingly the NASD will review the volume and impact of short sales effected through N•PROVE on an on-going basis to determine whether it is appropriate in the interests of maintaining fair and orderly markets to continue to allow short-sales through N•PROVE.

The NASD believes that the proposed N•PROVE system, as amended, is consistent with Section 15A(b)(6), 15A(b)(9), 15A(b)(11), and 11A(a)(1)(C) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in

[13] *See* letter from Leonard Mayer, Vice President & Chief Operating Officer, Mayer & Schweitzer, Inc., to Jonathan G. Katz, Secretary, SEC, dated July 13, 1994.

[14] Arguably, only flashing matched market orders to the preferenced market maker may increase the likelihood that the limit order will be executed because the market order is not exposed to multiple market makers for acceptance. It would be inappropriate and confusing to market participants, however, to disseminate information about preferenced limit orders and at the same time preclude investors from interacting with them.

[15] Securities Exchange Act Release No. 34277 (June 29, 1994), 59 FR 34885 (July 7, 1994).

securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Section 15A(b)(9) requires that rules of an association not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Section 15A(b)(11) requires the NASD to formulate rules governing the quality of fair and informative quotations. Section 11A(a)(1)(C) finds that it is in the public interest to, among other things, assure economically efficient execution of securities transactions. The fundamental purpose of N•PROVE is to assist individual investors in achieving prompt, efficient executions of their small orders, to provide individual investors an opportunity for price improvement within an automated execution environment, and to afford individual investors an automated and effective means to protect their limit orders. The integrity and efficiency of Nasdaq for public investors and market-making participants is critical and the NASD believes that N•PROVE will provide benefits to both constituencies. The design of N•PROVE is not anti-competitive as it treats all unpreferenced orders uniformly; to the extent that preferenced orders are distinguished, by entering into preferencing arrangements with known customers, market maker's effectively waive the protections offered by the system. N•PROVE may also enhance the quality of quotations in the Nasdaq market as market makers participating in the service may be encouraged to narrow the spread and improve the best inter-dealer quotations in Nasdaq in order to be first in priority and continue to receive unpreferenced order flow through N•PROVE.

Lastly, the NASD believes that N•PROVE is fully consistent with the significant national market system objectives contained in Section 11A of the Act. The facilities of N•PROVE would advance these objectives by offering efficient execution of investors' small orders, by maintaining market maker participation through the automated delivery of orders with the ability to reject those orders if trades have already occurred, and by offering the opportunity for price improvement to N•PROVE orders. The system's functionality will more accurately reflect market makers' affirmative obligations to provide liquidity to the market, without depriving market makers of legitimate exceptions from the firmness requirements contained in Rule 11Ac1–1 promulgated under the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes it reasons for so finding or (ii) as to which the NASD 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.

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, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File Number SR–NASD–94–13 and should be submitted by December 27, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

[16] 17 CFR 200.30–3(a)(12) (1994).

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 94–29932 Filed 12–5–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35031; File No. SR–NASD–94–56]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Partial, Accelerated Approval of Proposed Rule Change Relating to the Transfer of Customer Accounts

November 30, 1994.

On October 12, 1994, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] On November 9, 1994, the NASD filed with the Commission Amendment No. 1.[2] The proposed rule change will amend the NASD's rules to provide for three business day settlement of securities transactions and will amend the NASD's rules on the transfer of customer accounts between broker-dealers. The Commission published notice of the proposed rule change in the **Federal Register** On November 18, 1994.[3] No comments have been received on the notice. As discussed below, the Commission is approving on an accelerated basis that portion of the proposed rule change relating to the transfer of customer accounts.[4]

I. Description

The proposal amends the NASD's Uniform Practice Code ("UPC") Section 65 which sets forth the procedures for the transfer of customer accounts from one broker-dealer ("carrying member") to another broker-dealer ("receiving member"). The proposed rule change for Section 65 was developed in conjunction with the New York Stock Exchange ("NYSE"), National Securities Clearing Corporation ("NSCC"), and the Securities Industry Association Customer Account Division. Under the

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark Barracca, Branch Chief, Over-the-Counter Regulation, Division of Market Regulation, Commission (November 8, 1994).

[3] Securities Exchange Act Release No. 34966 (November 10, 1994), 59 FR 59802.

[4] The Commission is not approving by this order the portion of the proposed rule change relating to three day settlement of securities transactions (proposed amendments to Sections 5, 6, 12, 46, and 64 of the Uniform Practice Code and Article III, Section 26(m)(1) and Article III, Section 1 of the Rules of Fair Practice).

proposed language of Section 65, upon receipt from the customer of signed account transfer instructions a receiving member must immediately submit the transfer instructions to the carrying member. The proposal will reduce from five to three business days the time frame for the carrying member either to validate or to take exception to the transfer instructions for all accounts including retirement plan accounts.[5] The proposal will require that the carrying member complete all transfers in four rather than five business days after validation of the transfer instructions. The proposal also (1) will more clearly define the reasons why the carrying member may take exception to account transfer instructions,[6] (2) will require the use of an automated facility for the transfer of mutual fund positions and residual credits when both the carrying and the receiving members are participants in a registered clearing agency which has automated facilities for such transfers, (3) will set forth time frames for the resolution of claims,[7] (4) will require that partial transfers be processed through the automated facilities of a registered clearing agency when both the carrying and receiving members are participants in a registered clearing agency which has automated facilities for such transfers, and (5) will require that for a minimum of six months after an account transfer is completed residual credit balances must be transferred within ten business days after accrual.

II. Discussion

The Commission believes the portion of the proposed rule change relating to the transfer of customer accounts is consistent with Section 15A of the Act and, therefore, is approving that portion of the proposal. Specifically, the Commission believes the proposal is consistent with Section 15A(b)(6)[8] of the Act which requires that the rules of the NASD be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

By amending its rules to shorten the time frames for customer account transfers in order that its rules correspond with the rules of the NYSE and the NSCC, the NASD's proposed rule change should foster cooperation and coordination with persons engaged in regulating, clearing, and settling securities. By shortening the time it takes to transfer securities from one broker-dealer to another, the proposal also should assist investors by giving them greater flexibility in the selection of a broker-dealer through which to hold securities and by giving them enhanced control over their assets. Shortening the time it takes to transfer securities to a broker-dealer also should facilitate transactions in securities.

NASD has requested that the Commission find good cause for approving the portion of the proposed rule change relating to customer account transfers prior to the thirtieth day after the date of publication of the notice of filing. On September 2, 1994, the Commission approved the NYSE's proposed rule change to implement corresponding changes to the NYSE's procedures for transferring customer accounts.[9] The NYSE amendments relating to the automated transfer of mutual fund positions and residual credit processing become effective 180 days from approval *i.e.*, on March 3, 1995) while all other provisions become effective 90 days from approval *i.e.*, on December 2, 1994). Because many broker-dealers are subject to both the NYSE's rules and the NASD's rules and because of systems changes NSCC has made to its customer account transfer system, it is important that the rules of the NYSE and the NASD's rules and because of systems changes NSCC has made to its customer account transfer system, it is important that the rules of the NYSE and the NASD do not conflict. In order to permit the NASD's rules to become effective simultaneously with the NYSE's rules, the Commission is granting accelerated approval to the portion of the proposed rule change relating to customer account transfers. Thus, sections 65(m)(2) and 65(m)(3), relating to automated transfer of mutual fund positions and residual credit processing, will became effective on March 3, 1995, and all other amendments to Section 65 will become effective on December 2, 1994.

III. Conclusion

For the reasons stated above, the Commission finds that the portion of the proposed rule change relating to customer account transfers is consistent with Section 15A of the Act.

It is therefore ordered. Pursuant to Section 19(b)(2) of the Act, that the portion of the proposed rule change (File No. SR–NASD–94–56) containing the amendments to Section 65 be and hereby is approved.

For the Commission by the Division of Market Regulation pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–29935 Filed 12–5–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35019; File No. SR–NYSE–94–38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Amendments to Exchange Rule 104.13

November 29, 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 October 26, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to NYSE Rule 104.13 regarding investment account transactions of specialists and related parties. The text of the proposed rule change is as follows, with language to be deleted in brackets and language to be added in italics:

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[5] Currently, the time frame for validating or taking exception to transfer instructions for retirement plan accounts is ten days.

[6] A member may take exception to a transfer instruction only if: additional documentation is required; the account is flat and reflects no transferable assets; the account number is invalid; it is a duplicate request; it violates the member's credit policy; the receiving member cannot identify the client; the client rescinds the instruction; the social security number or tax identification number does not correspond to the carrying member's records; the receiving member's account title or type does not correspond to that of the carrying member; there is a missing authorization signature; or the entire account is in transfer to be delivered directly to customer.

[7] When a member receives a written claim letter relating to an account transfer, the member must resolve the claim within five business days from receipt of the letter or respond in writing to the claiming member setting forth specific reasons for denying the claim.

[8] 15 U.S.C. 78o-3.

[9] Securities Exchange Act Release No. 34633 (September 2, 1994), 59 FR 46872.

[10] 17 CFR 200.30–3(a)(12) (1994).

Rule 104

.13 Investment Transactions

(a) Any transactions effected for *the benefit* of any of the following [accounts] persons in stocks in which a specialist is registered must be for investment purposes:

* * * * *

(d) [Specialists should not originate orders in the stocks in which they are registered for any accounts over which they exercise investment discretion.] *No specialist, and no member, allied member, approved person (other than an approved person entitled to an exemption from this rule pursuant to Rule 98) affiliated with such specialist, officer, employee or person active in the business of the specialist shall originate orders in stocks in which such specialist is registered for any account over which they exercise investment discretion.*

(e) Transactions in a stock in which a specialist is registered effected for trust accounts, including "blind" accounts, for the benefit of such specialist or any person specified in paragraph (a) shall be subject to the provisions of this rule. Transactions in a fund which invests broadly in securities and which may from time to time invest in a securities in which a specialist is registered, shall not be subject to this rule.

Rule 98 Guidelines

(a) * * *

The Exchange Rules listed below impose certain restrictions on an approved person who is associated with the specialist member organization.

* * * * *

• Rule 104.13 provides that any transaction for the [account] *benefit* of an approved person associated with a specialist member organization, in any stock in which a specialist in the specialist member organization is registered, must be for investment purposes and effected in a stabilizing manner, *and precludes an approved person from originating an order in such stock for any account over which such approved person exercises investment discretion.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 104.13 requires that transactions effected in speciality stocks for the accounts of specified persons affiliated with or related to a specialist must be for investment purposes and executed in accordance with certain restrictions relating to the price at which transactions may take place, known as "tick" restrictions. The accounts specified in the rule include accounts of employees or parties active in the business of the specialist, the spouse or children residing in the same household as a specialist or persons active in the specialist business, and any approved person (individual or entity in a control relationship) of the specialist, other than an approved person entitled to an exemption pursuant to Exchange Rule 98.[1]

The Exchange believes it is appropriate to amend Rule 104.13 to make it clear that the investment account transaction requirements contained in the rule apply to transactions effected "for the benefit of" the parties specified in the rule, rather than simply to transactions effected for the "account" of such parties. This would apply, for example, to situations where transactions may not be effected directly for the "account" of one of the parties specified in the rule, but may be effected for an account in which one of these specified parties has a beneficial interest. The rule would also make it clear that specialists, and persons associated with specialists, may not originate orders in specialty stocks for any accounts over which they exercise investment discretion.

The Exchange also is proposing to amend NYSE Rule 104.13 to make it clear that the rule applies to transactions effected for the benefit of trust accounts, including so-called "blind" trust accounts, of any person specified in the rule. NYSE Rule 104.13 would be further amended to provide that transactions in a broad-based fund, which may from time to time invest in a specialty stock in the course of investing in numerous stocks, would not be subject to the rule.

The Exchange also is proposing to amended the Guidelines to Rule 98 to reflect the amendments to NYSE Rule 104.13 noted above.

2. Statutory Basis

The basis for the proposed rule change is the requirement under Section 6(b)(5) of the Act that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general to protect investors and the public interest. The proposed amendments are consistent with these objectives in that they ensure that the restrictions contained in Rule 104.13 are appropriately applied to accounts that benefit the persons subject to its provisions.

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 that is not necessary or appropriate in futherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on 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

Interests 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

[1] NYSE Rule 98 and its Guidelines provide exemptions from various Exchange rules affecting approved persons affiliated with specialists, including Rule 104.13. The exemption is predicated on the existence of procedures to achieve a functional separation between the specialist organization and the approved person.

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 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-94-38 and should be submitted by December 27, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-29934 Filed 12-5-94; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-35022; File No. SR-PHILADEP-91-03]

Self-Regulatory Organizations; Philadelphia Depository Trust Company; Order Approving a Proposed Rule Change Establishing Procedures Whereby PHILADEP Interfaces With The Depository Trust Company's Same-Day Funds Settlement Services

November 29, 1994.

On December 3, 1991, the Philadelphia Depository Trust Company ("PHILADEP") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-PHILADEP-91-03) under Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] to codify PHILADEP's accommodation procedures whereby a PHILADEP participant can gain access to same-day funds settlement ("SDFS") services provided by The Depository Trust Company ("DTC"). Notice of the proposal was published in the Federal Register on May 28, 1993.[2] No comment letters were received. On September 27, 1994, PHILADEP amended the proposal in the following respects:[3] (i) PHILADEP seeks to increase the number of transactions[4] that may be processed in the system to one hundred (100) per day as opposed to the limitation of fifty (50) per day that was set forth in the notice of proposed rule change and (ii) PHILADEP will approve a transaction once the participant acknowledges the transaction and approves it unless the PHILADEP Interface Department determines that the participant needs to make a prepayment or pledge additional collateral to its account at PHILADEP to ensure that the transaction will not cause the participant to exceed its net debit cap or collateralization control.[5] These amendments are technical in nature and do not require republication of notice and filing. For the reasons discussed below, the Commission is approving the proposed rule change subject to the following limitations: (i) PHILADEP's program is limited to one PHILADEP participant and, (ii) the number of transactions that may be processed is limited to one hundred per day.[6]

I. Description

To accommodate a PHILADEP participant that desires to settle its SDFS transactions through the facilities of a securities depository registered with the Commission, PHILADEP has become a participant in DTC's SDFS system. Consequently, PHILADEP will be the conduit for its participant's SDFS transactions. PHILADEP, as a participant in DTC's SDFS, will be required to make a deposit to DTC's SDFS Fund. PHILADEP will collect the SDFS Fund deposit from the participant taking part in PHILADEP's SDFS system. PHILADEP has no beneficial interest in any SDFS transactions and will not initiate any such transactions for its own account. Therefore, the extent of activity and concomitant collateral necessary to be posted to support such activity pursuant to the PHILADEP/DTC agreement will be collected directly from the PHILADEP participant generating the SDFS activity. In addition, the settlement debits and credits created by the activity in PHILADEP's account at DTC will be collected from or paid to the PHILADEP participant.

DTC will charge PHILADEP its normal SDFS service fees, and PHILADEP will pass these fees to its participant making use of the linked service. This participant must execute a separate agreement with PHILADEP explicitly agreeing to abide by PHILADEP's relationship with DTC in connection with the provisions of SDFS services. Specifically, PHILADEP requires its participant to abide by DTC's rules and procedures governing the SDFS system. For example, DTC's SDFS security eligibility rules, instruction forms, processing cut-off windows, and risk controls are all directly incorporated as requirements to be followed by PHILADEP and its participant. PHILADEP's participant is provided with copies of DTC's SDFS procedures manual and is instructed to follow these procedures. Interdepository delivery orders cannot occur unless PHILADEP has an adequate SDFS securities position at DTC.

To enhance further the risk reduction measures built into DTC's SDFS system (*e.g.,*) net debit caps and collateralization controls), PHILADEP has established additional safeguards consistent with DTC's SDFS procedures with respect to its participant using the SDFS system. Each SDFS transaction authorization request on a delivery to be received from DTC is directed by PHILADEP's Interface Department to the PHILADEP participant for verification and approval or cancellation of the request.[7] If the participant acknowledges the transaction and approves it,[8] PHILADEP will verify that the transaction will not cause PHILADEP to exceed its net debit cap or collateralization controls at DTC, and concomitantly will not cause the participant at PHILADEP to exceed its net debit cap and collateralization controls at PHILADEP.[9] Only if the participant has sufficient funds and collateral in its account will PHILADEP authorize the delivery to be completed and credit the securities to the participant's account. If the participant has insufficient funds or collateral in its account, the transaction will recycle, and PHILADEP will contact the participant and allow the participant to post additional funds or collateral to permit the transaction to complete processing.[10]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 32347 (May 21, 1993), 58 FR 31058.

[3] Letter from Keith Kessel, Compliance Officer, PHILADEP, to Peter Geraghty, Staff Attorney, Division of Market Regulation, Commission (September 21, 1994).

[4] *Infra* note 6.

[5] The third amendment clarifies the language in the notice of proposed rule change describing the above-referenced procedure. The amendment produces the same effect of requiring the participant to advance more funds or collateral before PHILADEP will accept or acknowledge the deposit.

[6] For calculation purposes, a transaction is a securities delivery made to or from the participant's PHILADEP SDFS account whether free or against payment.

[7] The participant must indicate a reason when cancelling a transaction.

[8] The process of a participant acknowledging a transaction and approving it is known as receiver authorized delivery.

[9] Because PHILADEP's account at DTC is an omnibus account and PHILADEP's program is limited to one PHILADEP participant, PHILADEP's net debit cap and collateralization requirement at DTC is the net debit cap and collateralization requirement for the participant in PHILADEP's program.

[10] As an absolute protection from intraday settlement risk, PHILADEP in most instances will require its participant to have or deliver 100% of the funds to its account before PHILADEP authorizes the receipt of SDFS securities.

When the PHILADEP participant must deliver SDFS securities, the PHILADEP participant sends instructions via facsimile to PHILADEP's Interface Department on or before the established cut-off times that are consistent with DTC established procedures. PHILADEP, on behalf of its participant, then sends notification of the delivery to DTC, but only after PHILADEP confirms that its participant has a current position in the subject security. Once DTC determines the transaction will not cause its participant or PHILADEP to exceed their respective net debit caps or collateralization controls and allows the transaction to be completed, PHILADEP will credit the participant's account. Finally, PHILADEP and DTC reconcile PHILADEP's positions in SDFS eligible securities on account at DTC each day, and PHILADEP reconciles its individual participant's positions that reflect that aggregate.

Because PHILADEP's SDFS system is offered as an accommodation to its participant, PHILADEP will restrict use of the system to the one participant currently using the system and will restrict the number of transactions that may be processed in the system to one hundred per day.[11] Future expansion of the SDFS system is dependent, among other things, upon PHILADEP's operational capabilities and will require the filing of a proposed rule change under Section 19(b)(2) of the Act.

II. Discussion

The Commission believes that PHILADEP's proposal is consistent with Section 17A of the Act and specifically with Sections 17A(b)(3)(A) and (F).[12] Sections 17A(b)(3)(A) and (F) require that a clearing agency be organized and its rules be designed to facilitate and promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds in the clearing agency's custody or control or for which it is responsible. The Commission believes that PHILADEP's proposal to incorporate the safeguards proposed in DTC's SDFS system (*e.g.* collateralization controls, net debit caps, receiver-authorized delivery, and SDFS Fund deposit) should help protect PHILADEP from the failure of the PHILADEP participant to meet its settlement obligation to PHILADEP. For example, the collateralization control requires that the participant have sufficient collateral in its account to cover any projected net settlement debit. This assures that the transactions do not result in financial loss to PHILADEP. The net debit cap helps to protect against abnormal intraday debit peaks that are out of line with the participant's prior month's average daily activity level. The third safeguard is the receiver-authorized delivery instructions which allow the participant to monitor deliveries directed to its account before the deliveries are posted to its account. The SDFS Fund protects PHILADEP from losses from defaults by providing a source of liquidity in the SDFS system. These incorporated safeguards will not operate independently but will function as an interdependent set of controls that will help ensure the safety of PHILADEP's interface with DTC.

Section 17A(b)(3)(F) also requires that the rules of a clearing agency foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. The Commission believes that PHILADEP's proposal is consistent with this section of the Act because the interface will provide the PHILADEP participant with the ability to have its transaction in SDFS securities efficiently processed through the facilities of a clearing agency thus avoiding the inefficiencies inherent in the settlement of SDFS securities outside the automated facilities of a securities clearing agency.

III. Conclusion

The Commission finds that PHILADEP's proposal is consistent with the requirements of the Act and particularly with Section 17A and the rules and regulations thereunder.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–PHILADEP–91–03) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–29933 Filed 12–5–94; 8:45 am]

BILLING CODE 8010–01–M

[11] *Supra* footnote 6.

[12] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[13] 17 CFR 200.30–3(a)(12) (1994).

[Rel. No. IC–20740; File No. 812–9212]

Anchor National Life Insurance Company, et al.

November 29, 1994.

AGENCY: Securities and Exchange Commission (the "Commission" or the "SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Anchor National Life Insurance Company ("Anchor National"), Variable Annuity Account Three (the "Separate Account") and SunAmerica Capital Services, Inc. ("SCS").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) for exemptions from Sections 26(a)(2)(C) and 27(c)(2) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the deduction from the assets of the Separate Account of mortality and expense risk charges and a distribution expense charge imposed under certain individual flexible premium deferred variable annuity contracts ("Contract").

FILING DATE: The Application was filed on August 31, 1994 and will be amended during the notice period to specify that the relief requested is from the provisions of subsection (2)(C) of Section 26(a) of the Act.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 27, 1994 and should be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicants, c/o Susan L. Harris, Esq., Vice President, Associate General Counsel and Secretary, Sun America Inc., 1 Sun America Center, Century City, Los Angeles, California 90067–6022.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Senior Counsel, on (202) 942–0670, Office of Insurance

Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: Following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch.

Applicants' Representations

1. Anchor National is a stock life insurance company organized under the laws of the State of California. The Separate Account was established by Anchor National on May 24, 1994, to fund variable annuity contracts. SCS, a broker-dealer registered under the Exchange Act of 1934, is the distributor for the Contracts.

2. The Contracts provide for accumulation of contract values and payment of annuity benefits on a fixed and variable basis. They will be initially funded through five portfolios of the Separate Account. Each portfolio invests its assets in the shares of one of five available series of Westcore Variable Trust ("Trust").

3. The Contracts are available for retirement plans which do not qualify for the special federal tax advantages available under the Internal Revenue Code and for retirement plans which do qualify for the federal tax advantages available under the Internal Revenue Code. Purchase payments under the Contracts may be made to the general account of Anchor National under the Contracts' fixed account option ("Fixed Account"), the Separate Account or allocated between them. The minimum initial purchase payment for a Contract is $5,000 for non-qualified contracts ($2,000 for qualified contracts). Additional purchase payments may be made in amounts of at least $250 ($100 if made in connection with an automatic payment plan).

4. If the Contract owner dies during the accumulation period, a death benefit will be payable to the beneficiary upon receipt by Anchor National of due proof of death. The death benefit is reduced by premium tax incurred by Anchor National, if any. The death benefit is equal to the greatest of: (1) The total dollar amount of purchase payments made prior to the death of the Contract owners, reduced by any partial withdrawals and partial annuitizations; or (2) the contract value at the end of the valuation period during which due proof of death (and an election of the type of payment to the beneficiary) is received by Anchor National; or, where permitted by state law, (3) in the case of a Contract owner who was less then age 70 at the date of Contract issue and after the seventh Contract anniversary, the contract value at the seventh Contract anniversary, increased by any purchase payments made and reduced by any partial withdrawals and partial annuitizations since that anniversary.

5. An annual contract administration charge of $30 is charged against each Contract. The amount of this charge is guaranteed and cannot be increased. This charge reimburses Anchor National for expenses incurred in establishing and maintaining records relating to a Contract. The contract administration charge will be assessed on each anniversary of the Contract date that occurs on or prior to the annuity date. In the event that a total surrender of contract value is made, the charge will be assessed as of the date of surrender without proration. This charge is not assessed during the annuity period. The contract administration charge is at cost with no margin included for profit.

6. During the accumulation period, amounts allocated to the Separate Account may be transferred among the portfolios and/or the Fixed Account. After the annuity date, transfers may be made from the Separate Account to the Fixed Account but not from the Fixed Account to the Separate Account. The first fifteen transactions effecting such transfers in any contract year are permitted without the imposition of a transfer fee. A transfer fee of $25 ($10 in Pennsylvania and Texas) is assessed on the sixteenth and each subsequent transfer within the contract year. This fee will be deducted from contract values which remain in the portfolio (or, where applicable, the Fixed Account) from which the transfer was made. If such remaining contract value is insufficient to pay the transfer fee, then the fee will be deducted from transferred contract values. The transfer fee is at cost with no anticipation of profit.

7. A contingent deferred sales charge ("withdrawal charge") may be imposed upon certain withdrawals. Withdrawal charges will vary in amount depending upon the contribution year of the purchase payment at the time of withdrawal. The withdrawal charge begins at 7% and declines 1% per year to 0% after seven years. The withdrawal charge is deducted from remaining contract value so that the actual reduction in contract value as a result of the withdrawal will be greater than the withdrawal amount requested and paid. For purposes of determining the withdrawal charge, withdrawals will be allocated first to investment income, if any (which may generally be withdrawn free of withdrawal charge), and then to purchase payments on a first-in, first-out basis so that all withdrawals are allocated to purchase payments to which the lowest (if any) withdrawal charge applies.

8. Purchase payments no longer subject to the withdrawal charge and earnings under a Contract may be withdrawn at any time free of the withdrawal charge. In addition, there may be a free withdrawal amount for the first withdrawal during a contract year after the first contract year. The additional free withdrawal amount is equal to 10% of purchase payments made more than one year prior to the date of withdrawal that remain subject to the withdrawal charge and that have not previously been withdrawn, less earnings under the Contract.

9. Anchor National deducts a distribution expense charge from each portfolio of the Separate Account during each valuation period which is equal, on an annual basis, to 0.15% of the net asset value of each portfolio. This charge is designed to compensate Anchor National for assuming the risk that the cost of distributing the Contracts will exceed the revenuers from the withdrawal charge. In no event will this charge be increased. The distribution expense charge is assessed during both the accumulation period and the annuity period, however, it is not applied to contract values allocated to the Fixed Account.

10. Annuity payments will not be affected by the mortality experience of persons receiving such payments or the general population The annuity rates may not be changed under the Contract. For assuming the risks (1) that the life expectancy of an annuitant will be greater than that assumed in the guaranteed annuity purchase rates, (2) for waiving the withdrawal charge in the event of the death of the Contract owners, and (3) for providing the death benefit prior to the annuity date, Anchor National deducts a mortality risk charge from the Separate Account. The charge is deducted from each portfolio of the Separate Account during each valuation period at an annual rate of 0.90% of the net asset value of each portfolio. If the mortality risk charge is insufficient to cover the actual costs of assuming the mortality risks, Anchor National will bear the loss; however, if the charge proves more than sufficient, the excess will be a gain to Anchor National. To the extent Anchor National realizes any gain, those amounts may be used at its discretion, including offsetting losses experienced when the mortality risk charge is insufficient. The mortality risk charge may not be increased under the Contract.

11. Anchor National bears the risk that the contract administration charge will be insufficient to cover the cost of

administering the Contracts. For assuming this expense risk, Anchor National deducts an expense risk charge from the Separate Account. The charge is deducted from each portfolio of the Separate Account during each valuation period at an annual rate of 0.35% of the net asset value of each portfolio. If the expense risk charge is insufficient to cover the actual cost of administering the Contracts, Anchor National will bear the loss; however, if the charge is more than sufficient, the excess will be a gain to Anchor National. To the extent Anchor National realizes any gain, those amounts may be used at its discretion, including offsetting losses when the expense risk charge is insufficient. The expense risk charge may not be increased under the Contract.

Applicants' Legal Analysis

1. Pursuant to Section 6(c) of the Act the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act or from any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Section 27(c)(2) of the Act prohibits the issuer of a periodic payment plan certificate, and any depositor or underwriter for such issuer, from selling such periodic payment plan certificates unless proceeds of payments on such certificates (other than sales loads) are held under an indenture or agreement containing specified provisions. Section 26(a)(2) and the Rules thereunder do not permit a deduction from the assets of a separate account for mortality and expense risk charges or distribution expense charges.

3. Applicants represent that the mortality risk is assumed by virtue of the annuity rates and the death benefit guaranteed in the Contract; the annuity rates cannot be changed after issuance of the Contract. Applicants also represent that the contract administration charge will not increase regardless of the actual costs incurred. If the mortality or expense risk charges or the distribution expense charges are insufficient to cover the actual costs, Anchor National will bear the loss. To the extent that the charges are in excess of actual costs, Anchor National, at its discretion, may use the excess to offset losses when the charges are not sufficient to cover expenses.

4. Applicants assert that the mortality and expense risk charge of 1.25% is reasonable in relation to the risks assumed by Anchor National under the Contracts and reasonable in amount as determined by industry practice with respect to comparable annuity products. Applicants state that these determinations are based on their analysis of publicly available information about similar industry practice, and by taking into consideration-such factors as current charge levels and benefits provided, the existence of expense charge guarantees and guaranteed annuity rates. Anchor National undertakes to maintain at its home office a memorandum, available to the Commission upon request, setting forth in detail the methodology used in making these determinations.

5. Anchor National has concluded that there is a reasonable likelihood that the Separate Account's distribution financing arrangement will benefit the Separate Account and its investors. Anchor National represents that it will maintain and make available to the Commission upon request a memorandum setting forth the basis of such conclusion. Anchor National further represents that the assets of the Separate Account will be invested only in management investment companies which undertake, in the event they should adopt a plan for financing distribution expenses pursuant to Rule 12b–1 under the Act, to have such plan formulated and approved by their board of directors, the majority of whom are not "interested persons" of the management-investment company within the meaning of section 2(a)(19) of the Act.

6. With respect to the distribution expense charge, Applicants represent that the aggregate amount of any withdrawal charges imposed and distribution expense charges paid, will not at any time exceed 9% of purchase payments previously made and that Anchor National will monitor each Contract owner's account for the purpose of ensuring that this limitation is not exceeded Applicants undertake to include, in the prospectus forming part of the registration statement for the Contracts, statements (1) describing the purpose of the distribution expense charge, and (2) that the staff of the Commission deems such charge to constitute a deferred sales charge.

Conclusion

Applicants submit that the exemptive relief requested in the application is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–29903 Filed 12–5–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35010; File No. SR–CHX–94–20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by The Chicago Stock Exchange, Incorporated to Consolidate its MAX and SuperMAX Rules

November 28, 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 November 3, 1994, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–CHX–94–20). The proposed rule change is described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX, pursuant to Rule 19b–4 of the Securities Exchange Act of 1934 (the "Act"), proposes to add Rule 37 (b) and (c) to Article XX, relating to the Exchange's Midwest Automated Execution System (the "MAX"), and the automated execution system within MAX in which a Specialist may voluntarily choose to participate on a stock by stock basis (the "SuperMAX").

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 CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in section (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(i) Purpose

The purpose of the proposed change is to incorporate the operation of MAX and SuperMAX into the CHX Rules. Currently, MAX and SuperMAX are only described in notices and approval orders. The proposed rule would consolidate this information into a single rule. The approval orders upon which this rule filing is based are, among others: Securities Exchange Act Release No. 32631 (July 14, 1993), 58 FR 39069 (July 21, 1993); Securities Exchange Act Release No. 19629 (March 24, 1983), 48 FR 14105 (April 1, 1983); Securities Exchange Act Release No. 27727 (February 22, 1990), 55 FR 7396 (March 1, 1990); Securities Exchange Act Release No. 12451 (May 14, 1976), 41 FR 20932 (May 21, 1976); Securities Exchange Act Release No. 22985 (March 7, 1986), 51 FR 9562 (March 19, 1986); Securities Exchange Release No. 32668 (July 22, 1993), 58 FR 40449 (July 28, 1993); and Securities Exchange Act Release No. 34155 (June 3, 1994), 59 FR 29838 (June 9, 1994).

(ii) Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were solicited or received by the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule of the Exchange and therefore has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making a written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to file number SR–CHX–94–20 and should be submitted by December 27, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–29904 Filed 12–5–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35021; File No. SR–Phlx–94–50]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving a Proposed Rule Change Relating to Examination Specifications for the General Securities Registered Representative (Series 7) Examination, and the Corresponding Content Outline

November 29, 1994.

I. Introduction

On October 3, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] proposed rule change (File No. SR–Phlx–94–50) to revise the General Securities Registered Representative (Series 7) Examination Specifications and the corresponding Content Outline.

The proposed rule change was published for comment in Securities Exchange Act Release No. 34843 (October 14, 1994), 59 FR 53001 (October 20, 1994). No comments were received on the proposal. This order approves the proposed rule change contingent upon the filing of the revised Examination Specifications and Content Outline by other appropriate self-regulatory organizations ("SROs"), and approval of those filings by the Commission.

II. Description of the Proposal

The Phlx proposes to use the Series 7 as amended, as the appropriate qualification examination for persons seeking registration as general securities representatives. The Series 7 Examination was created in 1974 as an industry-wide qualification examination for persons seeking registration as general securities representatives. The Series 7 Examination is generally required under SRO rules for persons who are engaged in the solicitation, purchase, or sale of securities for the accounts of customers. The purpose of the Series 7 Examination is to ensure that registered representatives have the basic knowledge necessary to perform their functions and responsibilities. The Series 7 Specifications detail the areas covered by the examination and break down the number of examination questions culled from each area, while the Content Outline details the subject coverage and question allocation of the examination.

Revision of the Series 7 Examination, Specifications and Content Outline was initiated in April 1993 by an industry committee of SROs and representatives from broker-dealers in order to update the examination in view of changes in the securities industry, including changes in relevant rules and regulations, the development of new securities products, and changes in the job of registered representatives as firms offer an increasingly wide range of financial services.[3] The Examination

[1] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR § 240.19b–4 (1994).

[3] SROs on the committee include the New York, American and Philadelphia Stock Exchanges, Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, and the National Association of Securities Dealers. Broker-dealer representatives include branch office managers, compliance officers, training personnel and registered representatives.

Specifications and Content Outline for the Series 7 have not been revised since 1986.

The industry committee updated the existing statements of the critical functions of registered representatives to ensure current relevance and appropriateness and drafted statements of tasks expected to be performed by entry-level registered representatives and conformed the existing Content Outline to the task statements. The Content Outline reflects the revised content of the examination. Under the proposed rule change, the total number of questions in the Series 7 Examination will remain at 250, and the revised examination will cover all financial product areas covered on the present Series 7 Examination as well as several new products, including collateralized mortgage obligations ("CMOs"), long term equity anticipation securities ("LEAPS") and CAPS,[4] with reduced emphasis on direct participation programs.

The Commission anticipates that the other appropriate SRO participants also will file the revised specifications for approval by the Commission. The Phlx, and these other SROs, may use the revised Examination, Specifications and Content Outline after the Commission has approved the proposed rule changes of the other appropriate SRO participants.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Sections 6(b)(5) and 6(c)(3)(B) of the Act.[5] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 6(c)(3)(B) provides that a national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange, and may require any person associated with a member, or any class of such persons, to be registered with the exchange in accordance with procedures so established.

The Commission also believes that the proposed rule change is consistent with Section 15(b)(7) of the Act[6] which stipulates that prior to effecting any transaction in, or inducing the purchase or sale of any security, a registered broker or dealer must meet certain standards of operational capability, and that such broker or dealer must meet certain standards of training, experience, competence, and such other qualifications as the Commission finds necessary or appropriate in the public interest or for the protection of investors.

The Commission believes that revising the Series 7 Examination, Specifications and Content Outline should help to ensure that only those securities representatives with a comprehensive knowledge of current Exchange rules, as well as an understanding of the Act, will be able to solicit, purchase or sell securities for the accounts of customers. The Commission believes that the revised areas covered by the Examination, Specifications and Content Outline are appropriate subject matters and include a sufficiently broad range of topics to ensure an appropriate level of expertise by representatives. Additionally, the revised examination tests relevant subject matters in view of changes in applicable laws, rules, regulations, products, and industry practices. By ensuring this requisite level of knowledge, the Phlx can remain confident that securities representatives have demonstrated an acceptable level of securities knowledge to carry out their responsibilities.

The Commission has determined that the Content Outline for the revised Series 7 Examination is sufficiently detailed and covers appropriate information so as to provide an adequate basis for studying the new topics covered on the revised examination. The revised Content Outline should help ensure that those persons taking the revised examination understand the full range of subject matters included in the examination.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

IV. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR-PHlx-94-50) is approved contingent upon the filing of the Examination Specifications and Content Outline by the other appropriate SROs and the approval of these findings by the Commission.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-29905 Filed 12-5-94; 8:45 am]

BILLING CODE 8010-01-M

[4] OEX CAPS and SPX CAPS are new securities based on the S&P 100 (OEX) and the S&P 500 (SPX) that give investors the right to participate to a predetermined level in upward or downward movements in either index.

[5] 15 U.S.C. § 78f(b)(5) and (c)(3)(B) (1988).

[6] 15 U.S.C. § 78o(b)(7) (1988).

[7] 15 U.S.C. § 78s(b)(2) (1988).

[8] 17 CFR 200.30-3(a)(12) (1994).

[Release No. 34-35020; File No. SR-Phlx-94-51]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving a Proposed Rule Change Relating to Examination Specifications for the General Securities Sales Supervisor (Series 8) Examination, and the Corresponding Content Outline

November 29, 1994.

I. Introduction

On October 3, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] proposed rule change (File No. SR-Phlx-94-51) to revise the General Securities Sales Supervisor (Series 8) Examination Specifications and the corresponding Content Outline.

The proposed rule change was published for comment in Securities Exchange Act Release No. 34842 (October 14, 1994), 59 FR 53002 (October 20, 1994). No comments were received on the proposal. This order approves the proposed rule change contingent upon the filing of the revised Examination Specifications and Content Outline by other appropriate self-regulatory organizations ("SROs"), and approval of those filings by the Commission.

II. Description of the Proposal

The General Securities Sales Supervisor ("Series 8") Examination is an industry-wide qualification examination for securities sales supervisors. The Series 8 examination is generally required under rules of the self-regulatory organizations ("SROs") for persons who are engaged in the supervision of general securities branch offices (*i.e.*, branch office managers) and of general securities registered representatives. The Series 8

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR § 240.19b-4 (1994).

examination tests a candidate's knowledge of securities industry rules and regulations and certain statutory provisions applicable to general securities sales supervision. The Series 8 Content Outline details the subject coverage and question allocation of the examination. The Examination Specifications detail the areas covered by the examination and break down the number of examination questions culled from each area.

Revision of the Series 8 Examination, Examination Specifications, and Content Outline was recently undertaken by an industry committee composed of representatives from SROs (the NYSE, the American Stock Exchange, the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, the National Association of Securities Dealers and the Philadelphia Stock Exchange) and representatives from broker-dealers, including branch office managers, compliance personnel and corporate executives, in order to update the examination in view of changes in relevant laws, rules and regulations, the development of new products, and to reflect various changes in industry practices. The committee reviewed the examination specifications, content areas and item bank and developed some new questions in new areas.

The revised examination continues to cover the areas of knowledge required to supervise sales activities in securities, however, the focus of the content of the examination has been shifted to concentrate more closely on supervisory duties. Accordingly, certain questions have been deleted from the examination which deal with routine calculations and basic product knowledge and questions on new federal and SRO rules and regulations have been incorporated into the exam, as well as questions on new products, supervision and changes in industry practices. The revised Examination Specifications and Content Outline reflect the revised content of the examination. The examination will remain a six-hour, two-part, 200 question examination.

The Phlx also is adopting a new paragraph to Phlx Rule 748, Supervision, to expressly incorporate a supervisory examination into Exchange rules. Specifically persons delegated supervisory responsibility pursuant to Rule 748 (b) and (c) will be required by proposed paragraph (d) to meet the Exchanges' qualification requirements, including successful completion of a supervisory examination deemed acceptable by the Exchange. This requirement is substantially similar to existing provision of other exchanges.[3] Currently, Rule 748 requires member or participant organizations to supervise all registered representatives and each office, department or business activity. In addition, a general partner or principal executive officer must be designated to assume overall responsibility for internal supervision of the organization and compliance with securities laws and regulations, including establishing written supervisory procedures delegating supervisory responsibilities and instituting a supervisory review procedure.

With respect to qualifications for supervisory personnel, Rule 748 merely requires employees with delegated supervisory responsibility to be "qualified," and persons responsible for any group of employees to "reasonably discharge" those duties. The proposed new language is intended to bridge this gap by expressly requiring supervisory personnel to qualify with the Exchange by successfully completing the appropriate examination, which will be indicated in the Exchange's memorandum to its membership. The Exchange notes that although options activity and personnel, including foreign currency options, are also subject to Rule 748, additional supervisory requirements for option accounts apply.[4]

The Commission anticipates that the other appropriate SRO participants also will file the revised Specifications and Content Outline for approval by the Commission. The Phlx and these other SROs, may use the revised Examination, Specifications and Content Outline after the Commission has approved the proposed rule changes of the other appropriate SRO participants.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Sections 6(b)(5) and 6(c)(3)(B) of the Act.[5] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 6(c)(3)(B) provides that a national securities exchange may examine and verify the qualifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange, and may require any person associated with a member, or any class of such persons, to be registered with the exchange in accordance with procedures so established.

The Commission believes that revising the Series 8 Examination, Specifications and Content Outline should help to ensure that only those securities sales supervisors with a comprehensive knowledge of current Exchange rules, as well as an understanding of the Act, will be able to supervise general securities branch offices and registered representatives. The Commission believes that the revised areas covered by the Examination, Specifications and Content Outline are appropriate subject matters and include a sufficiently broad range of topics to ensure an appropriate level of expertise by supervisors. Additionally, the revised examination tests relevant subject matters in view of changes in applicable laws, rules, regulations, products, and industry practices. By ensuring this requisite level of knowledge, the Phlx can remain confident that securities sales supervisors have demonstrated an acceptable level of securities knowledge to carry out their responsibilities.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder.

IV. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[6] that the proposed rule change (File No. SR–Phlx–94–51) is approved contingent upon the filing of the Examination Specifications and Content Outline by the other appropriate SROs and the approval of those filings by the Commission.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–29906 Filed 12–5–94; 8:45 am]

BILLING CODE 8010–01–M

[3] *See e.g.*, NYSE Rule 342(d) and Supplementary Material .13.

[4] *See* Phlx Rules 1024 and 1025.

[5] 15 U.S.C. § 78f(b)(5) and (c)(3)(B) (1988).

[6] 15 U.S.C. § 78s(b)(2) (1988).

[7] 17 CFR 200.30–3(a)(12) (1994).

DEPARTMENT OF STATE

[Public Notice 2125]

Delegation of Authority 215; Designation and Delegation of Authority Concerning the Department's Ethics Program

Pursuant to the regulations of the Office of Government Ethics, 5 C.F.R. 2638.202, and under the authority delegated to me under Delegation of Authority No. 198 dated September 16, 1992, I hereby designate William M. McQuade, senior Attorney Adviser responsible for ethics, as the Alternate Designated Agency Ethics Official for the Department of State. I delegate to him the duties referred to in Section 2638.203, to be carried out in conjunction with the Designated Agency Ethics Official of the Department.

Dated: November 9, 1994.

Richard M. Moose,

Under Secretary for Management.

[FR Doc. 94–29979 Filed 12–5–94; 8:45 am]

BILLING CODE 4710–35–M

[Public Notice 2126]

Delegation of Authority No. 120–5; Procurement Executive

By virtue of the authority vested in me by Department of State Delegation of authority No. 120–4 (59 FR 38022–38023) and in order to implement the Office of Federal Procurement Policy Act (41 U.S.C. 414) and Executive Order 12931, it is directed as follows:

1. Functions Delegated to the Procurement Executive

I hereby delegate to the Procurement Executive authority to:

a. Oversee the development of procurement goals, guidelines, and innovation;

b. Measure and evaluate the performance of Department contracting activities against stated goals;

c. Advise the Assistant Secretary for Administration whether goals are being achieved;

d. Enhance career development of the procurement work force;

e. Promote the acquisition of commercial items and the use of simplified acquisition procedures, to the maximum extent practicable;

f. Issue procurement policies, procedures, and regulations that, where practicable, rely on guiding principles that encourage and reward innovation;

g. Provide advice and guidance, in consultation with the Office of the Legal Adviser as appropriate, to all Department offices and to diplomatic and consular posts on all matters of procurement law and policy;

h. Make determinations and findings or justifications and approvals and take other actions as are deemed consistent with applicable policies, procedures, or regulations, with respect to procurement transactions, except where such actions are required by law or regulation to be made by another officer;

i. Appoint contracting officers;

j. Participate in the development of government-wide acquisition policies, regulations, and standards, and represent the Department on interagency bodies concerned with acquisition policies and procedures;

k. Select and designate an independent advocate for competition for Department of State acquisitions, and provide advice and counsel to such advocate in accordance with applicable laws and regulations;

l. Select and designate a task and delivery order ombudsman and a Federal Acquisition Computer Network (FACNET) program manager, in accordance with the Federal Acquisition Streamlining Act of 1994;

m. Issue policies, procedures, and regulations governing Federal assistance (grants and cooperative agreements); and

n. Appoint grants officers.

2. Re-Delegation

The Procurement Executive is authorized to redelegate to the employees of the Department any of the authorities or functions, delegated herein, except that the responsibility under section 1c may not be redelegated. Any redelegation may include authority for further redelegation.

3. General Provisions

a. Any official actions taken within the scope of this delegation taken prior to the effective date hereof by officers duly authorized are hereby continued in effect, according to their terms, until modified, revoked, or superseded by action of the Procurement Executive or other officer of the Department acting under authority of this delegation.

b. All authorities delegated herein shall be exercised in accordance with the applicable limitations and requirements of the Federal Acquisition Regulation (48 CFR Chapter 1) and other Federal laws and regulations regarding procurement or Federal assistance.

4. This delegation supersedes Department of State Delegation No. 120–3 (51 FR 16768–16769) dated May 6, 1986.

Dated: November 23, 1994.

Patrick F. Kennedy,

Assistant Secretary for Administration.

[FR Doc. 94–29980 Filed 12–5–94; 8:45 am]

BILLING CODE 4710–24–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–94–42]

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 December 26, 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. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

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 November 30, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 23147
Petitioner: Boeing Commercial Airplane Group
Sections of the FAR Affected: 14 CFR 91.515(a)(1) (formerly 91.195(a)(1))
Description of Relief Sought: To extend Exemption No. 4783, as amended, which allows the Boeing Commercial Airplane Group to continue to conduct noise measurement tests, Ground Proximity Warning System research and development, and FAA certification flight tests at altitudes lower than 1,000 feet above the surface or 1,000 feet from any mountain, hill, or other obstruction to flight.

Docket No.: 27432
Petitioner: Dornier Luftfahrt GmbH
Sections of the FAR Affected: 14 CFR 25.562(c)(5)
Description of Relief Sought: To extend Exemption No. 5765, as amended, which allows Dornier to temporarily operate the 328 aircraft with front row passenger seats that exceed the maximum HIC requirements of 25.562(c)(5), and, subsequently, to grant a permanent exemption from these requirements.

Docket No.: 27801
Petitioner: Mr. Steven G. Albert
Sections of the FAR Affected: 14 CFR 63.39
Description of Relief Sought: To allow Mr. Albert to receive a turboprop class rating on your FAA-issued flight engineer certificate without being required to pass a practical test administered by the FAA or an FAA-designated examiner. This would be based on the following: Mr. Albert's successful completion of U.S. Air Force flight engineer training and the FAA-administered written test, his designation from the Air Force as a functional flight engineer, and his fulfillment of the aeronautical experience requirements of § 63.37 of the FAR.

Docket No.: 27875
Petitioner: Mr. John M. Freebairn
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To permit Mr. Freebairn to serve as a pilot of an aircraft operated under part 121 of the FAR after reaching his 60th birthday.

Docket No.: 27903
Petitioner: Dry Creek Aviation
Sections of the FAR Affected: 14 CFR 45.29(b)(1)(i)
Description of Relief Sought: To permit Dry Creek Aviation to continue to display 2-inch registration marks on their airplane (serial number 0739) that was manufactured in 1976 by the Great Lakes Aircraft Company of Wichita, Kansas.

Docket No.: 27944
Petitioner: Balloonacy, Ltd.
Sections of the FAR Affected: 14 CFR 145.35
Description of Relief Sought: To allow Balloonacy to operate a mobile balloon repair station, without requiring Balloonacy to establish a fixed base facility.

Docket No.: 27946
Petitioner: Business Air, Inc.
Sections of the FAR Affected: 14 CFR 91.9(a) and 135.99(a)
Description of Relief Sought: To allow Business Air, Inc., to operate Embraer 110 aircraft in single pilot, cargo only operations under instrument flight rules or night visual flight rules without utilizing an autopilot.

Dispositions of Petitions

Docket No.: 24800
Petitioner: Tennessee Air Cooperative, Inc.
Sections of the FAR Affected: 14 CFR 103.1(e)(1)
Description of Relief Sought/Disposition: To extend Exemption No. 5001, as amended, which allows Tennessee Air Cooperative, Inc., to operate powered ultralight vehicles at an empty weight of not more than 350 pounds to accommodate physically disabled persons.

Grant, November 15, 1994, Exemption No. 5001C

Docket No.: 25892
Petitioner: Reflectone Training Center—Dulles
Sections of the FAR Affected: 14 CFR 61.55(b)(2) 61.56(c)(1); 61.57 (c) and (d); 61.58 (c)(1) and (d); 61.63 (c)(2) and (d)(2) and (3); 61.65 (c), (e)(2), (e)(3), and (g); 61.67(d)(2); 61.157 (d) (1) and (2) and (e) (1) and (2); 61.191(c); and appendix A of part 61
Description of Relief Sought/Disposition: To permit Reflectone to use FAA-approved simulators to meet certain flight experience requirements of part 61 of the FAR.

Grant, November 16, 1994, Exemption No. 5110C

Docket No.: 26898
Petitioner: Continental Micronesia, Inc.
Sections of the FAR Affected: 14 CFR 121.343(c)
Description of Relief Sought/Disposition: To allow Continental Micronesia, Inc., (CMI) to exercise the privileges of Exemption No. 5593, as amended, which was issued to the Air Transport Association of America (ATA) from § 121.343(c). Exemption No. 5593, as amended, permits member carriers of ATA to operate, after May 16, 1994, under an FAA-approved Airplane Retirement Schedule until December 31, 1998, "certain" airplanes that do not have one or more of the digital flight data recorders (DFDR) required by § 121.343(c). The category of certain airplanes covered by the exemption are State 2 airplanes that air carriers plan to retire rather than retrofit with noise abatement equipment. This exemption may not be used to delay DFDR retrofit for Stage 3 airplanes. Also, the exemption states that "Non-ATA air carriers that find themselves in a similar situation may petition the FAA for coverage under this exemption."

Grant, November 18, 1994, Exemption No. 5593H

Docket No.: 26957
Petitioner: C.A.E., Inc.
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57 (c) and (d); 61.58 (c)(1) and (d); 61.63 (c)(2) and (d) (2) and (3); 61.65 (c), (e)(2), (e)(3), and (g); 61.67(d)(2); 61.157 (d) (1) and (2) and (e) (1) and (2); 61.191(c); and appendix A of part 61
Description of Relief Sought/Disposition: To permit C.A.E., Inc., to use FAA-approved simulators to meet certain flight experience requirements of part 61 of the FAR.

Grant, November 16, 1994, Exemption No. 5555A

Docket No.: 26992
Petitioner: Continental Airlines, Inc.
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57 (c) and (d); 61.58 (c)(1) and (d); 61.63 (c)(2) and (d) (2) and (3); 61.65 (c), (e)(2), (e)(3), and (g); 61.67(d)(2); 61.157 (d) (1) and (2) and (e) (1) and (2); 61.191(c); and appendix A of part 61
Description of Relief Sought/Disposition: To permit Continental to use FAA-approved simulators to meet certain flight experience requirements of part 61 of the FAR.

Grant, November 16, 1994, Exemption No. 5557A

Docket No.: 27205
Petitioner: Federal Express Corporation
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/Disposition: To permit any part 135 operator to operate any aircraft owned and leased by Federal Express Corporation without complying with § 135.143(c)(2) of the FAR.

Grant, November 18, 1994, Exemption No. 5711C

Docket No.: 27841
Petitioner: Aircraft Charter Group, Inc.
Sections of the FAR Affected: 14 CFR 135.165(b) (6) and (7)
Description of Relief Sought/Disposition: To permit Aircraft Charter Group, Inc., to operate turbojet aircraft equipped with one high-frequency (HF) communication system.
Grant, November 9, 1994, Exemption No. 5977

Docket No.: 27932
Petitioner: Mobil Administrative Services Company, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/Disposition: To permit Mobile to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.
Grant, November 18, 1994, Exemption No. 5989

[FR Doc. 94–29990 Filed 12–5–94; 8:45 am]
BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 185; Third Meeting; Aeronautical Spectrum Planning Issues

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 185 meeting to be held January 4–6, 1995 starting at 9:00 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036.

Agenda will be as follows:

(1) Administrative remarks;
(2) General introductions;
(3) Approval of agenda;
(4) Review of summary of the second meeting of SC–185;
(5) Review the results of the drafting group of the whole and the revised work program;
(6) Presentations;
(7) Formation of working/drafting groups;
(8) Assign tasks;
(9) Other business;
(10) Establish agenda for next meeting;
(11) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 30, 1994.

David W. Ford,
Designated Officer.

[FR Doc. 94–29991 Filed 12–5–94; 8:45 am]
BILLING CODE 4910–13–M

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with 49 CFR Sections 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received from the Burlington Northern Railroad a request for waiver of compliance with certain requirements of the Federal rail safety regulations. The petition is described below, including the regulatory provisions involved, the nature of the relief being requested and the petitioners arguments in favor of relief.

Burlington Northern Railroad (BN) (Waiver Petition Docket Number SA–94–10)

The BN seeks a waiver of compliance from certain sections of the Railroad Safety Appliance Standards (49 CFR Part 231). BN requests a waiver from 49 CFR 231.4—Fixed-end low-side gondola and low-side hopper cars; (a)(3)(ii) states: "The brake shaft shall be located on end of car, to the left of and not more than 22-inches from center." This regulation has been applied to coiled steel cars that have end platforms, commonly identified as a coiled steel gondola.

BN is requesting that the wording be adopted as used in 49 CFR 231.6—Flat cars (3)(ii): "The brake shaft shall be located on end of car to the left of center, or on side of car not more than 36 inches from right-hand end thereof."

BN states that modern flat cars, particularly double stack cars, have used handbrakes in complete compliance with 49 CFR 231.6(a)(3)(ii), which locates the handbrake lower to the ground and closer to the side sill than allowed by other specified car types. This has led to a handbrake application that makes it possible to apply or release the handbrake from the ground when the car is stopped, or while riding the car when it is moving. Additionally, coil cars have been built that have an end platform and appear similar to a flat car, especially toward the end of the car. Historically, the handbrake has been mounted to the end of the trough bulkhead, inboard of the end platform. This requires a person to climb onto the car to operate the handbrake. At this location the handbrake is very susceptible to damage when the coils are loaded into the car. By lowering the handbrake and moving it outboard on the end sill, the handbrake is out of the way of the loading process and less likely to be damaged. The BN request is to locate the handbrake on the end sill and toward the side sill in excess of the 22-inches from the cars center line on coil cars having platforms with a AAR gondola mechanical designation. This request is to include all coil cars equipped with end platforms.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number SA–94–10) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before January 13, 1995 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) in Room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on November 30, 1994.

Phil Olekszyk,
Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 94–29897 Filed 12–5–94; 8:45 am]
BILLING CODE 4910–06–P

Federal Aviation Administration

Notice of Intent to Rule on Application to Use the Revenue From a Passenger Facility Charge (PFC) at Allentown-Bethlehem-Easton International Airport, Allentown, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Allentown-Bethlehem-Easton International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before January 5, 1995.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. L.W. Walsh, Manager, Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1, Camp Hill, Pennsylvania 17011

In addition, on copy of any comments submitted to the FAA must be mailed or delivered to Mr. George F. Doughty, Executive Director of the Lehigh-Northammpton Airport Authority at the following address: Lehigh-Northammpton Airport Authority, 3311 Airport Road, Allentown, Pennsylvania 16662

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Lehigh-Northammpton Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. L.W. Walsh, Manager, Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1, Camp Hill, Pennsylvania 17011 (717) 975–3423. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Allentown-Bethlehem-Easton International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On October 13, 1994, the FAA determined that the application to use the revenue from a PFC submitted by the Lehigh-Northammpton Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 21, 1995.

The following is a brief overview of the application.

Level of the proposed FPC: $3.00

Proposed charge effective date: November 1, 1992

Proposed charge expiration date: June 30, 1996

Total estimated PFC revenue: $4,350,000

Brief description of proposed project:

—Satellite Terminal Expansion

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators Filing FAA Form 1800–31

Any person may inspect the application in person at the FAA office listed above under FOR FURTHER INFORMATION CONTACT and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Lehigh-Northammpton Airport Authority.

Issued in Jamaica, New York State on November 21, 1994.

Anthony P. Spera,

Acting Manager, Airports Division, Eastern Region.

[FR Doc. 94–29992 Filed 12–5–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of 49 CFR Part 236

Pursuant to 49 CFR Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3334

Applicant: Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer-Signals/Quality, 1416 Dodge Street, room 1000, Omaha, Nebraska 68179

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the signal system, on the single track Cedar Bayou Drawbridge, milepost 34.9, near Baytown, Texas, San Antonio Subdivision, Baytown Branch; consisting of the removal of signals 1, 2, 3, and 4.

The reason given for the proposed changes is that present traffic does not warrant the signal system.

BS–AP–No. 3335

Applicant: Norfolk Southern Corporation, Mr. J.W. Smith, Chief Engineer—C&S, Communication and Signal Department, 185 Spring Street, SW., Atlanta, Georgia 30303

The Norfolk Southern Corporation seeks approval of the proposed modification of the signal system, on the two main tracks, at the East End Bluefield Yard and Allen Street Bridge, in Bluefield, West Virginia, on the Pocahontas District, Pocahontas Division; consisting of the discontinuance and removal of signals 3633D and 3634B, the relocation of signal 3627, and the modification of signals 3636A, 3636B, 3633A, and 3635A to display restricting.

The reason given for the proposed changes is to improve operations and increase efficiency.

BS–AP–No. 3336

Applicants: Springfield Terminal Railway Company and Boston and Maine Corporation, Mr. S.F. Nevero, Vice President Engineering, Iron Horse Park, North Billerica, Massachusetts 01862

The Springfield Terminal Railway Company and Boston and Maine Corporation (BM), jointly seek approval of the proposed discontinuance and removal of the traffic control system, on the single main track, between East Northfield, Massachusetts, CP TD, milepost 49.67 and Greenfield, Massachusetts, CP CPR–38, milepost 37.72, on the BM Connecticut River Main Line, and operate by NORAC 400 Rules, Voice Control System.

The reason given for the proposed changes is that the formerly operated passenger service and through freight trains presently operate via alternate routes.

BS–AP–No. 3337

Applicants: Southern Pacific Lines, Mr J.A. Turner, Engineer—Signals, Southern Pacific Building, One Market Plaza, San Francisco, California 94105

Atchison, Topeka and Santa Fe Railway Company, Mr. W.S. Seery, Director Signal Systems, Communications and Signal, 4501 Kansas Avenue, Kansas City, Kansas 66106–1195

Burlington Northern Railroad Company, Mr. William G. Peterson, Director Signal Engineering, 9401 Indian Creek Parkway, Overland Park, Kansas 66210–2007

Southern Pacific Lines, Atchison, Topeka and Santa Fe Railway Company, and Burlington Northern Railroad Company jointly seek approval of the proposed conversion of the manual interlocking system to a traffic control system, at South Denver, milepost WC-3.6, near Denver, Colorado, Rocky Mountain Region, Subdivision 1.

The reason given for the proposed changes is to enhance safety by having the dispatcher use only one set of operating rules for the territory under his control.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on November 30, 1994.

Phil Olekszyk,

Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 94-29898 Filed 12-5-94; 8:45 am]

BILLING CODE 4910-06-P

Maritime Administration

[Docket S-916]

American President Lines, Ltd; Application for a Waiver of Section 804(a) of the Merchant Marine Act, 1936, as Amended, To Permit Foreign-Flag Slot Charters

American President Lines, Ltd. (APL), by application dated November 21, 1994, requests waiver of the provisions of section 804 of the Merchant Marine Act, 1936, as amended (Act), for foreign-flag slot charters by APL on vessels of Mitsui O.S.K. Lines, Ltd. (MOL), Nedlloyd Lines B.V. (NLL), and Orient Overseas Container Line Inc. (OOCL) pursuant to APL's participation in the Asia-Atlantic Alliance Agreement, a reciprocal slot exchange and coordinated sailing agreement, designated Federal Maritime Commission (FMC) No. 203-011467, and in a Master Slot Charter Agreement, both between APL and MOL/NLL/OOCL.

The geographic scope of the trade in U.S. foreign commerce of the Asia-Atlantic Alliance Agreement is between Japan, Taiwan, and the Pinang-Pusan range in continental Asia and ports on the Atlantic and gulf coasts of the United States via the Panama Canal.

The geographic scope of the trade in U.S. foreign commerce of the implementing Master Slot Charter Agreement is between Hong Kong, Taiwan, and Japan and ports on the Atlantic coast of the United States and the Caribbean via the Panama Canal. All-water service under the Agreement is to be performed entirely with vessels of the three foreign parties.

This application may be inspected in the Office of the Secretary, Maritime Administration. Any person, firm, or corporation having any interest in such request within the meaning of section 804 of the Act and desiring to submit comments concerning the application must file written comments in triplicate with the Secretary, Maritime Administration, Room 7210, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Comments must be received no later than 5 p.m. on December 20, 1994. This notice is published as a matter of discretion and publication should in no way be considered a favorable or unfavorable decision on the application, as filed or as may be amended. The Maritime Administrator will consider any comments submitted and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 20.804 (Operating-Differential Subsidies)).

Dated: November 30, 1994.

By order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 94-29924 Filed 12-5-94; 8:45 am]

BILLING CODE 4910-81-P

National Highway Traffic Safety Administration

[Docket No. 94-66; Notice 2]

Cooper Tire and Rubber Company; Grant of Petition for Determination of Inconsequential Noncompliance

The Cooper Tire and Rubber Company (Cooper) of Findlay, Ohio, determined that some of its tires failed to comply with 49 CFR 571.109, Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New Pneumatic Tires," and filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Cooper also petitioned to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the petition was published on July 29, 1994, and an opportunity was afforded for comment (59 FR 38659). This notice grants the petition.

Paragraph S4.3(a) of FMVSS No. 109 specifies that each tire be labeled with "[o]ne size designation, except that equivalent inch and metric size designations may be used."

During the periods of the 8th week through the 18th week of 1994, Cooper produced 8,097 175/70R13, Cooper Sport 1000 Metric GT, polyester/steel belted, tubeless, black sidewall, radial tires with incorrect size designations. These tires were incorrectly stamped near the beads with a designation of 175/75R13 in characters 0.156 inch in height, whereas they should have been stamped 175/70R13. However, the tires are correctly labeled with 175/70R13, in characters 0.400 inch high, on the mid-sidewall area. Cooper has recovered 1,281 of these tires to correct them prior to sale. At the time it petitioned the agency, 6,816 remained unaccounted for.

Cooper supported its petition for inconsequential noncompliance with the following, and also provided mold stamp drawings which show the two areas on each side of the subject tires where the size is molded into them.

The tires in question are incorrectly stamped on both sides, in the area of the sidewall closest to the bead, with the designation 175/75R13. The tires are correctly stamped on both sides in the mid-sidewall of the tire with the correct designation 175/70R13 in characters 0.400 inch in height. In addition, each tire contains an adhesive paper tread label which is attached to the tread area of each tire indicating the correct size of 175/70R13.

The mislabel on each tire is incorrect only as to the aspect ratio (or series), that is 75, of the tire. The cross section width of 175, the designation of radial, and the rim diameter of 13 are all correct. Also the maximum load and inflation stampings on both sidewalls of each tire are correct for a 175/70R13 tire.

Further, a 175/75R13 [tire] has never been produced by Cooper, has never

been standardized by the Tire and Rim Association, and to the best of [Cooper's] knowledge, has never been produced by anyone, therefore, the possibility of misapplication does not exist.

The tires produced from this mold during the aforementioned time period comply with all other requirements of 49 CFR 571.

No comments were received on the petition.

The mislabeled aspect ratio does not affect the ability of the tire to be identified in the event of a recall. It has no effect upon the performance of the tire. The correct aspect ratio appears elsewhere on the tire, on both sides, and in larger characters. This minimizes the presence of the noncompliance. Moreover, there has never been a 175/7513 tire standardized by the Tire and Rim Association, nor has Cooper produced one. Therefore, there is no possibility of misapplication.

In consideration of the foregoing, the Administrator has decided that Cooper has met its burden of persuasion and that the noncompliance with FMVSS No. 109 herein described is inconsequential to motor vehicle safety. Accordingly, the Administrator exempts Cooper from the notification requirements of 49 U.S.C. 30118 and the remedy requirements of 49 U.S.C. 30120.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50, 501.8).

Issued on: November 30, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–29884 Filed 12–5–94; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 94–22; Notice 2]

First Brands Corporation, Grant Of Petition For Determination Of Inconsequential Noncompliance

First Brands Corporation (FBC) of Danbury, Connecticut determined that some of its brake fluid failed to comply with 49 CFR 571.116, Federal Motor Vehicle Safety Standard No. 116, "Motor Vehicle Brake Fluids," and filed an appropriate report pursuant to 49 CFR Part 573. FBC also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) (now 49 U.S.C. 30118 and 30120) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on April 7, 1994, under the designation of Docket No. 94–19, and an opportunity afforded for comment (59 FR 16685). On April 26, 1994, the docket was redesignated 94–22 (59 FR 21800). This notice grants the petition.

Paragraph S5.1.7, *Fluidity and Appearance at Low Temperature,* of Standard No. 116 states:

When brake fluid is tested according to S6.7, at the storage temperature and for the storage times given in Table II—

(a) The fluid shall show no sludging, sedimentation, crystallization, or stratification;

(b) Upon inversion of the sample bottle, the time required for the air bubble to travel to the top of the fluid shall not exceed the bubble flow times shown in Table II; and

(c) On warming to room temperature, the fluid shall resume the appearance and fluidity that it had before chilling.

Table II of S5.1.7 states that when the brake fluid is stored at −40° ± 2° C. for 144 hours ± 4.0 hours, the maximum bubble flow time is 10 seconds. When stored at −50° ± 2° C. for 6 hours ± 0.2 hours, the maximum bubble flow time is 35 seconds.

NHTSA notified FBC that a sample of Prestone Brake Fluid, AS–400, failed to meet the no-crystallization requirements of S5.1.7 (NHTSA file NCI 3293). FBC's initial investigation determined that the brake fluid was packaged on May 4, 1993, at its subsidiary, Paulsboro Packaging, Inc., and that the fluid was manufactured by Union Carbide Corporation (UCC) and identified as UCC's PM6060, lot # 0319083. FBC further stated:

All [of the] product in FBC's distribution system packaged from the specific lot # 0319083 was placed on hold and all packaging of Brake Fluid PM6060 was ceased pending a full investigation and implementation of corrective measures.

FBC produced 202,704 units (12.0 fl.oz.) from lot # 0319083, and currently has 61,752 units on hold at various warehouses.

Based on review of all data and consultation with UCC, it is FBC's opinion that the noncompliance will not affect product performance in a motor vehicle or create a safety concern.

FBC is recommending that no recall of [the] product outside of FBC's distribution system be made. It is further recommended that the product in inventory (61,752 units) also be released for sale.

FBC also stated that it has elected to convert to an alternative UCC brake fluid identified as PM6340, which has a freeze point of −65° C., and will provide an added margin to meet the requirements of S5.1.7, Standard No. 116.

In support of its petition, FBC attached a letter from UCC, dated January 17, 1994. The UCC letter describes the results of tests it performed on samples of the noncompliant brake fluid:

Specifically with regard to the DOT "Fluidity and Appearance at Low Temperature" test (FMVSS 116, Section 5.1.7), Union Carbide Corporation, using the DOT FMVSS 116 procedure, performed the test at −40° C for 6 days [144 hours] and −50° C for 6 hours. Following completion of the tests:

at −40° C for 6 days, the sample passed all requirements. The sample met the requirements for appearance at low temperature, bubble travel time and room temperature appearance-fluidity properties.

−at −50° C for 6 hours, the sample passed the requirements of bubble travel time and room temperature appearance-fluidity properties. Upon completion of the 6 hours at −50° C, some crystallization was noted in the sample.

—attempts were made to isolate the crystallized material. It was a soft, non-abrasive gel that was difficult to isolate as it flowed with the brake fluid.

Union Carbide Corporation also conducted the test of FMVSS 116, Section 5.1.7 on the sample with rigorous temperature control at −49° C ± 2° C to more closely realize the −48° C limit of the test's specified temperature range (Section 5.1.7 test parameter: −50° C ± 2° C). The sample was clear, showed no crystals, had a bubble travel time of approximately 5 seconds and regained its appearance and fluidity at room temperature. These results were confirmed by a second run at the same conditions.

The Pour Point of the sample was measured according to the method of ASTM D97. [The] lowest temperature at which movement in the liquid could be observed was determined to be −62 °C.

From the results obtained and observations made, we are confident that this brake fluid will perform and provide braking under the low temperature conditions of the FMVSS 116 standard, section 5.1.7 and offer the following reasons in support of this:

—The fluid passed the −40 °C/6 day fluidity and appearance test.

—The fluid showed appropriate viscosity at low temperature (−40 °C).

—The fluid showed appropriate viscosity at −50 °C (bubble travel time of [approximately] 5 seconds against a requirement of 35 seconds [maximum]).

—Any crystallization observed was a soft, non-abrasive gel that flowed with

the brake fluid. Further, the phenomenon is fully reversible.

—The Pour Point of the sample was measured as −62 °C.

No comments were received on the petition.

The agency has reviewed FBC's petition and supporting data. In two of UCC's low temperature tests of the noncompliant fluid there was no crystallization; however, in another test, five crystals were formed. The crystallization was described as "a soft non-abrasive gel." As such, it appears similar to the "slush-like crystallization" which occurred in Dow Corning's fluid. As Dow Corning persuasively argued, this type of crystallization will readily disperse under slight agitation or warming and will not adversely affect brake system performance. In contrast are crystals that are either water-based ice, abrasive, or have the potential to clog brake system components. NHTSA accepted the distinction and granted the petition (59 FR 52582). In its view, the same conclusion is sustainable in this case.

In consideration of the foregoing, the Administrator has decided that FBC has met its burden of persuasion and that the noncompliance with Standard No. 116 herein described is inconsequential to motor vehicle safety. Accordingly, the Administrator exempts FBC from the notification requirements of 49 U.S.C. 30118 and the remedy requirements of 49 U.S.C. 30120. However, granting of FBC's petition does not constitute an exemption from 49 U.S.C. 30112(a), the prohibition against offering for sale, selling, and introducing into interstate commerce motor vehicle equipment that does not meet all applicable Federal motor vehicle safety standards. Thus, FBC cannot release the 61,752 units in inventory for sale in the United States, and must dispose of the noncompliant fluid in a manner that does not violate 49 U.S.C. 30112(a).

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8).

Issued on: November 30, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–29883 Filed 12–5–94; 8:45 am]

BILLING CODE 4910–59–P

[Docket No. 94–84; Notice 1]

Notice of Receipt of Petition for Decision that Nonconforming 1990 Mercedes-Benz 190E Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1990 Mercedes-Benz 190E passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1990 Mercedes-Benz 190E that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 5, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9:30 am to 4 pm]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

G&K Automotive Conversion, Inc. of Santa Ana, California ("G&K") (Registered Importer 90–007) has petitioned NHTSA to decide whether 1990 Mercedes-Benz 190E (Model ID 201.036) passenger cars are eligible for importation into the United States. The vehicle which G&K believes is substantially similar is the 1990 Mercedes-Benz 190E that was manufactured for importation into, and sale in, the United States and certified by its manufacturer, Daimler Benz A.G., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared the non-U.S. certified 1990 Mercedes-Benz 190E to its U.S. certified counterpart, and found the two vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

G&K submitted information with its petition intended to demonstrate that the non-U.S. certified 1990 Mercedes-Benz 190E, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the non-U.S. certified 1990 Mercedes-Benz 190E is identical to its U.S. certified counterpart with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence* * * *, *103 Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, *207 Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, and 219 *Windshield Zone Intrusion*.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) placement of a seat belt warning symbol on the seat belt warning

lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model sealed beam headlamps and front sidemarkers; (b) installation of U.S.-model taillamp lenses which incorporate rear sidemarkers; (c) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the convex passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 *Door Locks and Door Retention Components:* installation of U.S.-model rear door locks.

Standard No. 208 *Occupant Crash Protection:* installation of a seat belt warning buzzer. The petitioner claims that the vehicle is equipped with Type 2 seat belts in all seating positions that conform to the standard. Additionally, the petitioner claims that the vehicle is equipped with an air bag and knee bolster that conform to the standard's requirements for passive restraints.

Standard No. 214 *Side Door Strength:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister., and 302 *Flammability of Interior Materials.*

Additionally, the petitioner states that the bumpers on the non-U.S. certified 1990 Mercedes-Benz 190E must be reinforced to comply with the Bumper Standard found in 49 CFR Part 581.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: December 1, 1994.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–29996 Filed 12–5–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–93; Notice 1]

Notice of Receipt of Petition for Decision that Nonconforming 1992 Mercedes-Benz 260E Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1992 Mercedes-Benz 260E passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that a 1992 Mercedes-Benz 260E that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) It is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is January 5, 1995.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9:30 a.m. to 4 p.m.]

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. § 30141(a)(1)(A) (formerly section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act)), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115 (formerly section 114 of the Act), and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports, Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) has petition NHTSA to decide whether 1992 Mercedes-Benz 260E (Model ID 124.026) passenger cars are eligible for importation into the United States. The vehicle which Champagne believes is substantially similar is the 1992 Mercedes-Benz 300E. Champagne has submitted information indicating that Daimler Benz A.G., the company that manufactured the 1992 Mercedes-Benz 300E, certified that vehicle as conforming to all applicable Federal motor vehicle safety standards and offered it for sale in the United States.

The petitioner contends that it carefully compared the 260E to the 300E, and found the two models to be substantially similar with respect to compliance with most applicable Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that the 1992 model 260E, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as the 1992 model 300E that was offered for

sale in the United States, or is capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that the 1992 model 260E is identical to the certified 1992 model 300E with respect to compliance with Standards Nos. 102 *Transmission Shift Lever Sequence . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 107 *Reflecting Surfaces*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 203 *Impact Protection for the Driver From the Steering Control System*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 211 *Wheel Nuts, Wheel Discs and Hubcaps*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that the 1992 model 260E complies with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamp assemblies which incorporate sealed beam headlamps; (b) installation of U.S.-model front and rear sidemarker/reflector assembles; (c) installation of U.S.-model taillamp assemblies; (d) installation of a high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* replacement of the convex passenger side rearview mirror.

Standard No. 114 *Theft Protection:* installation of a buzzer microswitch and a warning buzzer in the steering lock assembly.

Standard No. 115 *Vehicle Identification Number:* installation of a VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power Window Systems:* rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 *Door Locks and Door Retention Components:* replacement of the rear door locks and locking buttons with U.S.-model parts.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) installation of a factory-supplied knee bolster to augment the vehicle's passive restraint system. The petitioner states that the remaining components of the vehicle's passive restraint system, consisting of a driver's side air bag, control unit, and sensor, have part numbers identical to those found on the U.S. certified 1992 model 300E. The petitioner further states that the 1992 model 260E is equipped at its two front seating positions with combination lap and shoulder belts that adjust by means of an automatic retractor and release by means of a single push button, and that it is equipped with combination lap and shoulder belts with a single button release at its rear outboard seating positions, and with a lap belt at its rear center seating position.

Standard No. 214 *Side Door Strength:* installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity:* installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, S.W., Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 94–29997 Filed 12–5–94; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

[Docket No. PS–94–1W; Notice 1]

Transportation of Natural and Other Gas by Pipeline Tensile Properties of Unknown Steel Pipe, Grant of Waiver; Amoco Pipeline Co.

Amoco Pipeline Company (Amoco) petitioned the Research and Special Programs Administration (RSPA) for a waiver from compliance with a pipeline safety standard regarding determination of tensile properties of unknown steel pipe (49 CFR 192.107(b)(1)). This standard provides certain methods of establishing the yield strength of pipe that is manufactured in accordance with a specification not listed in Section I of Appendix B to Part 192 or whose specification or tensile properties are unknown. This petition applies to approximately 35 miles of 16 inch pipeline in the State of Missouri.

Amoco requested the waiver for a section of pipeline that is being converted from liquid to natural gas service. The pipeline is composed of 17 miles of 0.250 inch wall thickness, A.O. Smith electric weld pipe, constructed in 1948 and 18 miles of 0.281 inch wall thickness, National seamless pipe, constructed in 1952. Although it is believed that both sections consist of Grade B pipe, no documentation verifying this is available. Hazardous liquids were transported through this line until 1993, when it was purged with inert nitrogen gas. The pipeline, which was internally inspected in 1988, has not been hydrostatically tested.

The petition requests that the tensile strength determination procedures contained in Section II-D of Appendix B to Part 192, as referenced in 49 CFR 192.107(b)(1), be waived in favor of the tensile strength determination methods contained in 49 CFR Part 195.5(a)(1) with consideration to applicable class location factors contained in 49 CFR 192.111. Furthermore, the petition states that the maximum allowable operating pressure (MAOP), will be established by reducing the test pressure as required by 49 CFR 192.619(a)(2)(ii) for the class location. A recent amendment to 49 CFR Part 195.5(a), Docket PS–127; Amendment 195–52, allows determination of design pressure by

pressure testing a hazardous liquid pipeline to yield in accordance with ASME B31.8, Appendix N. The design pressure is calculated as eighty percent of the yield strength, as determined by the pressure test.

In an August 31, 1992, Notice of Proposed Rulemaking, Docket PS-124; Notice 1, RSPA proposed similar amendments to 49 CFR 192.14(a)(1). Since RSPA has received no comments opposing the rulemaking and a rule change is forthcoming, RSPA, by this order, finds that the requested waiver of 49 CFR 192.107(b)(1) is appropriate and is not inconsistent with pipeline safety. Therefore, Amoco Pipeline Company's petition for waiver from compliance with 49 CFR 192.107(b)(1) is granted, effective December 12, 1994.

Issued in Washington, DC on November 28, 1994.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 94-29998 Filed 12-5-94; 8:45 am]

BILLING CODE 4910-60-P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Advisory Committee on Trade Policy and Negotiations

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of closed meeting. The December 6, 1994 meeting of the Advisory Committee on Trade Policy and Negotiations will be closed to the public.

SUMMARY: The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States.

DATES: The meeting is scheduled for December 6, 1994, unless otherwise notified.

ADDRESSES: The meeting will be held at the Four Seasons Hotel, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Michaelle Burstin, Director of Public Liaison, Office of the United States Trade Representative, Executive Office of the President at (202) 395-6120.

Michael Kantor,

United States Trade Representative.

[FR Doc. 94-30114 Filed 12-5-94; 8:45 am]

BILLING CODE 3190-01-M

DEPARTMENT OF VETERANS AFFAIRS

Cost-of-Living Adjustments and Headstone or Marker Allowance Rate

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA) is hereby giving notice of cost-of-living adjustments (COLAs) in certain benefit rates and income limitations. These COLAs affect the pension and parents' dependency and indemnity compensation (DIC) programs. These adjustments are based on the rise in the Consumer Price Index (CPI) during the one-year period ending September 30, 1994. VA is also giving notice of the maximum amount of reimbursement that may be paid for headstones or markers purchased in lieu of Government-furnished headstones or markers in Fiscal Year 1995 which began on October 1, 1994.

DATES: These COLAs are effective December 1, 1994. The headstone or marker allowance rate is effective October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service (211B), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273-7210.

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 2306(d), VA may provide reimbursement for the cost of non-Government headstones or markers at a rate equal to the actual cost or the average actual cost of Government-furnished headstones or markers during the fiscal year preceding the fiscal year in which the non-Government headstone or marker was purchased, whichever is less.

Section 8041 of Pub. L. 101-508 amended 38 U.S.C. 2306(d) to eliminate the payment of the monetary allowance in lieu of VA-provided headstone or marker for deaths occurring on or after November 1, 1990. However, in a precedent opinion (O.G.C. Prec. 17-90), VA General Counsel held that there is no limitation period applicable to claims for benefits under the provisions of 38 U.S.C. 2306(d).

The average actual cost of Government-furnished headstones or markers during any fiscal year is determined by dividing the sum of VA costs during that fiscal year for procurement, transportation, Office of Memorial Programs and miscellaneous administration, inspection and support staff by the total number of headstones and markers procured by VA during that fiscal year and rounding to the nearest whole dollar amount.

The average actual cost of Government-furnished headstones or markers for Fiscal Year 1994 under the above computation method was $100. Therefore, effective October 1, 1994, the maximum rate of reimbursement for non-Government headstones or markers purchased during Fiscal Year 1995 is $100.

Cost-of-Living Adjustments

Under the provisions of 38 U.S.C. 5312 and section 306 of Pub. L. 95-588, VA is required to increase the benefit rates and income limitations in the pension and parents' DIC programs by the same percentage, and effective the same date, as increases in the benefit amounts payable under title II of the Social Security Act. The increased rates and income limitations are also required to be published in the **Federal Register**.

The Social Security Administration has announced that there will be a 2.8 percent cost-of-living increase in social security benefits effective December 1, 1994. Therefore, applying the same percentage, the following increased rates and income limitations for the VA pension and parents' DIC programs will be effective December 1, 1994:

TABLE 1.—IMPROVED PENSION

Maximum annual rates:

(1) Veterans permanently and totally disabled (38 U.S.C. 1521):
- Veteran with no dependents, $8,037
- Veteran with one dependent, $10,527
- For each additional dependent, $1,368

(2) Veterans in need of aid and attendance (38 U.S.C. 1521):
- Veteran with no dependents, $12,855
- Veteran with one dependent, $15,345
- For each additional dependent, $1,368

(3) Veterans who are housebound (38 U.S.C. 1521):
- Veteran with no dependents, $9,824
- Veteran with one dependent, $12,313
- For each additional dependent, $1,368

(4) Two veterans married to one another, combined rates (38 U.S.C. 1521):
- Neither veteran in need of aid and attendance or housebound, $10,527
- Either veteran in need of aid and attendance, $15,345
- Both veterans in need of aid and attendance, $20,161

TABLE 1.—IMPROVED PENSION—Continued

Either veteran housebound, $12,313
Both veterans housebound, $14,102
One veteran housebound and one veteran in need of aid and attendance, $17,129
For each dependent child, $1,368

(5) Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse (38 U.S.C. 1541):
Surviving spouse alone, $5,386
Surviving spouse and one child in his or her custody, $7,056
For each additional child in his or her custody, $1,368

TABLE 1.—IMPROVED PENSION—Continued

(6) Surviving spouses in need of aid and attendance (38 U.S.C. 1541):
Surviving spouse alone, $8,615
Surviving spouse with one child in his or her custody, $10,280
Each each additional child in his or her custody, $1,368

(7) Surviving spouses who are housebound (38 U.S.C. 1541):
Surviving spouse alone, $6,586
Surviving spouse and one child in his or her custody, $8,251
For each additional child in his or her custody, $1,368

(8) Surviving child alone (38 U.S.C. 1542), $1,368

TABLE 1.—IMPROVED PENSION—Continued

Reduction for income. The rate payable is the applicable maximum rate minus the countable annual income of the eligible person. (38 U.S.C. 1521, 1541 and 1542).

Mexican border period and World War I veterans. The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this table shall be increased by $1,819. (38 U.S.C. 1521(g))

Parents' DIC:

DIC shall be paid monthly to parents of a deceased veteran in the following amounts (38 U.S.C. 1315):

TABLE 2

[One parent. If there is only one parent, the monthly rate of DIC paid to such parent shall be $381 reduced on the basis of the parent's annual income according to the following formula:] For each $1 of annual income

The $381 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.08	800	9,143

No DIC is payable under this table if annual income exceeds $9,143.

One parent who has remarried. If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under Table 2 or under Table 4, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

Two parents not living together. The rates in Table 3 apply to (1) two parents who are not living together, or (2) an unmarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $273 reduced on the basis of each parent's annual income, according to the following formula:

TABLE 3

[For each $1 of annual income]

The $273 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.06	$800	900
.07	900	1,100
.08	1,100	9,143

No DIC is payable under this table if annual income exceeds $9,143.

Two parents living together or remarried parents living with spouses. The rates in Table 4 apply to each parent living with another parent; and each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be $257 reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

TABLE 4

[For each $1 of annual income]

The $257 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$1,000
.03	$1,000	1,500
.04	1,500	1,900
.05	1,900	2,400
.06	2,400	2,900
.07	2,900	3,200
.08	3,200	12,291

No DIC is payable under this table if combined annual income exceeds $12,291.

The rates in this table are also applicable in the case of one surviving parent who has remarried, computed on the basis of the combined income of the parent and spouse, if this would be a greater benefit than that specified in Table 2 for one parent.

Aid and attendance. The monthly rate of DIC payable to a parent under Tables 2 through 4 shall be increased by $203 if such parent is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

Minimum rate. The monthly rate of DIC payable to any parent under Tables 2 through 4 shall not be less than $5.

TABLE 5.—SECTION 306 PENSION INCOME LIMITATIONS

(1) Veteran or surviving spouse with no dependents, $9,143 (Pub. L. 95–588, section 306(a)).
(2) Veteran with no dependents in need of aid and attendance, $9,735 (38 U.S.C. 1521(d) as in effect on December 31, 1978).
(3) Veteran or surviving spouse with one or more dependents, $12,291 (Pub. L. 95–588, Section 306(a)).
(4) Veteran with one or more dependents in need of aid and attendance, $12,885 (38 U.S.C. 1521(d) as in effect on December 31, 1978).

TABLE 5.—SECTION 306 PENSION INCOME LIMITATIONS—Continued

(5) Child (no entitled veteran or surviving spouse), $7,473 (Pub. L. 95–588, Section 306(a)).
(6) Spouse income exclusion (38 CFR 3.262), $2,916 (Pub. L. 95–588, section 306(a)(2)(B)).

TABLE 6.—OLD-LAW PENSION INCOME LIMITATIONS

(1) Veteran or surviving spouse without dependents or an entitled child, $8,002 (Pub. L. 95–588, section 306(b)).
(2) Veteran or surviving spouse with one or more dependents, $11,539 (Pub. L. 95–588, section 306(b)).

Dated November 30, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 94–29892 Filed 12–5–94; 8:45 am]

BILLING CODE 8320–01–M

Poverty Threshold

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is hereby giving notice of the weighted average poverty threshold in 1993 for one person (unrelated individual) as established by the Bureau of the Census.

DATES: The 1993 poverty threshold is for consideration effective October 6, 1994, the date on which it was established by the Bureau of the Census.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–7210.

SUPPLEMENTARY INFORMATION: VA published a final regulation amending 38 CFR 4.16(a) in the **Federal Register** of August 3, 1990, pages 31579–80. The amendment provided that marginal employment generally shall be deemed to exist when a veteran's earned annual income does not exceed the amount established by the Bureau of the Census as the poverty threshold for one person. VA noted that the weighted average poverty threshold in 1988 for one person (unrelated individual) as established by the Bureau of the Census was $6,024 and stated we would publish subsequent poverty threshold figures as notices in the **Federal Register.**

The Bureau of the Census recently published the weighted average poverty thresholds for 1993. The threshold for one person (unrelated individual) is $7,363.

Dated: November 25, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 94–29869 Filed 12–5–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 233
Tuesday, December 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).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on December 7, 1994, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Acting Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. New Business

1. Regulations

a. Draft Proposed Rule Deleting Regulations Identified through Regulatory Burden Initiative [12 CFR Parts 614, 615, 618 and 619] (Proposed)

Closed Session*

A. New Business

1. Enforcement Actions

Dated: December 1, 1994.

Floyd Fithian,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 94–30019 Filed 12–2–94; 9:33 am]

BILLING CODE 6705–01–P

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c)(8) and (9)

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board) concerning the FCS Building Association.

DATE AND TIME: The special meeting of the Board concerning the FCS Building Association will be held December 7, 1994 at the offices of the Farm Credit Administration in McLean, Virginia, immediately following the FCA Board's regular meeting at 10:00 a.m.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Acting Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matter to be considered at the meeting is:

Open Session

A. Reports

1. FCSBA Quarterly Report

Dated: December 1, 1994.

Floyd Fithian,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 94–30020 Filed 12–2–94; 9:33 am]

BILLING CODE 6705–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, December 12, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 2, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94–30113 Filed 12–02–94; 3:17 pm]

BILLING CODE 6210–01–P

INTERSTATE COMMERCE COMMISSION

Commission Voting Conference

TIME AND DATE: 10:00 a.m., Tuesday, December 13, 1994.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, D.C. 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Finance Docket No. 32133, *Union Pacific Corporation, Union Pacific Railroad Company and Missouri Pacific Railroad Company—Control—Chicago and North Western Transportation Company and Chicago and North Western Railway Company*, Finance Docket No. 32133 (Sub-No. 2), *St. Louis Southwestern Railway Company and SPCSL Corp.—Trackage Rights Over Lines of Union Pacific Railroad Company and Missouri Pacific Railroad Company in Wyandotte County, KS, and Jackson County, MO*, and Finance Docket No. 32133 (Sub-No. 3), *CCP Holdings, Inc. and Chicago, Central & Pacific Railroad Company—Trackage Rights Over Certain Lines of Union Pacific Railroad Company, Missouri Pacific Railroad Company, and Chicago and North Western Railway Company*. Section 5a Application No. 118 (Amendment No. 1), *EC-MAC Motor Carriers Service Association, Inc.*[1]

[1] Includes Section 5a Application No. 34 (Amendment No. 8), *Middlewest Motor Freight Bureau, Inc.*; Section 5a Application 46 (Amendment No. 19), *Southern Motor Carriers Rate Conference*; Section 5a Application 25 (Amendment No. 8), *The New England Motor Rate Bureau, Inc.*; Section 5a Application 22 (Amendment No. 7), *Pacific Inland Tariff Bureau, Inc.*; Section 5a Application 60 (Amendment No. 1), *Rocky Mountain Carriers*; and Section 5a Application No. 45 (Amendment No. 13), *Niagara Frontier Tariff Bureau, Inc*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of Congressional and Press Services, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Vernon A. Williams,

Secretary.

[FR Doc. 94–30079 Filed 12–02–94; 3:17 pm]

BILLING CODE 7035–01–P

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors will meet on December 11–12, 1994. The meeting will commence at 9:30 a.m., on December 11, 1994, and at 11:00 a.m., on December 12, 1994.

PLACE: Washington Court Hotel, 525 New Jersey Avenue, N.W., Montpelier Room, Washington, D.C. 20001, (202) 628–2100.

STATUS OF MEETING: *Open,* except that a portion of the meeting may be closed pursuant to a vote of a majority of the Board of Directors to hold an executive session. At the closed session, in accordance with the aforementioned vote, the Board may hear and consider the General Counsel's report on litigation in which the Corporation is or may become a party. Finally, the Board may be briefed by the Inspector General Office of the Inspector General Activities.[2] The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Section 552b(c)(10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(h)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C. 20002, in its eleventh floor reception area, and will otherwise be available upon request.

DECEMBER 11, 1994:

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda
2. Approval of Minutes of November 5, 1994 Meeting
3. Approval of Minutes of November 5, 1994 Executive Session
4. Report on Board Client Initiatives, Presented by Board Members Ernestine Watlington and Edna Fairbanks-Williams, and James Head, Executive Director, National Economic Development and Law Center
5. Consider and Act on Proposed Board Plans for 1995: Board Goals and Objectives
6. Chairman's and Members' Reports
7. President's Report
8. Inspector General's Report
9. Consider and Act on Staff Proposals On the Corporation's 1996 Budget Mark

DECEMBER 12, 1994:

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Consider and Act on Audit and Appropriations Committee Report
   a. Consider and Act on Methodology for Determining the Level of Compensation Paid to the Inspector General
2. Consider and Act on Provision for the Delivery of Legal Services Committee Report
3. Consider and Act on Operations and Regulations Committee Report
   a. Consider and Act on Committee Recommendations Regarding Proposed Bylaw Revisions, the Creation of an Executive Committee, and the Possible Restructuring of Other Board Committees
4. Consider and Act on 1995 Board and Committee Meeting Schedule

CLOSED SESSION:

5. Consideration of the General Counsel's Report on Litigation
6. Briefing of Board by the Inspector General on Office of the Inspector General Activities.

OPEN SESSION: (Resumed)

7. Public Comment
8. Consider and Act on Other Business

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date issued: December 1, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–30015 Filed 12–2–94; 9:34 am]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION

Board of Directors; Operations and Regulations Committee Meeting Notice

TIME AND DATE: The Legal Services Corporation Board of Directors Operations and Regulations Committee will meet on December 12, 1994. The meeting will commence at 9:00 a.m.

PLACE: The Washington Court Hotel, 525 New Jersey Avenue, N.W., Montpelier Room, Washington, D.C. 20001, (202) 628–2100.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda
2. Approval of Minutes of October 27–28, 1994 Meetings
3. Consider and Act on Proposed Committee Meeting Schedule for Calendar Year 1995
4. Consider and Act on Committee Recommendations Regarding Proposed Bylaw Revisions, the Creation of an Executive Committee, and the Possible Restructuring of Other Board Committees
5. Consider and Act on Other Business

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: December 1, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–30016 Filed 12–2–94; 9:33 am]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION

Board of Directors; Provision for the Delivery of Legal Services Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Provision for the Delivery of Legal Services Committee will meet on December 12, 1994. The meeting will commence at 9:00 a.m.

PLACE: The Washington Court Hotel, 525 New Jersey Avenue, N.W., Lincoln Room, Washington, D.C. 20001 (202) 628–2100.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of November 5, 1994 Meeting.
3. Consider and Act on Proposed Committee Meeting Schedule for Calendar Year 1995.
4. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

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[2] Briefings do not constitute "meetings" as defined by the Government in the Sunshine Act. Notice of this briefing is being provided solely as a courtesy to the public.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: December 1, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–30017 Filed 12–2–94; 9:33 am]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION

Board of Directors; Audit and Appropriations Committee Meeting Notice

TIME AND DATE: The Legal Services Corporation Board of Directors Audit and Appropriations Committee will meet on December 12, 1994. The meeting will commence at 9:00 a.m.

PLACE: The Washington Court Hotel, 525 New Jersey Avenue, N.W., Washington Room, Washington, D.C. 20001, (202) 628–2100.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of November 5, 1994 Meeting
3. Consider and Act on Proposed Committee Meeting Schedule for Calendar Year 1995
4. Consider and Act on Methodology for Determining the Level of Compensation Paid to the Inspector General
5. Consider and Act on Other Business

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie (202) 336–8800.

Date Issued: December 1, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–30018 Filed 12–2–94; 9:33 am]

BILLING CODE 7050–01–M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Previously Held Emergency Meeting

TIME AND DATE: 9:50 a.m., Friday, December 2, 1994.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Closed.

MATTER CONSIDERED:

1. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

The Board voted unanimously that Agency business required that a meeting be held with less than the usual seven days advance notice, that it be closed to the public, and that earlier announcement of this was not possible.

The Board voted unanimously to close the meeting under the exemptions stated above. General Counsel Robert Fenner certified that the meeting could be closed under those exemptions.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 94–30089 Filed 12–2–94; 3:17 pm]

BILLING CODE 7535–01–M

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 10:00 a.m., November 16, 1994.

PLACE: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., N.W., Washington, D.C., 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices) and 9(B) (disclosure would significantly frustrate implementation of proposed agency action).

MATTERS TO BE CONSIDERED: Outside Employment Regulations.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, Washington, D.C. 20570. Telephone: (202) 273–1940.

Dated, Washington, D.C., December 1, 1994.

By direction of the Board:

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 94–30077 Filed 12–2–94; 3:18 pm]

BILLING CODE 7545–01–M

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: 3:45 p.m. November 21, 1994.

PLACE: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., N.W., Washington, D.C. 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552(b)(c)(2) (internal personnel rules and practices) and (c)(6) (personnel information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

MATTERS TO BE CONSIDERED: Personnel matters.

CONTACT PERSON FOR MORE INFORMATION: John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, D.C. 20570, Telephone: (202) 273–1940.

Dated, Washington, D.C., December 1, 1994.

By direction of the Board:

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 94–30078 Filed 12–2–94; 8:45 am]

BILLING CODE 7545–01–M

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Meeting of the Board of Directors

TIME AND DATE: 2:00 p.m., Friday December 16, 1994.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, N.W., Suite 800, Board Room, Washington, D.C. 20005.

STATUS: Open except for item VI.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary (202) 376–2441.

AGENDA:

I. Call to Order
II. Approval of Minutes:
  August 4, 1994, Regular Meeting
III. Treasurer's Report
IV. Audit Committee Reports:
  September 9, 1994 Meeting
  December 8, 1994 Meeting
  a. Selection of Internal Audit Director
  b. Update on Selection of Outside Auditors
V. Executive Director's Quarterly Management Report
VI. Personnel Committee Report:
  December 8, 1994, Closed Meeting
VII. Adjourn

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 94–30126 Filed 12–2–94; 4:03 pm]

BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of December 5, 12, 19, and 26, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 5

Wednesday, December 7

10:00 a.m.

Briefing on Pilot Diagnostic Evaluation Program and Use of Licensee Self-Assessments in Inspections (Public Meeting)

(Contact: 1st part Ellis Merschoff, 404–331–5179 and 2nd part Frank Gillespie, 301-504–1275)

2:00 p.m.

Briefing on Status of Reactor Pressure Vessels in Commercial Nuclear Power Plants (Public Meeting)

(Contact: Brian Sheron, 301–504–2722)

Thrusday, December 8

2:00 p.m.

Briefing on Proposed Rule—Revision to Appendix J to 10 CFR Part 50 (Public Meeting)

Contact: Joseph Murphy, 301–425–5670)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 12—Tentative

There are no Commission meetings scheduled for the Week of December 12.

Week of December 19—Tentative

Monday, December 19

10:00 a.m. DOE Briefing on Status of High Level Waste Program (Public Meeting)

Tuesday, December 20

10:00 a.m.

Briefing on Progress of Design Certification Review and Implementation (Public Meeting)

(Contact: Dennis Crutchfield, 301–504–1199)

Wednesday, December 21

10:00 a.m.

Briefing by International Programs (Closed—Ex. 1)

2:00 P.M.

Briefing by Nuclear Energy Institute (NEI) on Their Nuclear Regulatory Review Study (Public Meeting)

3:30 p.m.

Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 26—Tentative

There are no Commission meetings scheduled for the Week of December 26.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation,this means that no item has as yet been identified as requiring any Commission vote on this date.

THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: Dr. Andrew Bates (301) 504–1963.

Dated: December 1, 1994.

Andrew L. Bates,

Chief, Operations Branch, Office of the Secretary.

[FR Doc. 94–30050 Filed 12–2–94; 8:45 am]

BILLING CODE 7590–01–M

federal register

Tuesday
December 6, 1994

Part II

Environmental Protection Agency

40 CFR Part 761
Disposal of Polychlorinated Biphenyls; Manufacturing, Processing, and Distribution in Commerce; Proposed Decision on Exemption Petitions; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPPTS–66009A; FRL–4167–1]

RIN 2070–AC01

Disposal of Polychlorinated Biphenyls

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: EPA is proposing amendments to its rules under the Toxic Substances Control Act (TSCA) for polychlorinated biphenyls (PCBs). Changes are being proposed for the requirements for determining PCB concentration; marking, storage, and disposal; decontamination levels and procedures; and the reporting and recordkeeping requirements for PCBs, PCB Items, environmental media (e.g., soil, sediments, rivers, and lakes) contaminated with PCBs or PCBs in association with radioactive materials. In addition, EPA proposes to insert additional definitions and references, include new authorizations and exemptions, require the registration of certain electrical transformers, regulate combustion in industrial furnaces, regulate the disposal of liquids in landfills, coordinate PCB disposal approvals with other Federal and State programs, and revise the reportable quantity in the spill cleanup policy. EPA is also proposing to coordinate strategies for the remediation of PCB spills and other disposal sites, including cleanup under the Resource Conservation and Recovery Act (RCRA) Corrective Action provisions and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA or Superfund) remedial programs.

DATES: Written comments must be received by April 6, 1995. Any comment received after the close of the comment period will be considered "late" and may not receive full consideration. EPA intends to conduct one or more informal public hearings in the Washington, DC area on the different parts of the proposal which will take place after closure of the comment period. The exact time and location of the informal public hearings will be announced in a separate **Federal Register** Notice and may also be obtained by telephoning the Environmental Assistance Division at the telephone number listed under FOR FURTHER INFORMATION CONTACT. Written requests to make a short (less than 15 minutes) presentation at the informal public hearing must be received by the Environmental Assistance Division not later than 21 days prior to the scheduled dates of the informal public hearings. Please refer to the **Federal Register** Notice announcing the informal public hearings for more details.

ADDRESSES: Three copies of comments identified with the document control number (OPPTS–66009A; FRL–4167–1) must be submitted to: TSCA Nonconfidential Information Center, ATTN: TSCA Docket Receipts (7407), Office of Pollution Prevention and Toxics, Rm. B–607 Northeast Mall, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. A public record has been established and is available in the TSCA Public Docket Office at the above address from 12 noon to 4 p.m., Monday through Friday, except legal holidays.

Please submit comments separately on the RCRA portion of today's proposed rules. EPA is requesting comment on the proposed rule only to the extent that it would amend or change existing regulations. EPA is not soliciting comment on provisions of existing regulations that would not be changed by this proposal. Unit V of this preamble explains how commenters may make claims of business confidentiality for information included in comments.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E–543B, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551. For general information relating to the RCRA Corrective Action and CERCLA Remedial Programs which are discussed at Unit II.A.7. of this document, contact the RCRA/Superfund Hotline at (800) 424–9346 or (703) 412–9810. For technical information relating to Unit II.A.4. of this document, contact Lisa Askari, Corrective Action Programs Branch, Office of Solid Waste (5303W), at the address listed above or by telephone at (703) 308–8654.

SUPPLEMENTARY INFORMATION:

I. Background

A. Purpose of this Proposed Rule

On June 10, 1991 (56 FR 26738), EPA published an Advance Notice of Proposed Rulemaking (ANPRM) to solicit comments on possible changes to the PCB disposal regulations promulgated under the authority of TSCA section 6(e) and codified in 40 CFR part 761. Comments and supporting data on the issues outlined in the ANPRM, a number of other topics pertaining to the PCB regulations, and the interface between those regulations and other Federal and State programs affecting PCBs were received from more than 90 respondents. EPA has considered all of the comments. Based on these comments, EPA is including in this proposal changes in a number of areas of the PCB regulations that were not addressed in the ANPRM.

Several commenters submitted information concerning the toxicity of PCBs and the methods used by EPA to determine exposure to PCBs. EPA is currently conducting a review of the toxicity and mechanisms of action associated with PCBs and several structurally related chemicals. This review may not be complete until after the promulgation of these amendments. Since EPA cannot predict the outcome of the toxicity review and does not want to delay the promulgation of these rules, it is proposing flexibility in certain disposal regulations to allow for changes in EPA's position on PCB toxicity. In a similar fashion, EPA is proposing flexibility in certain disposal regulations to allow site-specific exposure data and changes in EPA's risk assessment methods to serve as the basis for making a determination regarding the selection of acceptable disposal technologies for certain PCB wastes.

B. Reproposal of Dry Weight Measurement

On April 6, 1990, EPA issued a proposed rule in the **Federal Register** ("Polychlorinated Biphenyls; Wet Weight/Dry Weight Clarification, 55 FR 12866) to amend a portion of the PCB regulations codified at 40 CFR 761.1(b) that addresses the analysis of PCBs on a dry weight basis. The comment period for the April 6, 1990 proposal ended on May 7, 1990. Comments on that proposal were received from 16 respondents. In today's **Federal Register**, EPA is issuing a reproposal of the wet weight/dry weight rule. All comments received on the April 6, 1990 proposal were considered in the preparation of this proposed rule, and those comments are included in the rulemaking record for this proposed rulemaking. The comments received for the April 6, 1990 proposal and any comments received on this proposed rule will be considered in the final rule. Today's reproposal would clarify the requirements for determining PCB concentrations in liquids, non-liquids, and multiphasic combinations of liquids and non-liquids (see unit III. M. of this preamble).

C. Waste Minimization and Combustion Strategy

On May 18, 1993, EPA announced a draft strategy to address waste minimization and combustion of hazardous waste under RCRA. The strategy is designed to stimulate a broad national dialogue on how:

(1) To better integrate waste minimization into EPA's hazardous waste management program.

(2) To determine the appropriate role of combustion in that program.

(3) To ensure that hazardous waste combustion standards are fully protective of human health and the environment. The draft strategy sets forth a series of short- and long-term activities that EPA would undertake in pursuing these three areas, among which are rulemakings to address technical standards for hazardous waste combustion and public participation in the RCRA permitting process. The draft strategy also sets forth EPA's intention to use RCRA's case-by-case omnibus permitting authority where necessary to protect health and the environment, and to impose upgraded permit conditions in newly issued permits. In addition to other potential areas, these permit conditions may address emissions of dioxins, furans, and particulate matter. Finally, the draft strategy announced EPA's intentions over the succeeding 18 months to give permitting priority to existing, operating RCRA combustion units.

The PCB program under TSCA is different from RCRA in several aspects. The manufacture of PCBs is generally banned, and the use of PCBs is heavily restricted. Therefore, any disposal issues are limited to a finite, although widely dispersed, universe. The PCB program mandates the burning of certain high-risk wastes. It also allows wastes, such as low concentration liquids and drained transformer carcasses, with a lower potential risk of exposure, to be disposed of in other types of combustion units (e.g., industrial boilers) to provide disposal capacity.

EPA proposes to make the following adjustments in the PCB disposal program under TSCA in response to issues raised in the combustion strategy. For fixed-site incinerators, approval conditions (for new units or at the time of renewal) would be adjusted to reflect new standards and procedural requirements adopted under RCRA. For mobile incinerators, approval conditions (for new units or at the time of renewal) would be adjusted to reflect new standards and procedural requirements adopted under RCRA where applicable. Unique to the PCB disposal program under TSCA is the concept of mobile incinerators. A single multi-year approval, that imposes the same technical standards applicable to fixed-site incinerators, is issued to these units. State and local governments receive prior notification and can impose additional restrictions on the mobile units using their own authorities. The TSCA approval generally limits the operating time at any one site unless additional assessment of risk and public notice are conducted. However, EPA has not adopted site-specific risk assessments and public participation in the permit development process for mobile incinerators because EPA and the public would lose the considerable benefits derived from mobile disposal units considering these units allow only minimal exposure due to their high destruction efficiency and limited operating time at each site.

The current industrial boiler rules at 40 CFR 761.60(a)(2)(iii) and 761.60(a)(3)(iii) and industrial furnace rules, proposed at §761.60(a)(4), limit both the concentration and volume of PCBs which can be treated in these units. Industrial boilers and furnaces are units that were built to perform other functions such as power generation or materials recycling, with the combustion of PCBs and hazardous wastes as a secondary function. The primary function poses a separate risk which should be considered when addressing the overall risk posed by the combustion of low concentration, low volume PCBs in industrial boilers and furnaces. Therefore, EPA proposes to impose uniform technology-based standards, instead of site-specific permit conditions, on industrial boilers and furnaces due to the low risk posed from the combustion of low concentration, low volume PCBs and because these units are constructed and operated for other purposes. EPA specifically requests comment on how best to implement the combustion strategy given the controls already imposed, or proposed in this rulemaking on the quantities and concentrations of PCBs which can be disposed of in industrial boilers and furnaces.

EPA believes that the regulations that currently apply to PCBs, along with those proposed, are sufficient under TSCA to protect the public and the environment from unreasonable risk of injury. Although EPA's May 18, 1993, draft strategy on waste minimization and combustion of waste extends only to RCRA hazardous wastes, its overall objectives were carefully considered in the development of this proposed rule. EPA requests comment on its overall plan for implementing the Agency's combustion strategy for the PCB program under TSCA.

D. Coordination of Programs

PCBs are regulated under several statutes administered by EPA. In particular, PCBs are subject to the corrective action provisions of RCRA. In an effort to harmonize standards for the cleanup of PCBs under both RCRA and TSCA, EPA is today proposing cleanup programs under both statutes for comparison and comment. The Agency's goal is to harmonize action levels for PCBs under RCRA with the target standards for approval of risk-based remediation actions under proposed §761.61(c). (See Unit II.A.7. for the RCRA proposal.)

E. Statutory Authorities

The TSCA portion of this proposed rule is issued pursuant to sections 6(e)(1), 6(e)(2)(B), 6(e)(3)(B) and 18(b) of TSCA. Section 6(e)(1)(A) gives EPA the authority to promulgate rules prescribing the methods for the disposal of PCBs (15 U.S.C. 2605(e)(1)(A)). TSCA section 6(e)(1)(B) provides broad authority for EPA to promulgate rules that would require PCBs to be marked with clear and adequate warnings (15 U.S.C. 2605(e)(1)(B)). TSCA section 6(e)(2)(B) gives EPA the authority to authorize the manufacture, processing, distribution in commerce, and use of PCBs in other than a totally enclosed manner (15 U.S.C. 2605(e)(2)(B)). TSCA section 6(e)(3)(B) provides that any person may petition EPA for an exemption from the prohibition on the manufacture, processing, and distribution in commerce of PCBs (15 U.S.C. 2605(e)(3)(B)). EPA may by rule grant an exemption if the Administrator finds that: "(i) an unreasonable risk of injury to health or the environment would not result, and (ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl." TSCA section 18(b) gives EPA the authority to exempt, by rule, any State from subsection (a)(2) (15 U.S.C. 2617(b)). EPA may by rule grant a State the authority to, among other things, regulate any aspect of PCBs in use, such as requiring a notification of that use.

The RCRA portion of this rule (discussed in Unit II.A.7. of this preamble) is issued pursuant to sections 1006, 2002(a), 3004(u), 3004(v), 3005(c) and 3007 of the Solid Waste Disposal Act as amended by the Resource

Conservation and Recovery Act, as amended by the Hazardous and Solid Waste Amendments of 1984 (42 U.S.C. 6924).

No additions or changes are proposed at 40 CFR part 300 in this rule under CERCLA (42 U.S.C. 9601–9657).

F. Summary of Proposal

Consistent with these authorities described in Unit I.E., EPA is proposing a number of modifications to the PCB disposal rules to provide flexibility in addressing the disposal of PCBs where specific conditions would allow for different waste management activities than are currently available under the regulations, while still providing protection from unreasonable risk of injury. EPA is also proposing modifications to the disposal regulations that would allow for the recognition of PCB waste management activities undertaken under other Federal or State authorities. Furthermore, EPA is proposing a number of changes to the regulations to delete out-of-date provisions, modify the regulations to address problems in their applicability or implementation, make certain policies and provisions consistent with the requirements of other Federal statutes, and reduce requirements for PCB disposal activities which present a *de minimis* risk. Finally, EPA is proposing certain authorizations and exemptions which would address the need for the scientific community to conduct research as well as health and environmental studies on PCBs and on media contaminated by PCBs (to include processing and distribution in commerce of PCBs) for the development of innovative disposal technologies which otherwise would require issuance of a disposal approval.

The topics to be addressed through this proposed rulemaking include the 16 issues identified in the ANPRM plus a number of additional issues that have either come to the Agency's attention through the submission of comments or from experience in implementing the PCB Notification and Manifesting Rule (40 CFR part 761 subparts A, D, J, and K) published in the **Federal Register** of December 21, 1989 (54 FR 52716). Several changes to the PCB regulations proposed today are in support of EPA's effort to significantly reduce the risk of release to the environment posed by PCBs still in use. The provisions affected include the 1–year time limit for storage and disposal, State enhancement provisions, restrictions on storage for reuse, decontamination, and the previously proposed changes to transformer reclassification procedures (58 FR 60970, November 18, 1993). EPA's efforts to promote the phase-out of PCBs still in use, especially those in electrical equipment, go beyond changes in the PCB rules. They include contemplated changes to various compliance monitoring and enforcement strategies and policies, a greater effort to inform the regulated community of the Agency's position on PCBs still in use, and expanded cooperation with other Federal and State agencies and departments. EPA is also proposing a definition at §761.3 of the term "PCB-Contaminated" that would apply across the PCB program. PCB-Contaminated would mean anything that contains or contacts PCBs at concentrations of 50 parts per million (ppm) to less than 500 parts per million (ppm). In the event that no PCB liquids or non-liquids are present on surfaces for measurement, then surfaces with PCB concentrations greater than 10 micrograms per 100 square centimeters (>10 μg/100 cm²) and less than 100 micrograms per 100 square centimeters (<100 μg/100 cm²), would be defined as PCB-Contaminated. EPA would also apply the term "PCB-Contaminated" to classes of PCBs or PCB Items meeting the levels of contamination specified in the definition.

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II. Notice of Proposed Rulemaking

A. Large Volume PCB Wastes

Background. The current PCB regulations generally establish a concentration of 50 parts per million (ppm) as the regulatory threshold for authorized PCBs in use (i.e., in service). This was based, in part, on the economic impact of the regulations on electrical transformers, but 50 ppm has been extended to include all authorized PCBs and PCB Articles, as defined in these proposed rules at §761.3, unless otherwise noted (e.g., PCB concentration of less than 50 ppm resulting from dilution). Where liquid samples could not be collected, such as on contaminated surfaces, surface sampling and concentration levels were developed (see part 761, subpart G, The PCB Spill Cleanup Policy). The surface concentrations, which were based on dermal exposure, were equated to the existing PCB regulations which included economic considerations. As a result, the regulations established for PCBs at concentrations of 50 to less than 500 ppm were applied to contaminated surfaces at concentrations of greater than 10 to less than 100 micrograms per 100 square centimeters (>10 – <100 μg/100cm²). The regulations that EPA is proposing, in several sections of this notice, codify the relationship between surface contamination and the existing regulations based on milligrams of PCBs per liter of liquid on a dry weight basis.

In the ANPRM, EPA requested comments on the effectiveness of the current PCB regulations in preventing an unreasonable risk of injury to health and the environment from the disposal of "large volume, non-liquid PCB wastes" such as wastes from the shredding of automobiles, white goods, and industrial scrap, and certain classes of soils, sludges, and sediments. Currently, large volume wastes derived from an authorized original source containing ≧50 ppm PCBs may only be disposed of in an incinerator that complies with 40 CFR 761.70, in a chemical waste landfill that complies with 40 CFR 761.75, or pursuant to an approved alternate method of destruction equivalent to incineration at 40 CFR 761.60(e), regardless of their current PCB concentration or the risk of exposure they may pose. The Agency believes that there are additional disposal methods and other waste management techniques for large volume wastes that would not pose an unreasonable risk of injury to health and the environment. These additional disposal methods and other waste management techniques are the subject of this section of today's proposed rule. For different kinds of large volume waste, such as soils, liquids, and surfaces contaminated with PCBs, EPA is proposing several self-implementing disposal options at §§761.61, 761.62 and §761.79. If followed exactly as written, the self-implementing disposal options would not require prior approval from EPA. These options are detailed and specific. The sampling portions of the self-implementing procedures appear in Appendices I-III. Placement of the proposed sampling procedures in appendices is intended to provide better continuity and should facilitate understanding of the overall self-implementing procedures of which they are a part.

The term "large volume" is used to describe wastes that, in general, are generated or managed in greater volumes than when they were originally placed in service. Large volume wastes would include dredged materials, contaminated environmental media, municipal sewage treatment sludges, industrial waste water treatment sludges, auto shredder waste, demolition wastes, and specifically listed materials containing PCBs that may not be authorized for use, such as PCB impregnated insulation or gaskets.

Large volume PCB wastes would not include wastes that are PCB Items, PCB Articles, and PCB liquids being removed from service. PCB liquids include, but are not limited to, dielectric fluid and solvents used to flush PCB Transformers prior to landfilling (GE Solvent Distillation Case [Docket No. TSCA-IV-890016]). Large volume PCB wastes would not include the more traditional PCB wastes which are typically generated and managed in discrete, relatively small volumes associated with individual pieces of electrical, mechanical, heat transfer, or other equipment.

Large volume PCB wastes are frequently heterogenous in nature and contaminated with low (i.e., <50 ppm) or varying levels of PCBs and other constituents. Although these wastes may now pose little environmental risk, under the current PCB regulations, they are usually required to be disposed of, based on their original PCB concentration, in either a TSCA chemical waste landfill or TSCA incinerator. Second, as the name of the category implies, "large volume" wastes may be generated each year in enormous amounts. However, the actual magnitude of the problem is not well documented. EPA requested information about historic PCB disposal sites, including areas of major or longterm spills (46 FR 22144, April 15, 1981) and included these data in its listing of sites known as the Comprehensive Environmental Response, Compensation and Liability Act Information System or CERCLIS. While EPA does not have information characterizing every site where PCBs were spilled or disposed of, the Agency does have estimates of the number of sites contaminated with PCBs. In 1991, EPA's Office of Emergency and Remedial Response completed a characterization of 1,218 sites associated with the National Priorities List (NPL) and 29,461 sites associated with CERCLIS. At approximately 20 percent of the NPL sites and approximately 7 percent of the CERCLIS sites, PCBs were characterized as a "predominant" waste type. The NPL sites alone contain approximately 34,070,000 cubic yards of material contaminated with PCBs and other substances. Similarly, the weight of shredder waste produced annually by metal recyclers is approximately 3 million tons. Commercial disposal costs of these types of large volume wastes at PCB incinerators or landfills have been as high as $2,300 per cubic yard for incineration, and $550 per cubic yard for chemical waste landfilling. Based on this information concerning large volume PCB waste generation, the number of old PCB disposal sites, and

the cost of disposal, EPA believes that it is appropriate to commence rulemaking to address the management and disposal of large volume PCB wastes and propose alternatives to the current available disposal options.

Therefore, for PCB remediation wastes, EPA is proposing to allow alternatives to the regulatory mandate that PCB wastes must be managed based on the requirements for disposal at the time the contaminating PCBs came out of service (i.e., based on the original PCB concentration of the material (see unit II.A.4. of this preamble). The remediation requirements proposed in §761.61(a) address indirect exposure issues by limiting the applicability of the section to environmental settings which are less likely to allow migration and therefore should be easier to characterize and remediate. All other environmental settings are addressed under the proposed "risk-based" option (§761.61(c)) where EPA could require a site-specific indirect exposure as well as direct exposure risk assessment. As a point of clarification, since spills result in an illegal release of PCBs to the environment, only those wastes cleaned up and disposed of in accordance with the PCB Spill Cleanup Policy (40 CFR part 761, subpart G) will be entitled to the presumption against enforcement of a disposal violation for that spill.

PCB non-remediation wastes (Unit II.A.6. of this preamble provides further discussion) are often found in large volumes and in a physical state that tends to limit the mobility of the PCBs (e.g., PCBs used as a plasticizer). In this instance, EPA is recognizing the reduced risk of direct or indirect exposure and the overall volume of this category of waste when it considers additional options for disposal.

Elsewhere in today's notice, EPA is also reproposing a process for determining the concentration of PCBs in a multiphasic media such as sludges or sediments (see Unit III. M. of this preamble). EPA would require that this process be followed by those using the provisions established for the disposal of large volume wastes and, in general, for determining the concentration of PCBs.

1. *Anti-dilution.* The current rule at 40 CFR 761.1(b), commonly known as the "anti-dilution" rule, prohibits the avoidance of specific disposal requirements because a PCB concentration was reduced or shifted from one material or environmental medium to another as the result of adding a diluent, or separating or concentrating the PCBs. This provision remains in effect. EPA is not promoting intentional or fortuitous dilution in either its rules or enforcement policies. However, EPA is proposing greater flexibility in choosing a disposal option for this category of large volume PCB wastes. EPA remains committed to a policy of stringent regulation of the disposal of PCB wastes. EPA is simply recognizing that where PCBs have already been released into the environment the critical disposal issue becomes one of mitigating the damage from the release, especially those aspects of indirect exposure such as bioaccumulation.

2. *Status of pre-1978 disposal.* Several commenters asked for clarification of the rules under TSCA governing the regulatory status and remediation of PCB spills and disposal sites in light of the ruling by EPA's Chief Judicial Officer in Re: Standard Scrap Metal Company, TSCA-V-C-288, Appeal No. 87–4, August 2, 1990 (Standard Scrap).

The Chief Judicial Officer (CJO) held that spilled PCBs found in soil are not necessarily in a "disposal site" for purposes of the prefatory note exclusion to §761.60. "Soil does not become a disposal site merely because PCBs are spilled onto it" (CJO's ruling page 13, paragraph 1). In this decision, the CJO limited the effect of the prefatory note to pre-1978 landfills or dumps, i.e., only those PCBs disposed in landfills and dumps may be considered "in-service" and do not require proper disposal according to 40 CFR part 761, subpart D. EPA is proposing to delete the prefatory note to §761.60, which states that PCBs disposed of prior to the effective date of the regulations were considered to be "in use" and therefore did not need to be cleaned up under these rules, and substitute language on the disposition of PCB waste disposed of before 1978 as introductory text to this section. Under the proposed rule, PCBs disposed of, placed in a land disposal facility (such as a dump, landfill, waste pile, or land treatment unit) or PCBs spilled or otherwise released to the environment, including areas contaminated by spills and releases such as sediments, prior to April 18, 1978, would be presumed to be disposed of in a manner that does not present a risk of exposure, and would not necessarily require further disposal action.

This proposed provision would allow the Regional Administrator, on a case-by-case basis, to make a finding that any pre-1978 disposal site does present a risk of exposure, whether the site be a spill, dump, land treatment unit, waste pile, stream, river, pond, lake, any sediment (or dredge material from a stream, river, pond, or lake), ground water, surface water, landfill, or any other type of disposal site. In such a case, the Regional Administrator could then require the submission of an application for approval of a risk-based disposal method under proposed §761.61(c) (see Unit II.A.4. of this preamble). Failure to submit a complete application, in the timeframe stipulated in the Regional Administrator's "call-in" letter, would be a violation, and the violations would accrue from that day forward. EPA believes that pre-1978 PCB disposal units or areas of contamination should not be allowed to remain "in-service" and thus unaddressed, as the existing prefatory note currently allows, if there is a risk of exposure from these sites.

Sites that could be considered an immediate exposure risk include, but are not limited to, school yards, food or feed areas, residential areas, underground or surface waters, well head protection areas, and certain stream, river, or lake sediments. In such cases where the Regional Administrator has made a determination that there is a risk of exposure, the site would have to be cleaned up, based on the exposure risk finding.

Also, in the introductory paragraph at §761.60, EPA is proposing to add language to instruct those whose waste is subject to the disposal provisions of subpart D to refer back to both the authorizations section at §761.30 and the prohibitions section at §761.20 and to coordinate their disposal activities with other agencies where appropriate for all PCB wastes. It is important for members of the regulated community to be cognizant of the fact that the disposal options in subpart D hinge on certain prohibitions as well as authorizations. For example, not all PCB Items would be required to be disposed of. Some items, such as natural gas pipelines containing PCBs, if properly decontaminated, could be reused.

Many other Federal, State, and local laws and regulations apply to the disposal of PCBs. Although EPA attempts to coordinate with the various Federal, State, and local programs controlling PCBs, the ultimate responsibility for coordination and compliance rests with the regulated community.

3. *Alternatives to landfilling.* On June 10, 1991, EPA also published a notice of availability of a draft guidance document outlining several alternative methods of treatment for certain classes of media containing PCBs (56 FR 26745). That document is entitled "Interim Guidance on Non-Liquid PCB Disposal Methods to be Used as Alternatives to a 40 CFR 761.75 Chemical Waste Landfill (CWL)." Generally, commenters to the ANPRM

who addressed the issue of alternative methods of treatment and commenters to the draft interim guidance, stated that a wider range of options would not only provide much needed disposal flexibility, but would provide an incentive for developing alternative methods of PCB disposal.

In response to these comments, the proposed rule at §761.61(c) would authorize the Regional Administrator, based on a site-specific risk assessment, to approve an application for different cleanup and disposal requirements provided that they would not pose an unreasonable risk of injury to health or the environment. The wide range of different methods of disposal that could be approved by the Regional Administrator upon application include thermal destruction such as infrared thermal treatment or circulating bed combustor; physical separation such as thermal treatment (rotary thermal desorber and fluidized bed) and solvent extraction (soil washing and liquified gas); solidification/stabilization such as chemical fixation (encapsulation, *in-situ* inorganic polymer, and silicates); *in-situ* vitrification; biological treatment; and chemical dechlorination. These are not the only treatment methods that could be approved by the Regional Administrator upon application; but are the methods currently being used with varying degrees of success.

Commenters suggested several potentially viable alternatives for the disposal of large volume PCB wastes, some of which were not listed in the draft alternative disposal document that accompanied the June 10, 1991, publication of the ANPRM. As indicated in this proposed rule, upon application to the Regional Administrator, each proposed option would be considered on a case-by-case basis. Some commenters suggested that the need to obtain a disposal permit was an impediment to developing and utilizing alternative methods of destruction and containment. EPA's position is that adequate controls must be imposed to ensure the safety of all disposal technologies, especially those being operated on a commercial scale. EPA does, however, anticipate that as individual or combinations of technologies are used repeatedly, the permitting process will become streamlined. Once out of the research and development (R&D) phase, new technologies will receive the same level of scrutiny as those already fully developed to ensure adequate environmental controls of specific technologies. In certain instances, specific standards, technologies, or procedures could also be promulgated in future rulemakings as additional decontamination activities at §761.79 or added to the self-implementing remediation techniques in §761.61(a) (see Unit II.A.3. of this preamble).

4. *Proposed remediation strategy for PCBs, including cleanup under the RCRA corrective action and CERCLA remedial programs.* The 1987 TSCA PCB Spill Cleanup Policy, published on April 2, 1987 (52 FR 10688), codified at part 761, subpart G, applied only to certain releases of PCBs occurring after May 4, 1987. Thus, other spills of PCBs (i.e., most notably those which occurred prior to May 4, 1987), were not intended to be subject to the provisions of the Policy. The issue of whether the Agency should develop a cleanup policy for historic PCB spills, and how such a policy might differ from the existing policy for new spills, was addressed in the ANPRM. In response to this discussion, several commenters on the ANPRM strongly supported the idea of developing an EPA policy on historic PCB spills. Those commenters suggested that such a policy could achieve considerable benefits at historic PCB spill sites, similar to those that have been obtained for new PCB spills under the 1987 policy.

In light of these comments, and in consideration of the Agency's experience with implementing the 1987 cleanup policy for new spills, EPA is today proposing a strategy under TSCA for cleanup of all PCBs in the environment. The following preamble also discusses how PCBs would be addressed under the remedial authorities of RCRA and CERCLA. In addition, EPA is today proposing to clarify the concentration level for soil contaminated with PCBs that was identified as an "action level" in the proposed RCRA Corrective Action Regulations (55 FR 30798, July 27, 1990).

a. *Background.* As part of the development of the 1987 TSCA PCB Spill Cleanup Policy, EPA evaluated the frequency, amount, and nature of PCB spills from electrical equipment, the different routes of exposure to PCBs (i.e., ingestion, dermal, and inhalation), the risks posed by spills in different locations, and the costs of cleanup. After evaluating this information and considering a spill cleanup proposal submitted to EPA by the Environmental Defense Fund (EDF), the Natural Resources Defense Council (NRDC), the Edison Electric Institute (EEI), the Chemical Manufacturers Association (CMA), and the National Electrical Manufacturers Association (NEMA), EPA developed cleanup goals for PCBs in soil and on surfaces.

The TSCA PCB Spill Cleanup Policy requires cleanup of PCBs to different levels depending upon spill location, the potential for exposure to residual PCBs remaining after cleanup, the concentration of PCBs initially spilled (high concentration or low), and the nature and size of the population potentially at risk of exposure to residual PCBs. Thus, the TSCA PCB Spill Cleanup Policy applies the most stringent requirements for PCB spill cleanup to non-restricted access areas where there is a greater potential for human exposures to spilled PCBs. The TSCA PCB Spill Cleanup Policy applies less stringent requirements for cleanup of PCB spills in restricted access areas where the nature and degree of human contact present a lower potential for significant exposure. Finally, even less stringent requirements apply to restricted access areas where there is little potential for human exposures.

Implementation of the 1987 TSCA PCB Spill Cleanup Policy has, in EPA's estimation, yielded highly favorable environmental results. Large numbers of PCB spills have been cleaned up expeditiously and safely with minimum administrative burdens to regulatory agencies or responsible parties. This success is in large part attributable to the self-implementing nature of the policy; the clear, numeric cleanup goals specified in the policy; and the straightforward sampling and notification procedures required of those responding to PCB spills.

Although the 1987 policy was intended to be applicable to "new" spills of PCBs, the policy has also been used in the cleanup of historic spills, particularly in the context of CERCLA remediations. As discussed below, since 1990 the Superfund program has adopted an approach to cleanup of PCBs that relies heavily on the 1987 TSCA policy. Although the CERCLA (and RCRA) remedial process generates large volumes of site-specific information that can be used to "fine tune" cleanup decisions for PCBs, as well as other hazardous substances, it has been the Agency's experience that the essential features of the 1987 TSCA policy are workable and yield protective cleanup results for historic spills of PCBs.

The following discussion summarizes the approach that the CERCLA program has taken in adapting the 1987 PCB Spill Cleanup Policy to Superfund cleanups. It also outlines a similar proposed approach for the RCRA corrective action program.

b. *CERCLA program policy for cleanup of PCBs.* Because the TSCA PCB Spill Cleanup Policy is not a binding regulation, it is not a potentially

applicable or relevant and appropriate requirement (i.e., an ARAR) for Superfund response actions. However, as a codified policy reflecting substantial scientific and technical evaluation, it has been considered as important guidance in developing cleanup levels at Superfund sites.

In August 1990, EPA issued several CERCLA guidance documents regarding remediation of PCBs at Superfund sites. Among other provisions, these guidance documents establish guidelines for the CERCLA Program to follow in setting preliminary remediation goals for PCBs for soil, ground water, and sediment contaminated with PCBs at Superfund sites. (See "A Guide on Remedial Actions at Superfund Sites with PCB Contamination", OSWER Directive No. 9355.4–01 FS (August 1990) ["PCB Guide"].)

Preliminary remediation goals (PRGs) in the Superfund program are specific statements of the desired endpoint concentrations of contaminants, or risk levels for each exposure route, that are believed to provide adequate protection of health and the environment based on preliminary site information. (See preamble to the National Contingency Plan (NCP), 55 FR 8666, 8712 and 8713 (March 8, 1992).) These goals are also used in setting parameters for the purpose of developing remedial alternatives. Because PRGs are formulated early in the remedial evaluation process, they are typically based on readily available information, such as environmental or health-based ARAR's other reliable guidance or information, commonly referred to in the CERCLA program as To Be Considered or (TBCs), or the "point of departure" risk level of 10^{-6}. As additional information becomes available during the Remedial Investigation/Feasibility Study (RI/FS) process, the PRGs may be modified due to consideration of exposure, technical, or other factors (55 FR 8713 and 8717). The use of PRGs does not preclude development and consideration or selection for alternatives that attain risk levels other than those represented by the PRG. Final selection of the appropriate level of risk is made based on the balancing of criteria in the remedy selection step of the process.

Along the same lines, the 1990 CERCLA PCB guidance documents explain that exceedance of a PRG for PCBs does not mean that action is required. Rather, once the CERCLA program decides that action is necessary at a site, the PRGs for PCBs should be used to identify areas at which response action should be considered. "These goals may be refined throughout the RI/FS process; final remediation goals are determined in the remedy selection." (PCB Guide, p.2).

According to the CERCLA PCB guidance, the concentration of concern for PCBs in soil differs depending on the type of exposure that is expected (e.g. residential or industrial) The guidance documents point out that site-specific conditions may warrant departure from the basic framework outlined in the guidance, due to factors such as the potential for PCBs to migrate to groundwater and to affect environmental receptors. The guidance recommends that in most cases, the preliminary remediation goals (or "analytical starting points" for setting remedial levels) for PCBs in soil under CERCLA are as follows:

The TSCA PCB Spill Policy at §761.120, recommends PCB spills be cleaned up to the following levels: For current and reasonably-expected future residential and other non-restricted access areas: less than 1 ppm on the surface to a depth of 10 inches and 10 ppm at depths below 10 inches; for industrial and other restricted access areas: 25 ppm; and for outdoor electrical substations: 25 ppm, or 50 ppm with labelling warning of presence of PCBs (not expected at CERCLA sites). In the case of remediation for residential, unrestricted land use at CERCLA sites, 1 ppm soil PCBs at the surface is recommended by the Superfund program as a PRG to address threats posed by direct contact. Where soil with concentrations greater than 1 ppm PCBs is left in place for residential land use, the depth of soil cover is determined by site-specific conditions. In such cases, appropriate deed restrictions or other institutional controls are generally implemented.

In the case of remediating for industrial, restricted land use at CERCLA sites, a range of 10 ppm soil PCBs to 25 ppm soil PCBs at the surface is recommended by the Superfund program as a PRG to address threats posed by direct contact.

c. *Proposed approach for cleanup of PCBs under RCRA corrective action authorities.* In the July 27, 1990, proposed RCRA Corrective Action Rule, 55 FR 30798, EPA introduced the concept of "action levels" as trigger levels for further study and subsequent remediation at RCRA facilities. In the RCRA Corrective Action Program, a remedial investigation may indicate that levels of contamination from a past release are unlikely to present a threat to health and the environment. EPA proposed that measured levels in the environment be compared to action levels, and that in situations where measured levels are below action levels, EPA would not normally require either further study (i.e., a Corrective Measures Study) or remediation.

In the proposed RCRA Corrective Action Rule, EPA proposed using maximum contaminant levels (MCLs) promulgated under the Safe Drinking Water Act as action levels for ground water. For other media (including soils) and for constituents in ground water that do not have established MCLs, the following criteria were proposed for establishing action levels. First, the concentration for a hazardous constituent must be derived in a manner consistent with Agency guidelines for risk assessment. Second, the studies used to derive action levels must be scientifically valid. Third, the concentrations used as action levels would be (for carcinogens) associated with a 1×10^{-6} upperbound excess cancer risk for Class A and B carcinogens (PCBs are Class B carcinogens), and a 1×10^{-5} risk level for Class C carcinogens. For systemic toxicants, the action level would be a concentration to which humans could be exposed on a daily basis without appreciable risk of adverse effects during a lifetime. The exposure scenario used for calculating the action levels was direct contact (i.e., ingestion), assuming residential land use. EPA's proposal included in §264.521(d) a separate provision establishing criteria for establishing action levels for soil, assuming exposure through consumption of the soil contaminated with a hazardous constituent. However, EPA proposed to make an exception to this approach where EPA has already established standards for remediation of spilled PCBs under the TSCA PCB Spill Cleanup Policy. In the preamble, EPA explained that the Agency had determined that the standards in the TSCA PCB Spill Cleanup Policy should be used as action levels and cleanup standards for soil in RCRA corrective actions (55 FR 30819).

Proposed Appendix A, to part 264, subpart S, provided examples of concentration levels that meet the above criteria for action levels for more than 150 hazardous constituents. However, EPA erred in setting out the concentration level for PCBs in soil in Appendix A (55 FR 30867). EPA had intended to list 1 ppm, the cleanup goal recommended by the TSCA PCB Spill Cleanup Policy for residential land use, as the action level for PCBs. Instead the action level listed in Appendix A for PCBs in soil was 0.09 ppm. EPA is requesting comment on correcting this erroneous listing. EPA believes that adding the following clarifying language

to the end of §264.521(d): "Action levels for PCBs in soils shall be defined as 1 ppm consistent with the TSCA PCB Spill Cleanup Policy at part 761 subpart G," would correct the error.

EPA believes that it is appropriate to adopt the TSCA 1 ppm level for PCBs as the action level for use under the RCRA corrective action program. As previously discussed, 1 ppm is the cleanup goal recommended by the PCB Spill Cleanup Policy for residential land use. Thus, the TSCA spill cleanup level is approximately one order of magnitude greater than the action level identified in the subpart S preamble. However, the Agency believes that adopting the 1 ppm level for RCRA may be appropriate, for several reasons. For one thing, the 1 ppm TSCA level is based on the same residential land use scenario and essentially the same exposure assumptions used in deriving the RCRA action levels. It also represents the same general "conservativeness" as an action level, in that it equates to a 10^{-5} excess lifetime cancer risk. In addition, the TSCA level was developed based on substantial studies conducted by the Agency that focused specifically on the risks posed by PCBs, as well as other relevant factors relating to cleanup of PCBs. Finally, 1 ppm is close to the analytical detection limit for soil, whereas the action level of 0.09 ppm identified in the subpart S proposal may often be below detection limits.

The Agency recognizes that adopting the TSCA 1 ppm level as an action level under RCRA would depart somewhat from how other soil action levels are set. It would be a level established under another regulatory program and, as such, may reflect certain factors that were not otherwise considered in developing the action level concept under RCRA. On the other hand, adopting the TSCA level for soils would be very much analogous to using MCLs as action levels for ground water as discussed in the July 27, 1990 proposal (see 55 FR 30819 and 30853).

It should also be noted that adopting the 1 ppm action level for PCBs requires certain explicit revisions to the proposed subpart S regulations. Specifically, as discussed above, the proposed criteria for soil action levels that were specified in proposed §264.521(d) would need to be revised to explicitly identify the 1 ppm level for PCBs. In addition, Appendix A to part 264 subpart S would require an amendment to identify the new PCB action level.

The Agency solicits comment on today's proposal for adopting 1 ppm as the action level for PCBs in soil for the purpose of implementing corrective actions at RCRA regulated facilities.

Although the PCB Spill Cleanup Policy identifies other numbers that are generally appropriate for certain land use settings, the Agency believes that these levels are inappropriate for use as action levels, because they may often require substantial site-specific information and determinations by the Agency about current and future land use and exposure potential. This is inconsistent with the action level concept, which requires identifying conservative, presumptive levels that can be established without this type of site-specific information.

However, the Agency believes that many of the provisions of the PCB Spill Cleanup Policy may be appropriate in making decisions regarding cleanup levels in the context of RCRA corrective action. In the preamble to the proposed subpart S regulations, EPA stated that the cleanup levels and practices in the PCB Spill Cleanup Policy would generally be appropriate for use in addressing PCB releases under RCRA corrective actions. The Agency wishes to reaffirm its intention to use the 1987 spill policy as guidance for cleanup of PCBs in the corrective action program in essentially the same manner as has been identified in the Superfund guidance discussed above.

It should be noted that the Superfund guidance on PCBs focused primarily on the use of the PCB Spill Cleanup Policy in establishing preliminary remediation goals, or PRGs. The subpart S proposal did not provide an explicit regulatory framework for setting PRGs during the corrective action process; however, the preamble to the proposal did acknowledge that establishing such preliminary cleanup goals may often be appropriate in a RCRA context. The Agency may address this issue more thoroughly in subsequent RCRA rulemakings. In any case, EPA intends to use the general approach outlined in the Superfund PCB guidance in establishing preliminary cleanup goals (when appropriate), as well as "final" cleanup levels for PCB contamination at RCRA facilities. As explained in the CERCLA guidance, the levels specified in the TSCA PCB Spill Cleanup Policy would generally be examined in light of site-specific information, and that the Agency would preserve the flexibility inherent in the subpart S provisions for establishing cleanup standards, to select a cleanup level for PCBs that may depart from the TSCA PCB Spill Cleanup Policy, when appropriate. (See proposed §264.525(d), 55 FR 30877, July 27, 1990.)

The Agency solicits comment on the concept, as outlined above, of using the TSCA PCB Spill Cleanup Policy as general guidance for establishing cleanup levels under RCRA corrective action authorities. The Agency also solicits comment on specific provisions of the TSCA PCB Spill Cleanup Policy for which it may be appropriate to modify or supplement for use in establishing cleanup levels under RCRA.

d. *Today's proposed remediation strategy for PCB spills under TSCA.* EPA is today proposing a new strategy under TSCA for cleanup of all PCBs in the environment that is closely modeled after the 1987 TSCA PCB Spill Cleanup Policy for new PCB spills from electrical equipment. The Agency believes that adopting such a strategy is warranted, for several reasons. EPA's experience with PCB cleanups under CERCLA has shown that the general approach and the specific cleanup goals expressed in the 1987 Policy are generally appropriate for cleanup of PCBs not directly addressed under the policy, as long as flexibility is provided for factoring site-specific conditions into final cleanup decisions. In addition, cleanup of PCBs not directly addressed currently under the policy must be addressed under TSCA on a case-by-case basis, with oversight of the cleanup action by EPA Regions. This can require considerable paperwork and lengthy negotiations between regulators and responsible parties over cleanup goals and procedures at individual sites. Adopting a simpler, more uniform yet flexible strategy for cleanup of PCBs in the environment under TSCA would thus serve to reduce administrative and other transactional costs and accelerate the cleanup process.

EPA is not convinced that there is any compelling technical or environmental rationale for having several separate and inconsistent methods for cleaning up PCB spills, based simply on when the spill occurred. Under TSCA, the new strategy and administrative procedures propose to address the problem of PCBs in the environment through a flexible, tiered approach.

EPA is proposing that PCBs disposed of, placed in a land disposal facility, spilled, or otherwise released into the environment prior to April 18, 1978 would be presumed to be disposed of in a manner which does not present a risk of exposure (i.e., the PCBs are presumed to be safely disposed of) unless EPA makes a finding that there is a risk of exposure (see §761.60 proposed revised introductory text in the codified portion of this document). EPA could then require that an application be submitted

for approval of remediation and proper disposal of those PCB remediation wastes under the proposed §761.61(c). All other PCB remediation wastes would be addressed by one of several alternatives proposed today.

In certain scenarios PCBs could be remediated to specified levels and treated under the self-implementing provisions proposed at §761.61(a). This activity would be conducted with a minimum of interaction between EPA and the party conducting the remediation, but it would require that the specified conditions be followed without variance.

Any PCB remediation waste could be cleaned up under the risk-based provisions proposed at §761.61(c). This new provision would be harmonized with the RCRA and CERCLA programs. Any changes of the levels under RCRA and CERCLA would be reflected in a change under TSCA in the target standards. While §761.61(c) would provide flexibility based on site-specific assessment of the risks posed, it would also be the most resource intensive and time consuming to implement. All actions addressing PCBs under Superfund would use §761.61(c) as the relevant requirement under TSCA thus providing the flexibility necessary to implement site-specific remedial actions.

EPA is also proposing to retain the traditional disposal options under proposed §761.61(b) for incineration, alternate treatment technologies, and chemical waste landfilling. This section could be used where all PCB remediation waste would be removed from the environment, or where remediation levels were established elsewhere in these rules. Section 761.61(b) could also be used where a mechanism such as a State established cleanup was recognized by EPA through a coordinated approval under proposed §761.77, where a State had already established a site characterization and/or remediation plan requiring off-site disposal in a facility with a TSCA disposal approval for PCBs.

The current TSCA PCB Spill Cleanup Policy would still be available to address recent spills from electrical equipment. The party responsible for a spill which was eligible for cleanup under the spill policy would also have the option of using one of the alternatives available under proposed §761.61 or §761.79 (Decontamination), where applicable. It should be noted that, in accordance with the anti-dilution provisions of §761.1(b), if the contamination was from an authorized use, then the PCB remediation waste is regulated based on the regulatory status of the PCBs at the time of their release into the environment. The following illustrates this point. A transformer contains PCB dielectric fluid at 1,000 ppm. The unit leaks its dielectric fluid, and all resulting PCB remediation waste is regulated, regardless of concentration, because the original dielectric fluid was regulated at the time of the leak. However, if the same PCB Transformer is first reclassified to non-PCB status (i.e., less than 50 ppm PCB in the dielectric fluid) and non-PCB dielectric fluid leaks, none of the resulting remediation waste is regulated under TSCA (but not necessarily other laws or regulations) because the dielectric fluid was unregulated at the time of the leak.

There are two questions associated with any cleanup. The first question is to what level must contamination be cleaned and the second question is what are the disposal requirements for the contaminated material. In general, the current PCB rules address the disposal question by stating that PCBs diluted through acts such as spilling or processing for disposal must be disposed of based on the disposal requirements for that PCB concentration at the time the PCBs came out of service or were spilled. However, except for those scenarios addressed by the TSCA PCB Spill Cleanup Policy, the current rules require complete removal of spilled or otherwise improperly disposed of PCBs. Most commenters to the ANPRM were very supportive of the Agency's desire to amend the current rules to allow the management of remediation wastes based on their current PCB concentrations and the site-specific risk from exposure.

Several commenters asked that EPA address the question of cleanup levels by establishing, in this rule, national standards for specific exposure scenarios, with provisions for variances that would be binding, for remediation of wastes containing PCBs for all Federal programs that would be preemptive of State and local requirements. These commenters suggested that this approach could reduce the "transactional" costs associated with site-by-site negotiations, promote voluntary remediation activities and, in general, speed the cleanup of sites. EPA has limited authority under TSCA to preempt State or local requirements for the cleanup or disposal of PCB remediation wastes. With regard to establishing uniform standards for specific exposure scenarios for the remediation of PCBs and other hazardous substances or constituents, EPA has contemplated the following options: (a) Setting specific standards, (b) using a uniform decision-making process with target standards, but allowing site-specific variances, or (c) using a uniform decision-making process with a general goal and site-specific application. EPA believes that specific standards are most appropriate when dealing with common disposal scenarios and limited disposal options. Favoring site-specific approaches to remediate old spills is most appropriate when there is little commonality at the various sites among the problems being addressed and the available disposal options. Except for the limited scenarios proposed in §761.61(a), EPA does not believe that it has sufficient experience or information to establish additional self-implementing cleanup and disposal options. EPA is seeking comments, supported by technical information from those engaged in remedial actions; other Federal, State or local entities responsible for the implementation or oversight of remedial actions; and the general public on all three approaches including the following proposal.

Several remedial approaches could be proposed for any given site which is contaminated with PCBs. In this section, EPA is proposing three alternatives for the cleanup and disposal of PCB remediation waste under TSCA. The first alternative would be self-implementing. The term self-implementing means that EPA approval under TSCA would not be necessary as long as the entire remediation conformed to the procedures and standards of the first alternative at proposed §761.61(a). The second alternative, performance-based disposal, is the use of "traditional" disposal technologies of incineration and chemical waste landfilling, according to the approval process and standards as proposed at §761.61(b). The third alternative, risk-based disposal, is a process and decision document not unlike the Superfund remedial action decision-making process and record of decision (ROD). Each step would be approved by the Regional Administrator having jurisdiction over the site which is contaminated with PCBs, including a risk assessment and any onsite treatment, or redisposition of treated or untreated remediation waste at the site. Treatment levels would be based on a site-specific risk assessment described at proposed §761.61(c). Those seeking a PCB disposal approval could also avail themselves of the "Coordinated Approval" provision (see Unit III.K.1. of this preamble). This alternative would allow the recognition of a cleanup action conducted under another authority such as a RCRA corrective action permit or in compliance with a

CERCLA ROD or enforcement decision document.

i. *Self-implementing option.* The self-implementing alternative is patterned after the PCB Spill Cleanup Policy (40 CFR part 761, subpart G), which sets standards for cleaning up spills shortly after they occur. Like the PCB Spill Cleanup Policy, this proposed alternative requires that risk-based surface and soil levels be achieved. However, an important distinction between subpart G and the proposed self-implementing alternative is that for non-recent spills, there may be limited information concerning the concentration and amount of PCBs released to the environment and the time, nature, and extent of that release and any subsequent migration. Subpart G established spill cleanup requirements addressing the concentration and amount of spilled materials based on the location of the spill and potential exposure to the spilled PCBs. Spill cleanup in this proposal is based on the current concentration in the material onto which a spill occurred. The extent of migration of the spill is likely to be greater for an old spill than for a more recent or new spill. This difference plus the requirement for rapid initiation and containment of the spill were partly responsible for the provision at 40 CFR 761.135 which creates a presumption against an enforcement action for penalties for the act of illegal disposal. While the self-implementing proposal allows disposal of remediation waste according to the waste's current existing concentration, the proposal does not create a presumption against enforcement action for penalties for the act of unauthorized disposal. Another significant difference from subpart G is that the self-implementing disposal requirements would not apply to certain environmental and exposure scenarios having the potential for a high risk of exposure. Subpart G allows certain residual levels to remain after cleanup based on the potential future use of the site, including the imposition of physical or institutional restrictions limiting access, which could have been incorrectly assumed to always directly correlate with exposure in those areas. Today's proposal addresses residual levels based not only on access to areas, but also potential exposure to residual PCB levels within those areas. For example, a restricted access commercial area might limit who could be exposed, but might not limit how much a person with access could be exposed.

In this proposal, concrete is not considered a non-porous surface as it is in subpart G (see the proposed definition of "non-porous surface" at §761.3). Consequently, concrete containing PCBs would have to be removed rather than just wiped off. The size of the remediation area is not an issue with today's self-implementing proposal as it is with subpart G.

The self-implementing option differentiates between the cleanup of a site and the disposal of PCB remediation waste from the site. Cleanup means the identification and reduction of the PCB concentrations, and/or removal of PCB remediation waste to a specified residual PCB concentration at its existing location. The cleanup portion of this alternative allows remediation waste with specified PCB levels to remain undisturbed at the site and not be disposed of. Cleanup may be followed by either (or both) off-site disposal of a certain amount of PCB remediation waste, or treatment of a certain amount of remediation waste at the site. Disposal means the movement of PCB remediation wastes from the site of contamination to another location for destruction or containment (off-site disposal) or the destruction or containment of PCB remediation waste at the cleanup site (on-site disposal). Section 761.61 would apply to the cleanup and disposal of all PCB remediation wastes regardless of when the disposal, spill, or contamination occurred. Subpart G would continue to apply to recent spills from electrical equipment; however, the party responsible for the spill and cleanup could choose to follow §761.61. There are other conforming changes which could be made to 40 CFR part 761, subpart G, resulting from this proposal. These changes have not been made because those who were a party to the negotiation of subpart G have not been a direct party to the development of this proposal. Nevertheless, the conforming changes to subpart G have been accounted for in this proposal and the proposal is consistent with the conforming changes, especially with respect to references of "old" spills. Section 761.61 specifically applies to "old" spills.

The self-implementing remediation option proposes on-site disposal to specified cleanup levels of residual PCBs in the PCB remediation waste. Cleanup levels would be more stringent for high exposure areas than for low exposure areas, as these terms would be defined in §761.3. Three self-implementing on-site options are proposed: capping higher residual levels (a definition of "cap" is proposed at §761.3), "treating down" from higher levels to lower levels on-site using a non-chlorinated solvent washing process; and microencapsulation or vitrification (definitions of these terms are proposed at §761.3). These last two immobilization technologies are being proposed because they have been promulgated under RCRA for debris which is contaminated with both RCRA hazardous waste and TSCA PCB waste (see 57 FR 37194 –37282, August 18, 1992). Based on EPA's experience with approving PCB disposal technologies, the solvent washing process is the only currently available destruction or physical separation PCB disposal process considered generally effective in a variety of situations, commercially feasible at ambient temperatures (i.e., no external heat source), and safe enough to be conducted without prior approval. EPA will consider these factors, along with the general statutory requirement to prevent unreasonable risk of injury to health and the environment, in considering the addition, under §761.61(c), of other processes, procedures, or technologies to §761.61(a). EPA specifically requests comments on the best method to expeditiously include new universally acceptable risk-based treatment technologies as self-implementing treatment options prior to amendment of §761.61(a) in the **Federal Register**. The kind of solvent washing process EPA proposes for treating PCBs removes PCBs from the waste, separates the PCBs from the solvent, and reuses the solvent while disposing of the PCBs. Residual levels of solvent in the treated PCB remediation waste must correspond to allowable levels under all other Federal and local regulations, including requirements under RCRA and regulations of the Occupational Safety and Health Administration (OSHA). For other techniques such as vitrification, EPA is concerned about additional issues such as the release of volatile products of incomplete combustion (PICs) especially when the process is conducted *in-situ*. If EPA cannot devise a procedure or prescribe a technology for addressing the issue of volatile PICs, vitrification will be deleted from option (a) and only considered under option (c) in a risk-based approval. EPA specifically requests comment and supporting technical information on this issue.

RCRA uses the Toxicity Characteristic Leaching Procedure (TCLP), (40 CFR part 261 Appendix II, Method 1311), its model for co-disposal of potentially hazardous wastes with municipal solid waste in a landfill. Under RCRA regulations, the assumption is that if a waste does not exhibit the toxicity characteristic (and is otherwise not

hazardous), it does not need to be disposed of as a hazardous waste; thus, it can be placed in a solid waste landfill (40 CFR 261.3). EPA is drawing a parallel to the RCRA rules for disposal of certain treated remediation wastes under TSCA. EPA is proposing to use the RCRA TCLP as a measure of effectiveness of microencapsulation or vitrification of PCB containing remediation wastes. Using the RCRA model for establishing toxic contaminant levels, EPA is proposing 50 micrograms per liter (i.e., approximately 50 parts per billion [ppb]) as the treatability level for extractable PCBs. (The Toxicity Characteristic (TC) level for PCBs was proposed and subsequently withdrawn (see 57 FR 21520, May 20, 1992 and 57 FR 49280, October 30, 1992)). If adopted under TSCA, any PCB remediation waste that has been microencapsulated or vitrified and subsequently shown to leach PCBs at less than 50 ppb, as measured by the TCLP, would be considered appropriate for disposal in a municipal solid waste landfill, after written notice to the municipal solid waste landfill, or disposal could be at a TSCA approved disposal facility. The treated PCB remediation waste would still be subject to all prohibitions in the PCB rules including, but not limited to, use, reuse, export, or the proposed ban on open burning. One commenter to the ANPRM proposed that EPA use the American National Standards Institute/American Nuclear Society leachability test (ANSI/ANS 16.1) to determine the effectiveness of microencapsulation or vitrification technologies. The major technical differences between the two leaching procedures are the amount of surface area exposed to the leaching medium and the neutral (versus the TCLP's mildly acidic) nature of the leaching medium in the ANSI/ANS Standard. As stated in its introduction, the ANSI/ANS standard serves only as a basis for indexing releases from the encapsulant and does not apply to any specific environmental situation. The commenter noted that a variety of contaminant release tests and test conditions should be developed to assess the potential for release of specific contaminants in given situations. Since this proposal is focused on the release of a toxic constituent from a matrix when co-disposed with other solid waste in a municipal solid waste landfill, EPA believes that the question of which test to use is more properly addressed in the solid and hazardous waste regulations under RCRA than the PCB rules under TSCA.

Today's proposed self-implementing option for disposal of PCB remediation waste includes a different way to evaluate PCB concentrations during site remediation. Some field screening tests have been developed and approved for use under EPA's "Test Methods for Evaluating Solid Waste" (SW–846) and have otherwise been widely used. Chemicals other than PCBs at the remediation site may interfere with the tests and indicate that PCBs are not present when in fact PCBs are present (a false negative). The correct application of the tests may still not inform or warn the user of the presence of such interferences. This proposal includes the use of several kinds of PCB field screening tests during remediation, so long as confirmatory sampling is used to guard against false negatives and to demonstrate the absence of interferences which would render the analytical results invalid. The ability to obtain acceptable analytical results in a very short time on-site and while remediation is under way can complete remediation goals more quickly and at lower costs.

The self-implementing option for the disposal of PCB remediation waste would offer one new consideration for PCB disposal at §761.61(a)(4)(v): allowing non-liquid wastes generated by the cleanup process (e.g., spent abrasives) to be disposed of at their existing concentration (i.e, at a concentration less than the maximum concentration of PCBs found at the remediation waste site). Solvents used in remediation activities could be reused according to provisions proposed in §761.79(a)(1) and §761.61(a). During use of the solvents, secondary containment would have to be provided to ensure no solvent releases to soil or water. A general requirement for protection for workers engaged in decontamination activities is also proposed. Decontamination activities could not proceed until those workers conducting the decontamination are protected from exposure to PCBs and the materials used to decontaminate. EPA requests comments on this proposal and technical information on the performance and effectiveness of other treatment technologies the Agency could include in the self-implementing option.

ii. *Performance-based option.* The performance-based disposal option proposed at §761.61(b) includes the traditional disposal technologies of high-temperature incineration, high efficiency boilers, chemical waste landfills, and alternate destruction methodologies that are currently approved by the Director of the EPA Chemical Management Division for mobile, transportable, and non-unique fixed-site disposal units, and by the Regional Administrator for unique fixed-site disposal units. These technologies are based on their performance as required in the existing PCB disposal regulations. No specific changes are being proposed for these standards.

iii. *Risk-based option.* The risk-based remediation option proposed at §761.61(c) bases disposal requirements for PCB remediation waste on the potential risks to health and the environment resulting from residual PCBs in the PCB-remediation waste. Performance requirements could include destruction, containment, restriction of access to the disposal site, deed restrictions, and other short- and long-term management controls. The risk-based disposal standard would continue to be one of no unreasonable risk of injury to health and the environment.

The application and approval process for a risk-based remediation approval would be essentially the same as the current process for application for a performance-based PCB disposal approval. New approvals would be classified as performance-risk based approvals under proposed §761.61(c). Written applications would be required and the approving official (i.e., the Regional Administrator having jurisdiction over the site of remediation) would document in the approval: the reasons for the approval, the approval conditions, and EPA's findings. The process, criteria, and standards for decision-making would be similar to EPA's site remediation program under CERCLA. It is EPA's desire to limit the use of this time consuming and resource intensive proposed option in favor of the self-implementing provisions proposed in §761.61(a) or the decontamination procedures proposed as additions to §761.79. To assist the applicant in developing an approach for the risk-based disposal application, EPA's general principles for reviewing a PCB remediation approval application are stated here in the form of four preferences. The first preference would be to have a permanent remedy that allows for the least restrictive access and land use restrictions at each site. The second preference would be to impose greater protection of sensitive ecosystems such as water resources, croplands, grazing lands, and residential areas than the target standards, expressed as cleanup levels in the self-implementing option (at proposed §761.61(a)), would provide. The third preference would be for destruction or

extraction instead of land disposal. The fourth preference would be for using on-site or existing off-site disposal facilities versus developing new off-site land disposal facilities. Microencapsulation or vitrification would not be a preferred technology for PCBs if it caused unacceptable increases in the overall volume of wastes being sent off-site to chemical waste landfills, resulted in a liquid phase, or allowed unacceptable levels of leaching of PCBs.

The evaluation criteria for site-specific variances from the target standards would include: (1) Risk factors associated with the waste (e.g., volume, concentration, physical state, toxicity, mobility), and (2) risk factors associated with the proposed waste management option (e.g., safety, reliability, effectiveness, possibility of discharge to surface or ground water, current and reasonably expected future site use, technical feasibility, resource value, proposed institutional controls, permanence of remedy, potential for concentration of PCBs and waste minimization). While this paragraph reflects some factors associated with each criterion, these unranked factors would only provide notice and assistance in defining the criterion. EPA would not be limiting itself to the factors listed or require that each factor listed be considered.

e. *Implementation of PCB remediation programs.* Currently, based on the results of site sampling, historical, or other data, EPA may presume that PCBs are illegally disposed of at a site and require remediation under TSCA. In that case, the burden is on the site owner or operator to establish, through persuasive evidence, that the PCBs are not illegally disposed of under TSCA. Today, EPA proposes to address all PCB remediation waste, regardless of concentration, physical state or date of disposal (see proposed introductory text at §761.60) under §761.61, based on the risk of exposure or injury they now pose. EPA would apply the current "anti-dilution" provision at §761.1(b) to retain regulatory authority over PCB remediation waste even where the PCB concentration is now below 50 ppm, unless the dilution was authorized (e.g., as the result of a transformer reclassification under §761.30(a)(2)(v)) and the authorized dilution occurred prior to disposal. Anti-dilution would not mandate disposal requirements for PCB remediation waste under proposed §761.61 (or §761.62 for PCB non-remediation waste). Again, the burden would be on the site owner or operator to establish, through persuasive evidence, that the PCB remediation wastes, regardless of current concentration or date of disposal are legally disposed of under TSCA and in the case of wastes disposed of before April 18, 1978, which are now ≧50 ppm PCBs, do not pose a risk of injury. PCBs at any concentration are subject to remediation under CERCLA or corrective action under RCRA. This is not an inconsistency in application of the various statutes because the 50 ppm PCB level under TSCA is based in part on the economic impacts of the PCB regulations and not solely on risk. EPA is not precluded from taking action under any other statute it administers simply because it has chosen not to regulate use or disposal or take remedial action under TSCA. For example, a party begins a cleanup of a historic pre-1978 spill. This site would not fall under 40 CFR part 761, subpart G and would require Regional approval for cleanup levels for PCBs at ≧50 ppm. The soil at the site is found to vary in concentration between 10 ppm and 100 ppm PCBs. Upon application to the Regional Administrator, under proposed §761.61(c), the site could be cleaned to a specified level, and the resulting PCB remediation waste treated by chemical dechlorination. Or, under the proposal, the Regional Administrator could, upon application and upon a site-specific evaluation, determine that an immobilizing procedure such as *in situ* vitrification was a viable alternative. A disposal application would then be judged by EPA on its overall ability to protect health and the environment from unreasonable risk of injury from PCBs. PCBs at levels <50 ppm (at a pre-1978 disposal) would still be subject to cleanup under RCRA and CERCLA authorities.

The disposal rule proposed today would be a potentially "applicable or relevant and appropriate requirement" for PCB cleanups under the CERCLA, both with respect to the disposal of PCB remediation wastes at CERCLA sites, and with respect to the remediation approach utilized and the residual level of PCBs in soil. However, EPA does not anticipate that the provisions relating to the remedial approach and residual levels permitted will significantly affect CERCLA cleanups, because the rule would provide three options. Generally, EPA would be likely to select the risk-based option at §761.61(c), which would give the Agency very broad discretion in selecting a remedy.

One commenter suggested that EPA should conduct a comparative risk analysis of all possible disposal techniques and include other factors such as transportation and disposal of treatment residues before issuing a PCB disposal approval under TSCA. EPA does not believe that TSCA authority should be used to accomplish exactly what CERCLA, an all encompassing proactive remediation statute, was designed to do. Rather, the PCB disposal approval process under TSCA is simply one of determining the effectiveness of an applicant's proposed cleanup and disposal options for PCBs in achieving a specific standard.

5. *PCB remediation wastes.* One category of large volume PCB wastes includes all contaminated environmental media, dredged materials, municipal sewage treatment sludges, commercial or industrial sludges in or from any pollution control device (contaminated as the result of a spill of PCBs but not resulting from the incidental manufacture of PCBs); soil, rags, and other debris generated as the result of a spill cleanup; and site removal, remediation, or corrective action waste at any concentration of PCBs and in liquid or non-liquid form. This category of wastes would be referred to as "PCB remediation wastes," and EPA is proposing this definition at §761.3. In response to comments and to simplify the application of these amendments, EPA is proposing that PCB remediation wastes include both liquids and non-liquids at any concentration of PCBs, in any quantity or volume, regardless of when the waste was generated.

6. *PCB non-remediation wastes.* The other category of large volume PCB wastes would be referred to as "PCB non-remediation wastes." PCB non-remediation waste includes: non-liquid bulk wastes or debris from the demolition of buildings and other human created structures where the construction materials were manufactured or coated (e.g., by using paint containing PCBs) with PCBs as opposed to being contaminated with PCBs (e.g., through a spill from electrical equipment); wastes from the chopping or shredding of automobiles, household and industrial appliances, or other white goods (i.e., shredder fluff); PCB-impregnated electrical, sound-deadening, or other types of insulation and gaskets; and all other PCB Items or PCBs for which disposal requirements are not otherwise specified in §761.60, regardless of concentration where the concentration at the time of disposal was greater than or equal to 50 ppm PCBs. EPA is proposing a definition of "PCB non-remediation waste" at §761.3.

Shredder wastes comprise small pieces of metal, rubber, plastic, fabric, foam, insulation, wire, cardboard, dirt, and various other materials. Demolition wastes may contain any number of materials, including some of the same

materials found in shredder waste. The results of shredding or demolition processes may be that the sources of PCB contamination in these large volume wastes may not easily be identified. In addition, some decommissioning projects and demolition projects may produce large quantities of insulation containing PCBs.

Shredder waste is also the "end of the line" for many items, not otherwise regulated for disposal, that find their way into the scrap metal stream, and may result in subsequent contamination of shredder waste. EPA acknowledges the need for responsibly operated metal recycling facilities. As such, EPA is reiterating that all wastes containing 50 ppm PCBs or greater, including shredder wastes, as well as demolition wastes and large volumes of other PCB non-remediation wastes impregnated with PCBs (e.g., insulation), are regulated for disposal. However, EPA is proposing at §761.62 that where PCB non-remediation wastes are the result of processing PCBs regulated for disposal, the wastes resulting from that processing are also regulated for disposal even when the resulting concentration of the processing wastes is less than 50 ppm PCB, through action of the anti-dilution provision at §761.1(b). Where the waste is already shredded, statistically valid sampling and analytical methods acceptable to EPA, such as those in proposed Appendix III to part 761, may be used to characterize the contamination to support proposals for various disposal options. Under the TSCA PCB program, EPA will not accept any sampling method that mathematically masks or dilutes areas of PCB contamination. A generator or facility owner or operator may demonstrate that no PCBs greater than or equal to 50 ppm were in the wastestream at the time of generation or that all wastes containing PCBs are exempt under the TSCA Household Waste Exemption (Unit II.D.1. in this preamble). Conscientious operators of demolition activities and shredding facilities should be aware of known sources of contamination that can readily be removed from the wastestream before processing and disposal. These sources may include small capacitors, light ballasts, or PCB-Contaminated Articles such as hydraulic equipment. Proposed §761.62 would allow for other disposal options for PCB non-remediation wastes based on site-specific criteria by extending the risk-based philosophy of the disposal requirements for municipal sludges and dredged materials under proposed §761.60(a)(5). Under this proposal, EPA could also require as a condition of any approval under this section the implementation of a source identification and removal program to control the level (i.e., concentration) and variability of PCBs in the wastestream. In compliance with current restrictions, items regulated for disposal such as transformer carcasses, nonintact or leaking small capacitors, or wastes resulting from unauthorized uses must not be placed in the metal stream destined for shredding facilities.

a. *Risk-based disposal.* In general, EPA's preference for disposal of PCB non-remediation wastes under proposed §761.62 is to approve their disposal in a well-engineered and operated municipal solid waste landfill with appropriate monitoring to detect releases of PCBs to the environment. Facilities should also be designed and operated in such a manner as to control the release of PCB non-remediation wastes to the environment by controlling among other things, areal dispersion, run-on and runoff, and leachate generation and management from the waste disposal units. EPA would not be inclined to approve the disposal of PCB non-remediation wastes as fill material in environmentally sensitive areas including but not limited to sites in 100–year flood plains, near potential sources of drinking water, in wellhead protection areas, and in residential settings. PCB non-remediation wastes could still be disposed of under the three current disposal options of incineration, chemical waste landfill, or any alternative disposal methods approved under TSCA authorities by the Regional Administrator upon application. Under the proposal, if the waste is not uniform in PCB contamination, the Regional Administrator may specify appropriate limitations on the method or location of disposal (§761.62(c)(4)). Where PCB non-remediation waste is stored on the ground (e.g., in a pile), any soil contaminated with non-remediation waste would be regulated for disposal under §761.61.

b. *Leachability-based disposal.* As an alternative to obtaining a risk-based TSCA disposal approval under proposed §761.62(c), EPA is proposing under §761.62(b), to allow the disposal of PCB non-remediation waste in a municipal solid waste landfill if the level of PCBs in the waste as measured by the Toxicity Characteristic Leaching Procedure was less than 50 micrograms per liter (i.e., 50 ppb) and the landfill is notified in writing, at least 15 working days prior to their receipt of the waste. This self-implementing option would be available to only the PCB non-remediation waste itself and not to any material resulting from pre-treatment such as microencapsulation or vitrification of the waste. Any proposal to process (i.e., pretreat) PCB non-remediation waste currently requires an approval, and this is not proposed to change. Disposal of PCB non-remediation wastes, such as wastes from automobile or appliance shredders, in a municipal solid waste landfill is currently prohibited by the PCB regulations, but may be allowed by EPA on a case-by-case basis.

EPA requests comment, with supporting data, on the inclusion of other self-implementing options for the storage and disposal of PCB non-remediation wastes under §761.62(b). These additional options would include provisions to make them generally applicable nationwide and not require additional site-specific prohibitions or limitations.

c. *Performance-based disposal.* PCB non-remediation waste could still be disposed of in a TSCA approved incinerator or chemical waste landfill under proposed §761.62(a). This option would be most appropriate where the PCB for PCB non-remediation waste which was no longer being generated, the waste could not be disposed of under proposed §761.62(b) because of high levels of leachable PCBs, and where the situation would not warrant the expenditure of resources to apply for a risk-based disposal approval under proposed §761.62(c).

7. *Decontamination standards and procedures.* EPA is proposing several changes and additions to §761.79 with general applicability throughout the PCB program under TSCA, for liquids and non-porous surfaces, except where another standard is established, for example in a RCRA permit, a TSCA PCB disposal approval, a Superfund ROD, or a Superfund enforcement decision document. Today's proposal includes a general decontamination standard of ≤ 10 micrograms PCBs (μg)/100 square centimeters (cm^2) (as measured by standard wipe tests, §761.123) for a non-porous surface (see proposed definition at §761.3) and two decontamination procedures for non-porous surfaces. The decontamination standard may be achieved using any disposal or cleaning technique which, in some instances, may require prior approval by EPA. Although activities such as filtering, soaking, wiping, stripping of insulation, chopping, scraping, or the use of abrasives to remove or separate PCBs from contaminated surfaces or liquids may be processing for disposal as opposed to disposal, EPA is proposing

to waive any requirement to obtain prior approval under TSCA for these listed activities. EPA also considered whether to include distillation in this exemption but remains concerned about releases of volatile and semi-volatile organic compounds to the environment. EPA is seeking comment on the inclusion of distillation. All residues containing PCBs from these and other "disposal" activities would remain regulated.

The proposed standard for decontamination of solid surfaces is the standard in the PCB Spill Cleanup Policy at §761.125(c)(2)(i). EPA believes that ≦ 10 μg PCB/100 cm² is protective for disposal or subsequent reuse of the decontaminated surface. This standard has also been demonstrated to EPA through the PCB disposal approval process to be achievable through a wide variety of techniques. The residual cleaning materials containing PCBs would be managed and disposed of as a PCB waste in accordance with the applicable PCB disposal regulations in part 761, subpart D. The "Note" currently following §761.79 would be inserted as introductory text under §761.79 to warn those conducting decontamination operations that compliance with this section would not relieve them of their duty to comply with other Federal, State, or local requirements for the use and disposal of solvents. One example is the requirement to comply with the rules for the disposal of wastes identified or listed under RCRA or State or local laws as solid, hazardous, or otherwise regulated wastes.

As an alternative to decontamination followed by sampling, for non-porous surfaces, especially those that cannot be accessed for sampling, EPA is proposing two non-aggressive procedures for decontamination. The first procedure is for surfaces contaminated with mineral oil dielectric fluid (MODEF) with PCB concentrations ≦ 10,000 ppm (see proposed §761.79(e)). The second procedure is for surfaces contaminated with higher concentrations of PCBs in MODEF and askarel PCBs (see proposed §761.79(f)). Each procedure involves a 15–hour non-aggressive soaking (i.e., no agitation of the kerosene or movement of the contaminated surface in the kerosene). Proposed §761.79(f) would require a second soak with clean kerosene.

After decontamination using one of these procedures, the decontaminated surface would not be regulated for disposal and could be reused except in association with food, feed, or drinking water in accordance with proposed §761.20(c)(5). EPA's research demonstrates that these two non-aggressive procedures using kerosene should decontaminate surfaces to a level ≦ 10 μg/100 cm². Therefore, confirmatory sampling would not be required. EPA is requesting comment, supported by laboratory data, on aggressive versus the proposed non-aggressive decontamination techniques especially where the volume of kerosene or another solvent proposed by the commenter can be reduced. EPA recognizes that there is a possibility that the proposed decontamination procedure may not result in final surface levels at or below 10 μg/100cm². For purposes of implementation, if EPA subsequently sampled a decontaminated surface and found levels above 10 μg/100 cm², the surface would be regulated unless it could be shown by the owner (i.e., through laboratory documentation) that the original PCB concentrations were determined, the prescribed procedures in §761.79(e) or (f) were followed for those concentrations of PCBs, and the prescribed volume of PCB rinseate was used and properly disposed of (i.e., through copies of the manifests and certificates of disposal).

EPA is also proposing additional language at §761.79(a) to clarify that the disposal of solvents, abrasives, or equipment used in decontamination procedures is regulated and is proposing another disposal option, specifically disposal in an industrial boiler, for certain of those solvents. The proposal would also require at §761.79(a)(5) that all decontamination activities be conducted with containment adequate to prevent releases of PCBs to the environment. EPA is proposing that any decontamination activities conducted in accordance with the provisions of §761.79 would not require a PCB disposal approval from EPA. Workers would have to be protected against exposure through dermal contact or inhalation; however, EPA is not specifying what measures must be taken.

The proposal establishes a decontamination standard for water of 0.5 micrograms PCB per liter (0.5 μg/l) or approximately 0.5 ppb PCB (see proposed §761.79(g)). This standard is consistent with EPA drinking water levels for PCBs at 40 CFR 141.61(c). EPA is proposing a 0.5 ppb decontamination standard because it is difficult to ensure that the decontaminated water will not be reused in association with food or feed or as drinking water for livestock or humans. A conforming amendment at proposed §761.20(c)(6) would allow the unrestricted reuse of water decontaminated in accordance with the level established in §761.79(g). The Agency believes that uses of water at or below the proposed decontamination level would not pose an unreasonable risk of injury to health or the environment. The proposal also establishes a decontamination standard for organic liquids, not associated with remediation wastes, of less than 2 milligrams PCB per liter (i.e., <2 ppm PCB) (see proposed §761.79(h)).

EPA believes that placing these standards in the decontamination section will clarify and simplify the implementation of the PCB program by specifically defining levels for decontamination and removing the prohibitions against reuse (see §§761.20(c)(5) and (6)). The proposed introductory text to §761.60 states in part that "...PCB wastes must be disposed of in accordance with provisions of this subpart." EPA interprets this to mean that any PCB otherwise subject to the disposal requirements of §761.60, may also be disposed of through decontamination under proposed §761.79.

8. *Distribution in commerce and use of decontaminated equipment, structures, and materials.* The Agency is proposing a conforming amendment to the current provisions of §761.20(c) as an exception to the general prohibition against the distribution in commerce and use of equipment, structures, and materials unless they are decontaminated under a TSCA approval, or the provisions at proposed §761.79. This amendment is important because it causes the scope of the PCB prohibitions in this section to, among other things, specifically conform to the current use of TSCA disposal approvals in establishing decontamination or cleanup levels (see proposed §761.20(c)(4)). EPA also proposes at §761.20(c)(7) to exempt from the general prohibition on use of PCBs, surfaces (e.g., equipment) which comes in contact with PCBs or PCB wastes at ≧50 ppm by allowing its continued use until thw surface exceeded the appropriate decontamination standard, at which point it would have to be decontaminated or disposed of. The Agency believes that the further use, or distribution in commerce of items decontaminated or cleaned up to specific standards established in applicable EPA PCB spill cleanup policies, §761.79, or a TSCA approval would not present an unreasonable risk of injury if the decontaminated items are not used or reused in association with food, feed, or drinking water. For water, a standard is being proposed at §761.20(c)(6) that is stringent enough to allow unrestricted distribution or reuse of the decontaminated water. In §761.20(c)(7), the Agency is proposing

to allow the restricted distribution or reuse of solid, nonporous surfaces that have been contaminated by regulated PCBs if the final PCB concentration meets the decontamination standard proposed at §761.79(d), regardless of the original concentration of the PCBs. Although any liquid (e.g., a solvent) or solid (e.g., an abrasive) used for decontamination would remain regulated, the decontaminated surface could be distributed or reused pursuant to proposed §761.20(c)(5) and (6).

9. *Processing for disposal.* Current §761.20(c)(2) says in part that PCBs "may be processed . . . in compliance with the requirements of this part for purposes of disposal in accordance with the requirements of §761.60." The preamble language addressing this section (see 44 FR 31527, May 30, 1979) explained that the provision was intended to apply to the concentration of PCBs in a manufacturing waste stream where the wastes resulted from the manufacture and processing of PCBs for use. EPA is clarifying how this paragraph applies to the disposal of all PCBs, including those removed from use. Today, EPA is broadening the exemption for processing for disposal by identifying which processing for disposal does not require an approval and which processing for disposal does require a PCB disposal approval. EPA clarifies that processing activities which are primarily associated with and facilitate the storage and transportation of PCBs for disposal would not require an approval. Processing activities which are primarily associated with and facilitate treatment, as defined in §261.10, or land disposal, rather than storage or transportation for disposal would require an approval unless the processing was part of an activity already included in an approval or other authorization in subpart D of this part, for example in §§761.61(a), 761.62(b), or 761.79.

Specifically, EPA is implementing the existing provisions at §761.20(c)(2) as follows:

(a) Processing activities which are primarily associated with and facilitate storage or transportation for disposal do not require a TSCA PCB disposal approval. Examples include, but are not limited to removing PCBs from service (e.g., draining liquids), packaging or repackaging PCBs for transportation for disposal, or combining materials from smaller containers into larger containers in accordance with §761.1(b).

(b) Processing activities which are primarily associated with and facilitate treatment or land disposal require an approval unless they are part of an existing approval or are part of a self-implementing activity such as §761.61(a) and §761.79 or otherwise specifically allowed under 40 CFR part 761, subpart D. Examples include but not limited to microencapsulation; pulverization; particle size separation; employing augers or hoppers to facilitate feeding non-liquid PCBs into a disposal unit; and directly piping liquid PCBs into a disposal unit from PCB items, storage containers or bulk transport vehicles; or directly introducing non-liquid PCBs from containers, bulk transport vehicles or on pallets into a disposal unit, such as an incinerator, a high efficiency boiler, industrial furnace, alternate destruction method, or chemical waste landfill.

(c) With the exception of provisions in §761.60(a)(2) or (3), in order to meet the intent of §761.1(b), processing, diluting or otherwise blending of waste prior to being introduced into a disposal unit for purposes of meeting a PCB concentration limit shall be included in a disposal approval or comply with the requirements of §761.79.

(d) The rate of delivering liquids or non-liquids into a PCB disposal unit shall be part of the conditions of the PCB disposal approval for the unit when an approval is required.

B. Large Volume PCB Articles

Section 761.3 currently defines "PCB Article" as any manufactured article, other than a PCB Container, that contains PCBs and whose surface(s) has been in direct contact with PCBs. "PCB Article" includes capacitors, transformers, electric motors, pumps, pipes, and any other manufactured item (1) that is formed to a specific shape or design during manufacture, (2) that has end use function(s) dependent in whole or in part upon its shape or design during end use, and (3) that has either no change of chemical composition during its end use or only those changes of composition that have no commercial purpose separate from that of the PCB Article.

The large volume article disposal proposals differ from the existing PCB Article disposal regulations in two ways: they focus more on the presence of PCBs rather than on the presence of PCB containing liquids; and the proposed changes focus more on the decontamination of portions of the articles for purposes of another use (metal recovery) or reuse (by verifying the absence of PCBs presumed present), rather than for outright disposal (i.e., destruction or landfilling) of the article.

1. *Disposal.* The current §761.60(b)(5) would be redesignated as §761.60(b)(6). The new §761.60(b)(6)(ii) would be amended to include language allowing disposal in industrial furnaces (as defined in the proposed §761.3) of drained PCB-Contaminated Articles. A new §761.60(b)(6)(iii) would be added to address PCB Articles with surfaces contaminated with PCBs, but which contain no liquids by which to characterize the article.

With respect to §761.60(b)(6)(ii), although not explicitly provided for in the current regulations, EPA in the past, has interpreted disposal in an industrial furnace, as defined in proposed §761.3, as an appropriate method of disposal also for drained PCB-Contaminated Transformers and drained PCB-Contaminated natural gas pipeline (see Ref. 25).

Currently, the regulations specifically state that "salvage" is an acceptable form of disposal for "PCB hydraulic machines" containing PCBs at concentrations of ≧50 ppm (§761.60(b)(3)). The word "salvage" has been interpreted by EPA to allow smelting of "PCB hydraulic machines" that have been drained of all free flowing liquid. (See Ref. 21) In addition to disposal of hydraulic machines, which have been drained of hydraulic fluids, in municipal or industrial landfills, EPA is proposing to amend §761.60(b)(3) to allow salvage by disposal in industrial furnaces, as defined in proposed §761.3. It should be noted that PCBs, not just free flowing liquids, associated with the PCB Articles must be removed from the surface of the item before the item may be reintroduced into commerce. EPA is seeking comments and data on disposal techniques such as disposal in industrial furnaces for inclusion in this amendment.

The new §761.60(b)(6)(iii) addresses PCB Articles with surfaces contaminated with PCBs, but which contain no liquids by which to characterize the article. This category of PCB Articles would include, but not be limited to, ship hulls, air handling systems, and other articles that could be characterized by a wipe sample. As a point of clarification, EPA believes that PCB-Contaminated Electrical Equipment with porous material in its core will probably not rapidly be able to meet the requirement of being drained, because the porous core will continue to release liquid for an extended period of time after the initial liquid is drained from the unit. In these cases EPA recommends that the core and any other sorbent material be removed and placed in a TSCA approved chemical waste landfill.

PCB-Contaminated Articles regulated under proposed §§761.60(b)(6)(ii) or (iii) would be required to be disposed of in:

a facility permitted, licensed, or registered by a State to manage municipal or industrial solid waste (excluding thermal treatment units), an industrial furnace (defined in proposed §761.3) operating in compliance with the requirements of §761.60(a)(4), or other TSCA approved disposal facilities.

As a point of clarification, the phrase "is not regulated for disposal" at current §§761.60(b)(4) and (b)(5)(ii) does not mean that drained PCB-Contaminated Electrical Equipment and PCB Articles may be sold, distributed in commerce for sale or use, or reused without an exemption under these rules. The phrase only means that a waste can be disposed of, in accordance with the definition of disposal at §761.3, without a TSCA PCB approval.

2. *Open burning and industrial furnaces.* Currently, §761.60(b)(4) and (b)(5)(ii) provide that drained PCB-Contaminated Electrical Equipment (except capacitors) and drained PCB-Contaminated Articles are not regulated for disposal. EPA chose not to regulate the disposal of certain PCBs because it found that the risks were not unreasonable. However, EPA is aware that certain PCBs have been disposed of through "open burning" (e.g., the burn-out of core materials in PCB-Contaminated Transformers) without adequate provision for efficient combustion and control of gaseous combustion products. EPA currently controls the combustion of PCBs through incinerator and industrial boiler criteria set out at §761.70, to limit the release of PCBs and the production or release of byproducts of the incomplete combustion of PCBs such as dioxins and furans. EPA is proposing at §761.3 a definition of "open burning" that is consistent with RCRA's definition at 40 CFR 260.10, a ban on the practice of open burning. Open burning can result in the volatilization of PCBs and several toxic products of incomplete combustion including polychlorinated dibenzofurans; 2,3,7,8-tetrachlorodibenzofuran; polychlorinated dibenzo-*p*-dioxins; and 2,3,7,8-tetrachlorodibenzo-*p*-dioxin.

This provision would prevent open burning of regulated PCBs in State permitted, licensed, or registered municipal solid waste combustors (i.e., thermal treatment unit) unless the combustor met the requirements for an industrial furnace set out at proposed §761.3 and §761.60(a)(4). To facilitate the Regional Administrator's review of the operation of an industrial furnace, a site-specific risk assessment would need to accompany any request for a Regional Administrator's determination of no unreasonable risk. This risk assessment could be in the form of a permit issued under RCRA or the Clean Air Act, or as a separate determination issued by the Regional Administrator prior to combustion of PCBs.

Industrial furnaces, as defined in 40 CFR 260.10, are being proposed as an acceptable form of disposal when as industrial furnace combusting PCBs does not release unreasonable levels of PCBs to the environment. To help ensure that PCBs disposed of in an industrial furnace do not pose an unreasonable risk of injury to health or the environment, EPA is proposing at §761.60(a)(4) that industrial furnaces used for disposal of PCBs be operated under either a RCRA permit (40 CFR part 266, subpart H and 40 CFR 270.66) for industrial furnaces or a valid State air permit that includes a standard for PCBs, and that the industrial furnaces be in compliance with the conditions of their permit. Where an industrial furnace does not meet the permit requirements, upon written request by the owner or operator of the industrial furnace, the Regional Administrator may make a finding, in writing, that the combustion of PCBs in certain industrial furnaces would not pose an unreasonable risk to health or the environment if the industrial furnace is operating in compliance with the proposed conditions discussed below even though it does not have RCRA or State air permits. EPA is amending Form 7710–53, "Notification of PCB Activity," to include a category for industrial furnaces and is proposing that owners of this equipment comply with the notification requirements of §761.205 by notifying the Agency that their equipment is used to dispose of PCBs. (For the reader's convenience, a copy of the revised form is reproduced at unit III.J. of this preamble and may be used to notify EPA of PCB waste handling activities. The form will nolonger be shown in 40 CFR part 761.)

The following operating conditions are being proposed at §761.60(a)(4) for industrial furnaces disposing of PCB-Contaminated Items. The conditions are: (1) The operating temperature of the industrial furnace must be at least 1,000° C (centigrade) at the time it is charged; (2) each charge must be fed into molten metal or metal at or above 1,000° C; (3) successive charges must not be introduced into the hearth in less than 15 minute intervals, (4) there shall be no visible particulate emissions from the stack during PCB disposal (as determined by Method 9 in 40 CFR part 60 Appendix A), (5) there shall be no visible fugitive particulate emissions from the industrial furnace building during PCB disposal (as determined by Method 9, in 40 CFR part 60 Appendix A); (6) the industrial furnace must have an operational device which accurately measures, directly or indirectly, the temperature in the hearth; and (7) a reading of the temperature in the hearth at the time it is charged must be taken, recorded, and retained at the facility for 3 years from the date each charge is introduced. If EPA ever determined that an industrial furnace was not operating in compliance with one or more of the conditions proposed in §761.60(a)(4), was not operating under and in compliance with a valid RCRA permit or State air permit (with an emissions standard for PCBs) or a finding by the Regional Administrator, the owner or operator of that industrial furnace would be deemed to be conducting "open burning", and would be, among other things, prohibited from introducing any additional PCB wastes into the unit. Examples of acceptable industrial furnaces which could meet the proposed operating conditions include, but are not limited to, electric arc furnaces, blast furnaces, and open hearth furnaces. If drained PCB-Contaminated Items are charged at less than 1,000° C into a furnace chamber and the furnace gas emissions from this chamber passed through a secondary combustion chamber, this kind of furnace shall be approved according to §761.60(e). This disposal option would not be available for TSCA regulated PCB liquids.

As a conforming change, due to the proposed ban on open burning, EPA is proposing to delete the phrase "is not regulated by this rule" from the PCB regulations at §761.60(b)(4), governing disposal of drained PCB-Contaminated Electrical Equipment, except capacitors and (b)(5), governing disposal of drained PCB-Contaminated Articles. The proposal would substitute the phrase "may be disposed of in a facility permitted, licensed, or registered by a State to manage municipal or industrial solid waste (excluding thermal treatment units), an industrial furnace as defined in §761.3, operating in compliance with the requirements of § 761.60(a)(4), or a disposal facility approved under this part." The purpose of these proposals is to promote, with minimal regulatory burden, certain recycling practices such as smelting for the recovery of metals and to stop such practices as the unapproved burning of PCB liquids, contaminated wood or paper cores, or contaminated insulation even where there may be a claim of energy recovery unless specifically allowed elsewhere by these regulations.

Some commenters to the ANPRM advised EPA against proposing controls

on industrial furnaces, stating that current processes were adequate. However, another group of commenters recommended that either additional controls be placed on industrial furnaces or that drained PCB-Contaminated Items be otherwise regulated for disposal. These commenters suggested environmental harm could be caused by the unregulated combustion of PCB-Contaminated Items.

EPA believes that responsibly run industrial furnaces provide a valuable recycling benefit and that the current Federal regulatory matrix in conjunction with the proposed operating standards would provide adequate controls on any potential emissions.

3. *Characterization of PCB Articles.* Under §761.60(b)(5) of the current rules, PCB Articles are characterized by the PCB concentration found in the free flowing liquid. This method is appropriate for electrical equipment containing PCBs and some other articles containing PCBs. However, it may not be appropriate for PCB Articles whose surfaces may be contaminated with a very light coating of liquid which is not free flowing. In these instances, EPA is proposing at §761.60(b)(6) that the standard wipe test be used to characterize these articles. Nonporous surfaces including, but not limited to, ship hulls and air handling systems could be wipe sampled under proposed §761.60(b)(6)(iii), pursuant to the wipe sampling guidelines, at locations that accurately characterize the article. Areas directly in contact with PCBs would have to be sampled. Any nonporous surface found to be contaminated with PCBs at <100 micrograms per 100 square centimeters could be disposed of in an industrial furnace. Other articles found to be contaminated with PCBs at ≧100 micrograms per 100 square centimeters must be disposed of in a TSCA approved incinerator or placed in a TSCA approved chemical waste landfill. EPA is proposing to limit the application of the wipe test to characterize items for disposal to certain articles. The wiped surface must be non-porous for the test to accurately characterize the contamination level of the article. However, a standard wipe test may be applicable to other PCB Articles with porous surfaces under an alternative disposal approval (§761.60(e)). Any article may also be disposed of through decontamination under proposed §761.79, as applicable.

4. *Characterization of natural gas pipeline.* A new §761.60(b)(5) and Appendix I would be created to address disposal, including abandonment in place, and removal of natural gas pipeline. This section proposes the characterization of natural gas pipeline by direct analysis of pipeline fluids, commonly found in pipeline "drips" and geographic low points or the use of the standard wipe test for characterization purposes, if liquid samples are not available. Natural gas pipeline being removed from service which is characterized as PCB-Contaminated, that is, between 50 and less than 500 ppm PCBs in pipeline fluids or, for drained pipe, those segments which are greater than 10 to less than 100 micrograms PCB per 100 square centimeters, as characterized by the standard wipe test, may be disposed of in a facility which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste (except thermal treatment units), in an industrial furnace operating in compliance with the requirements of §761.60(a)(4), or in a TSCA approved disposal facility. Natural gas pipeline characterized at 500 ppm PCB or greater in its condensate liquids or 100 μg/100cm² PCB or greater in a standard wipe sample could be removed and managed in a TSCA approved disposal facility, as a PCB non-remediation waste under proposed §761.62 or decontaminated under proposed §761.79. Natural gas pipeline with an inside diameter of 4 inches or less is proposed to be disposed of in the same manner as PCB-Contaminated pipeline.

The natural gas pipeline industry routinely takes segments of pipeline out of service by abandoning the segments in the right-of-way. EPA is proposing several options for natural gas pipeline that would be abandoned in place. Natural gas pipeline at any concentration of PCBs, containing no free-flowing liquid and with an inside diameter of 4 inches or less, could be abandoned in place by filling the pipe to 50 percent of the volume with cement or other materials listed in proposed §761.60(b)(5) or placing the abandoned segment in a public service notification program and under either option, sealing the ends shut. PCB-Contaminated natural gas pipeline of any diameter could be abandoned in place if it contained no free flowing liquids and each end was sealed shut. Natural gas pipeline at concentrations of 500 ppm PCBs or greater, or 100 μ/100cm² PCBs or greater could be abandoned in place if it was either washed once with diesel fuel or filled to 50 percent of its volume with cement or other materials listed in proposed §761.60(b)(5) and, in either case, each end was sealed. Where natural gas pipeline of any diameter or PCB concentration is abandoned in certain listed locations that could be difficult to sample, the segments would be filled to 50 percent with cement or other materials listed in proposed §761.60(b)(5), unless cement was specified as a requirement for abandonment.

EPA proposes, in Appendix I, details on how to characterize natural gas pipelines containing PCBs for abandonment and removal. Appendix I would require that natural gas pipeline containing PCBs be wiped on the lowest point on the inside surface of each end of a removed segment of pipe as that point would be determined prior to removal from the ground. Where the pipe was removed from the ground, the removed segment to be sampled could not exceed 40 feet in length. Segments of natural gas pipe removed from the ground for disposal would be required to be sampled at each end. A length of pipe having seven or fewer segments that was removed for disposal would have to be sampled at each end of each segment. For removal of multiple contiguous segments, greater than seven segments but less than 3 miles in total length, samples would be required from both ends of the first and last segments removed and both ends of five randomly chosen segments in between (with this scheme producing seven sampled segments). For removal of multiple contiguous segments more than 3 miles in total length, samples would be required from both ends of the first segment and both ends of each segment that is one-half mile distant from the segment previously sampled (with this scheme producing a minimum of seven sampled segments).

For pipe to be disposed of, the analytical results of both samples from each segment sampled would be averaged to determine the level of contamination. If any average sample results from any segment removed were greater than 10 to less than 100 micrograms PCB/100 square centimeters, then that segment would be considered PCB-Contaminated. If any average sample results from multiple contiguous segments removed were greater than 10 micrograms PCB/100 square centimeters then all unsampled segments in that removal would be presumed to be contaminated with PCBs at that level. Other sampling regimes could be approved in a disposal approval issued under §761.60(e) or §761.62(c).

C. PCB/Radioactive Wastes

The Agency solicited through the ANPRM information and comments regarding the regulation under TSCA of

the continued use, storage, and disposal of mixtures, items, and wastes with both PCB and radioactive constituents. Information was requested to be used to propose criteria for developing an authorization for the continued use, storage, and disposal of such materials, which would minimize risks to health and the environment from PCBs. With respect to radioactive components, the proposed criteria would achieve compliance with requirements established under the authority of the Atomic Energy Act (AEA) as amended (42 U.S.C. 2011) and maintain doses from radioactive materials regulated under the AEA at a level that is "As Low As Reasonably Achievable" (ALARA) (40 FR 19442, May 5, 1975; 10 CFR part 50, Appendix I).

The Nuclear Regulatory Commission (NRC) and the Department of Energy (DOE) participated in the identification of situations of potential concern due to the presence of radionuclides and the development of the proposed waste management options for PCB/radioactive waste, as reflected in this section.

The ANPRM stated that neither TSCA nor the PCB regulations has waiver provisions similar to those under RCRA and solicited comments on amending the 1–year time limit for storage and disposal for PCBs at 40 CFR 761.65(a) where no disposal technology exists. An extension to the 1–year storage and disposal requirement could also be appropriate for situations where the disposal capacity or the time necessary to complete the disposal are insufficient. This approach would provide flexibility on a case-by-case basis to address specific use scenarios or storage requirements and issues unique to PCB/radioactive waste management.

The majority of comments supported flexibility in extending the 1–year time limit for storage and disposal, and concurred with the proposal that such extensions or waivers should be determined on a case-by-case basis. Some commenters suggested a general regulatory waiver or variance to the 1–year time limit for storage and disposal requirement. Still another commenter suggested that EPA grant an exemption similar to the national capacity variance to RCRA's hazardous waste land disposal restriction requirements. Other commenters proposed a "good faith" showing by contacting disposal facilities nationwide and certifying that disposal capacity is not available for wastes remaining in storage. Many commenters also supported extending or waiving the 1–year time limit for storage and disposal requirement for materials like PCB/radioactive waste. Commenters recommended extensions for problems such as: a lack of disposal or treatment technology, a lack of disposal or treatment capacity, and a lack of sufficient time to complete the disposal process (e.g., bioremediation).

EPA, in Unit III.G.3 of this preamble, is proposing to amend 40 CFR 761.65 to allow for self-implementing and case-by-case extensions to the 1–year time limit for storage and disposal requirement for any PCB wastes. PCB/radioactive wastes are included in that proposal.

Proposed §761.65(a)(2) would provide the Regional Administrator for the Region where the waste is being stored, or the Director, Chemical Management Division (CMD), authority to grant extensions to the current 1–year time limit for storage and disposal of PCBs, including PCB/radioactive wastes. An extension could be granted based on a determination by the Regional Administrator or the Director, CMD, that there was a demonstrated need or justification to store or conduct disposal of wastes beyond 1 year and that no unreasonable risks of injury to health or the environment would result from an extension of the storage period. Criteria for extension would include, but not be limited to, a demonstrated need to store wastes beyond the 1–year time frame due to a lack of disposal capacity, the absence of a treatment technology or insufficient time to complete the treatment/destruction process, and a demonstration that relevant treatment or disposal requirements are being pursued.

The problem of capacity shortfalls is expected to continue for some time after the disposal technology has been developed because of the large volume of stored PCB/radioactive wastes awaiting disposal. As an example of capacity problems, DOE operates a Regional disposal facility at Oak Ridge, Tennessee, for PCB/RCRA/radioactive mixed wastes. Fifty million pounds of wastes are currently in storage for disposal at several Regional sites. Current generation rates at the various facilities that rely on Oak Ridge for disposal are approximately 5 million pounds per year. The maximum disposal rate for the unit is approximately 3.09 million pounds per year. Current projections indicate that it will take 30 to 50 years to dispose of the current materials in storage and all the wastes yet to be generated using the facility as currently configured (Ref. 11). Therefore, DOE is not expected to meet the 1–year time limit for storage and disposal requirement even though it is pursuing additional capacity.

Several commenters requested that under TSCA, the PCB and radioactive wastes in a mixture not be confused with the term "mixed wastes" under RCRA. EPA agrees and proposes to apply the term "PCB/radioactive wastes" or "PCB/fissionable radioactive waste" (See proposed definition at §761.3) as opposed to "mixed wastes" to wastes containing PCBs and radioactive constituents subject to regulation under TSCA and the AEA.

EPA disagrees with those cementers indicating that there is no disposal technology approved under TSCA for PCB/radioactive waste. Incineration technology is available; however, there is no commercial disposal capacity and only limited disposal capacity for incineration of PCB/radioactive waste (e.g., the DOE incinerator at Oak Ridge, TN). Therefore, facilities storing PCB/radioactive waste often cannot comply with the 1–year time limit for storage and disposal because insufficient disposal capacity exists. Until additional disposal capacity becomes available, PCB/radioactive wastes will require storage, generally exceeding the 1–year time limit for storage and disposal for PCBs. Even as capacity increases, there will still be requests for extensions of the 1–year time limit for storage and disposal because of the sheer volume of materials in storage. Therefore, EPA is not proposing to place a specific time limit on the extension to the 1–year time limit for storage and disposal. Recipients of an extension to the 1–year time limit for storage and disposal would have to request, if needed, and receive from the Regional Administrator or Director, CMD periodic renewals to their original extension. It is possible that the same reasons that apply to an original extension request may apply to any subsequent requests because no progress in developing a disposal technology has occurred.

One commenter stated that annual status reports for PCB/radioactive wastes in storage for disposal should be required and updated annually on July 15 to coincide with the submission of the PCB Annual Report for each facility. Status reports or reviews of existing extensions may be conditions established by the Regional Administrator or Director, CMD providing the extension.

Several commenters suggested that EPA amend §761.65 to accommodate concerns relating to management and storage and the uniqueness of PCB/radioactive wastes. There are certain elements relating to storage of radioactive wastes containing plutonium or enriched uranium that

require consideration of criticality safety (i.e., the prevention of nuclear reactions that would pose a threat to health and the environment). All actions relating to criticality or radiation protection issues must be coordinated through, and approved by, the local office of the regulatory authority for radioactive material regulation; for licensed nuclear facilities, this would be the appropriate NRC Regional Office or State radiation protection authority office. The issue of criticality relates to proper storage of fissionable materials so that a continuous self-sustaining chain reaction does not occur. [DOE Order 5480.5 states that "nuclear criticality is a self sustaining chain reaction, i.e., the state in which the effective neutron multiplication constant of a system of fissionable material equals or exceeds unity."] Proper storage of fissionable material is essential to avoid a criticality event. A self-sustaining chain reaction (i.e., criticality) will not result in an atomic explosion. However, it can result in the generation of harmful radiation that can cause death or serious injury (Ref. 54).

The issue of criticality relates to the types of containers used to store the fissionable materials or suspect fissionable materials and the storage area. EPA is proposing to amend §761.65(c)(6) by allowing an alternative to the container requirements approved by the Department of Transportation (DOT) for PCB/fissionable radioactive wastes. Containers used to store liquid PCB/fissionable radioactive wastes would have to be nonleaking. Containers used to store both liquid and non-liquid PCB/fissionable radioactive wastes would need to be designed to meet nuclear criticality safety requirements such as those specified in the American National Standard for Nuclear Criticality Safety in Operations with Fissile Materials Outside Reactors (ANSI Standard No. 8.1). The standard currently includes polyethylene and stainless steel as acceptable container materials providing they are chemically compatible with the wastes being stored. Some containers designed to prevent the buildup of liquids could be used to store non-liquid fissionable PCB/radioactive wastes, provided they are stored in an area which would contain any spilled liquids. If any such containers were found to be leaking, their contents would have to be transferred immediately to non-leaking containers, and the leaked or spilled materials cleaned-up taking into account relevant safety procedures appropriate for radioactive materials.

EPA is also proposing to amend §761.65(b)(1)(ii) to allow storage areas for PCB/fissionable radioactive wastes to meet performance criteria for containment volume rather than specific requirements for curb height. This amendment would retain the current requirements that facilities storing PCB/fissionable radioactive wastes store those materials in a storage area meeting the containment volume requirements equal to at least two times the internal volume of the largest PCB container stored therein or 25 percent of the total internal volume of all PCB containers stored therein or whichever is greater, but would not impose curb height requirements for these wastes.

Several commenters stated that PCB/radioactive wastes may also contain additional materials such as asbestos that cannot be incinerated. EPA believes that technology exists which allows PCBs to be separated from other materials (e.g., radioactive waste or asbestos). EPA recommends that whenever possible PCBs be separated from other wastes; however, today's proposal does not contain requirements for separating PCBs because guidance for separating PCBs, from water for example, already exists. EPA had developed a policy allowing the physical separation of PCBs from other wastes, so long as all waste parts separated from the original PCBs are regulated (TSCA Compliance Program Policy 6–PCB–2).

One commenter indicated that EPA does not have the jurisdiction to regulate radioactive PCBs under TSCA. EPA agrees in part and disagrees in part. TSCA section 3(2)(B)(iv) states that the term "chemical substance" does not include "any source material, special nuclear material, or byproduct material (as such terms are defined in the Atomic Energy Act of 1954 and regulations issued under such Act)." Generators of PCB/radioactive waste are subject to regulatory oversight for radioactive materials under the Atomic Energy Act of 1954 as amended (DOE or NRC). EPA, on the other hand, has regulatory oversight for PCBs under TSCA. Thus, generators of PCB/radioactive waste must comply with both EPA and NRC regulations, State requirements, or DOE Orders. Mixtures of radioactive PCB molecules and non-radioactive PCB molecules that cannot be separated are subject to TSCA and the AEA because, for regulatory purposes, when separation of the PCB molecules is not achieved, the statutory exemption does not extend to nonradioactive PCBs in a mixture. It should be noted that regulation of PCB/radioactive mixtures under TSCA and the AEA applies to both wastes and non-wastes. The NRC and DOE participated in the development of this section in order to ensure compatibility between TSCA and AEA.

D. Issues Not Addressed When the Rules Were Originally Promulgated

In the ANPRM, EPA solicited comments on whether to establish a household waste exemption under TSCA, and information regarding current PCB uses that are not authorized in the regulations. Items 1 and 2 below discuss the household waste exemption and unauthorized use issues. In responding to these issues, several commenters raised questions regarding the disposal requirements for certain items containing PCBs; these issues are addressed under Item 3.

1. *Household waste exemption.* EPA solicited comments in the ANPRM on whether a household waste exemption, similar to the household waste exclusion under RCRA at 40 CFR 261.4, should be established under the TSCA PCB disposal regulations. The RCRA household waste exclusion exempts from the hazardous waste requirements any material that was derived from households (including single and multiple residences, hotels and motels, bunk houses, ranger stations, crew quarters, campgrounds, picnic grounds, and day use recreation areas). Examples of household waste under the RCRA exclusion include garbage, trash, and sanitary wastes in septic tanks. Under the RCRA criteria, household waste is limited to: (1) Waste generated by individuals on the premises of a household, and (2) waste composed primarily of materials found in the wastes generated by consumers in their homes (49 FR 44978, November 13, 1984). Additionally, EPA sought comments on the types of PCB wastes for which such an exemption would be applicable. In today's notice, EPA is proposing a household waste exemption for any waste containing PCBs generated by individuals on the premises of private households (including single or individually owned or rented units of a multi-unit construction) primarily found in wastes generated by consumers in their homes, i.e., domestic wastes (see proposed regulatory text at §§761.3 and 761.63). This change in the PCB regulations would authorize private homeowners, including individually owned or rented units of a multi-unit construction, to dispose of their unwanted household items that contain hazardous and toxic wastes under a municipal solid waste collection program without fear of recrimination even though the homeowner may have knowledge of the existence of PCBs in the household appliance.

EPA received roughly a dozen comments, and all but two supported the establishment of a household waste exemption. Some commenters provided additional caveats on how such an exemption should be structured. Comments in favor of the household waste exemption essentially fell into four categories: (1) Broadly define the scope of the exemption, (2) consider the impact of the exemption on recycling activities, (3) limit the scope of the exemption, and (4) address other disposal considerations (i.e., the disposal of materials containing PCBs used in the construction of residential buildings). Commenters not in favor of the TSCA proposal for an exemption questioned whether there should be a household waste exemption under either TSCA or RCRA, and whether the volume of waste containing PCBs which was generated from households was significant enough to warrant an exemption. EPA's responses to the four broad categories of comments are provided below.

a. *Broadly define exemption.* Those in favor of establishing a household waste exemption suggested broadly defining the activities that would qualify for the exemption. One commenter suggested EPA use the definition for "Municipal solid wastes" found at §761.3 to define the scope of the household waste exemption. Municipal solid wastes are defined as "garbage, refuse, sludges, wastes and other discarded materials resulting from residential and non-industrial operations and activities, such as household activities, office functions, and commercial housekeeping wastes." However, if such a change was made, the exemption would include items EPA believes should not be excluded from regulation (e.g., PCB wastes from offices and commercial activities). Another commenter stated that commercial buildings should also be included in a household waste exemption because the wastes generated at these buildings may be from the same sources and types of equipment found in the household.

The effect of banning the manufacture, processing, and distribution in commerce of PCBs, coupled with actions taken to limit the use of PCBs, focuses the Agency's concern on activities where the continued use of PCBs has been authorized (i.e., industrial or commercial-scale settings such as utilities, manufacturing sites, construction/renovation/demolition projects, etc.) rather than on household settings where appliances with PCBs may not generally be found (Ref. 32). Additionally, industrial and commercial-scale PCB disposal activities, because of the risks associated with the greater volume of PCB wastes generated by these activities, require a level of protection for health and the environment that can best be achieved through demonstrated and effective PCB destruction and containment technologies. Therefore, EPA is not persuaded that a broadly defined household waste exemption, encompassing large volumes of commercial-scale PCB wastes, would be protective of health and the environment.

b. *Impact on recycling activities.* One commenter stated that the exemption should include waste generated by households but diverted or removed from the wastestream for purposes of recycling. Another commenter stated EPA should control the recycling and storage of household waste (e.g., increase the storage timeframe from 1 to 2 years). The final set of comments associated with this category suggested EPA take steps to encourage municipal collection programs for PCBs.

The recycling of household waste contaminated with PCBs surfaced as a national issue during 1985–86 when the problem of PCB contamination in shredder fluff (i.e., the non-metallic residue from the shredding process) was first identified. Since that period, EPA has conducted a pilot study of the shredding industry to ascertain, among other things, the source of the PCB contamination (Ref. 34). When the fluff contamination problem first surfaced, PCB Small Capacitors in household appliances were thought to be the source of the contamination. Therefore, data search/collection activities were initiated to determine the types of appliances that would most likely contain PCB Small Capacitors. The results of these efforts indicated that PCB Small Capacitors were not used in most household appliances. However, EPA determined that there was a significant likelihood that PCB Small Capacitors could be found in room and central air conditioners, heat pumps, furnace blowers, fluorescent lighting ballasts, and microwave ovens (Refs. 32 and 33). As a result, many States have implemented PCB Small Capacitor removal programs to ensure that PCBs are not intentionally processed during shredding operations.

In proposing a TSCA household waste exemption, EPA recognizes that some objects that contain a PCB component may inadvertently be shredded, resulting in fluff containing PCBs. EPA is proposing at §761.62(b) that this residue when tested and found to be contaminated at levels of 50 ppm PCB or greater, but measuring less than 50 micrograms per liter (ppb) when using RCRA's Toxicity Characteristic Leaching Procedure (see 40 CFR part 261 Appendix II) may be disposed of in a facility that is permitted, licensed, or registered by a State as a municipal or industrial waste landfill. However, shredder residue when tested and found to contain 50 ppm or greater PCBs must be managed pursuant to the current disposal requirements at §761.60. (Additional disposal options for this type of waste are proposed at §761.62 and discussed at Unit II.A.5. of this preamble.) Under the current regulations, the processing and distribution in commerce of PCBs is prohibited unless otherwise authorized by rulemaking or under a PCB exemption. The proposed household waste exemption authorizes these activities for household wastes containing PCBs. The processing of non-exempt, non-household items such as commercial or industrial grade appliances containing PCBs, fixtures from renovation or demolition projects, and industrial or heavy duty equipment containing PCBs would continue to be a violation of the PCB regulations. EPA is not encouraging the processing and subsequent dilution of PCBs by recycling facilities.

In a May 31, 1979, **Federal Register** notice, EPA explained that the random disposal of PCB Equipment in municipal solid waste sites by householders and other infrequent disposers did not present an environmental hazard (44 FR 31528). On the other hand, EPA determined that the disposal of large quantities of PCB Small Capacitors posed a somewhat larger risk, and commercial and industrial activities were encouraged to establish a voluntary collection and disposal program. EPA would therefore include in the household waste exemption wastestreams created by recycling operations that accepted only wastes composed of household items from private residences (see the discussion under Unit II.D.1.c., "Limit Scope of the Exemption" of this preamble). Therefore, the owner or operator of a recycling facility should establish contractual requirements or other appropriate notification or inspection procedures to ensure that PCB wastes not covered under the exemption (e.g., commercial or industrial appliances containing PCBs or fixtures from demolition or renovation projects, industrial, or heavy-duty equipment containing PCBs) were not processed at the facility. In any event, the owner or operator of such a

facility would be subject to an enforcement action should such waste be processed.

Municipal collection programs accepting only those wastes that satisfy the proposed exemption criteria could operate under the TSCA household waste exemption; the TSCA chemical waste landfill and incineration requirements would not apply to the disposal of these wastes (see the discussion under Unit II.D.1.c., "Limit Scope of the Exemption" of this preamble). Because disposal of the wastes collected under a municipal solid waste program that satisfy the criteria proposed for the exemption would not be regulated by this rule, the wastes could be disposed of in a facility which is permitted, licensed, or registered by a State to manage municipal or industrial waste. As a result, the commercial storage approval requirement and compliance with the TSCA PCB 1-year time limit for storage and disposal limitation would not apply. Therefore, EPA does not see a need to extend the storage timeframe from 1 to 2 years as suggested by one commenter.

c. *Limit scope of the exemption.* A few commenters stressed the need to restrict the applicability of a household waste exemption to purely residential settings in order to exclude business activities that take place in a residence. Another commenter believed the exemption should be identical to the RCRA household waste exclusion. EPA has interpreted the RCRA Subtitle C rules at 40 CFR 261.4 as limiting the exclusion to those household wastes that meet two criteria: (1) The waste must be generated by individuals on the premises of either a temporary or permanent household, and (2) the waste must be composed primarily of materials found in wastes generated by consumers in their homes. The RCRA exclusion at 40 CFR 261.4(b) includes "household waste from single and multiple dwellings, hotels and motels, and other residential sources." The RCRA hazardous waste program, in establishing a household waste exclusion, acted upon a Congressional intent to ensure that wastes generated by consumers in their households would be exempt from the Subtitle C regulation. As a result, the RCRA exclusion included materials from single and multiple residences, hotels, motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day use recreation areas — locations at which consumer activity is of a type that would be conducted in a residential setting and result in the generation of hazardous wastes.

As commenters have suggested, EPA is proposing an exemption under TSCA for the disposal of household wastes containing PCBs that is similar, but not identical, to the RCRA exclusion. Like the RCRA exclusion, the TSCA exemption would not include non-residential PCB wastes such as commercial or industrial grade appliances containing PCBs, fixtures from demolition or renovation projects, and industrial or heavy duty PCB Equipment. Under TSCA, Congress sought to eliminate the use of PCBs, unless specifically authorized, by banning their continued manufacture, processing, and distribution in commerce. However, Congress intended that the use of equipment which contained PCBs in a totally enclosed manner not be terminated prior to the end of the equipment's useful life. As stated earlier, research conducted by EPA suggests that some refrigerators and household freezers, room and central air conditioners, heat pumps, furnace blowers, fluorescent lighting ballasts, and microwave ovens may contain PCB Small Capacitors. The risks associated with the disposal of those items containing PCB Small Capacitors in a random, geographically dispersed manner by individual homeowners were considered by EPA in mid-1977 when it proposed the PCB Small Capacitor exemption. EPA has re-evaluated this issue twice subsequent to that time and has determined that the exemption should remain in place (see the discussion at Unit II.D.3.c. of this preamble).

The distinction that EPA makes between the TSCA household waste exemption, which focuses on consumer products used by individuals in private residences, and the RCRA household waste exclusion, which focuses on consumer activity conducted by private individuals in temporary or permanent residences, is based on the continued belief that the unregulated disposal of large quantities of PCB Items such as light ballasts and PCB Small Capacitors by commercial and industrial activities presents an environmental risk (see 42 FR 26568, May 24, 1977; 43 FR 7152, February 17, 1978; 44 FR 31528, May 31, 1979 and the discussion on the disposal of small capacitors at Unit II.D.3.c. of this preamble).

Under RCRA, the risks associated with consumer activities that result in the generation of hazardous waste do not change when the activities are conducted in a single or multiple residence, hotel, motel, bunkhouse, ranger station, crew quarters, campgrounds, picnic grounds, or day use recreation areas. These are all locations at which the consumer activity is of a type that would be conducted in a residential setting.

For the PCB household waste exemption under TSCA, EPA believes that the unregulated disposal by individual households of consumer products which contain PCBs should be exempted from the TSCA disposal requirements because there are relatively few household products that would contain PCBs. The proposed exemption would not apply to individuals who reside in transient settings because they would likely not dispose of household appliances that would contain PCBs (e.g., certain refrigerators and household freezers, room and central air conditioners, heat pumps, furnace blowers, fluorescent lighting ballasts, and microwave ovens). Rather, equipment containing PCBs obtained for use in transient settings would likely be of a commercial grade and disposed of in quantity. Therefore, the removal and disposal of equipment containing PCB Small Capacitors by commercial activities and entrepreneurial interests such as hotel and motel chains and owners of multiple unit residential buildings engaged in repair, renovation, and/or demolition projects, would not be covered by this exemption.

EPA considered excluding from the TSCA household waste exemption PCB wastes found in a home-based business, but has determined that PCB Items found in a private residence would likely be evident in these smaller business enterprises as well. That is, industrial-scale manufacturing activities would not normally be conducted in a residential setting. If, however, such was the case, only those PCB Items commonly found in a private household would be covered by this exemption.

Although EPA proposes to establish an exemption under TSCA for the disposal of household waste, the public is reminded of the CERCLA reporting requirement for PCBs at 40 CFR 302.6 that essentially requires individuals to contact the National Response Center when they are disposing of 1 pound or more of PCBs in any 24-hour period in a non-federally permitted facility. The TSCA household waste exemption does not relieve an individual (i.e., the person disposing of the waste and/or the owner of the disposal facility) of the liability for remediating PCB contamination if the non-federally permitted disposal facility becomes a future Superfund site. Therefore, EPA is seeking comments on whether additional limitations should be imposed when defining entities that would qualify for this exemption.

d. *Other disposal considerations.* One commenter, although not objecting to the exemption, suggested EPA should focus on the previous residential applications of PCBs, such as a wall painted with PCB-containing paint, and the item's sale, destruction, and disposal. The proposed TSCA household waste exemption would not apply to debris produced during building construction, renovation, or demolition and similar type wastes, since such wastes do not consist primarily of materials found in wastes generated by a consumer in his/her home. Disposal options for this large-volume waste are discussed under Unit II.A. of this preamble.

2. *Unauthorized use.* EPA also sought comments in the ANPRM on widespread PCB applications that had not been addressed when the original regulations were developed. EPA was particularly interested in obtaining information on current, but unauthorized uses of PCBs. Nearly a dozen sets of comments were submitted from four primary sources: Natural gas pipeline companies, the Armed Forces, civilian governmental agencies, and companies from the industrial sector. Items currently in use and identified by the commenters as containing PCBs included wool felt insulating materials which have high levels of PCBs and deck plates that are found on naval vessels; plastics, paints, small rubber parts, adhesive tape, and insulating materials used in electrical cabling, for example; PCB-impregnated gaskets in heating, ventilation and air conditioning, and other duct systems; concrete expansion joint materials, and large-diameter natural gas pipeline. Several distinct "unauthorized use" scenarios emerged based on a review of the comments and discussions with EPA Regional representatives. These scenarios and the proposed regulatory provisions addressing these uses are discussed below.

a. *PCB impregnated materials used in duct systems.* During the late 1940s through 1950s, the adhesive coating used on ventilation gaskets for use in the Department of War (a predecessor of the Department of Energy (DOE)) heating, ventilation, and air conditioning (HVAC) systems was impregnated with PCBs to comply with the Department of War's specifications. This application was not in violation of the ban on the manufacture, use, processing, or distribution in commerce of PCBs because it occurred prior to the enactment of TSCA and promulgation of the implementing regulations. However, in late 1989, DOE notified EPA that over time, operation of their plants had caused small amounts of the lubricating oil (from motor and compressor bearings) to leach through the gasket material and to be drawn into the ventilation system, resulting in releases of material containing PCBs.

b. *PCB impregnated insulation materials.* The Department of the Navy discovered that wool felt containing PCBs had been installed in older submarines for sound-dampening purposes. Information provided to EPA by the Department of the Navy indicates no PCBs are emitted from the material and that the material is generally located in inaccessible or rarely accessed areas, fixed between metal plates. The Navy's current policy is to remove the material only when necessary (i.e., during maintenance).

c. *Agency experience.* Experience gained in implementing the PCB requirements has resulted in the identification of other uses of PCBs that are not authorized by the regulations. Issues have arisen over time concerning the use of PCBs in paint formulations, coatings for ceiling tiles, roofing, and siding materials, adhesives, waterproofing compounds, and any number of other chemical uses such as additives and plasticizers. The recent discovery of asbestos roofing and siding materials and insulating (potting) material in fluorescent light ballasts that contain PCBs are illustrations of the Agency's expanding knowledge of the applications for PCBs.

In November 1992, EPA was informed of the discovery of PCBs in asbestos roofing and siding materials that had been manufactured by H. H. Robertson (circa 1917) and marketed as Robertson Protected Metal (RPM) and Galbestos. RPM and Galbestos are multilayered steel siding materials that consist of steel, asphalt, or zinc (depending on the product line); asphalt-impregnated asbestos felt; and an asphaltic waterproof coating. Although there is limited evidence available that PCBs were ever introduced in the manufacturing process, preliminary sampling and analysis have indicated PCB concentrations in this material ranging from <2 ppm to 30,000 ppm. These products were purchased and used internationally by the U.S. Department of Defense (Department of War, U.S. Navy, U.S. Army, U.S. Air Force, U.S. Marine Corps), U.S. Coast Guard, Tennessee Valley Authority, and various industries such as airlines, railroads, chemical plants, steel mills, mines, and industrial/manufacturing facilities. Manufacturing facilities for RPM and Galbestos products were located in Beaver Falls, PA, and subsequently relocated to Ambridge, PA, as well as in Canada and England. Preliminary data suggests that the continued use of this material, if in good condition, and subsequent disposal in a municipal solid waste landfill, would not present an unreasonable risk of injury to health or the environment (see "Toxic Characteristic Leaching Procedure (TCLP) for Galbestos Siding Material" MRI Report, Project No. 9802–30–01, August 16, 1993 [Ref. 45]).

Also, in August/September 1993 EPA received data from several sources indicating that PCBs were found in the insulating (potting) materials of fluorescent light ballasts generally manufactured prior to 1978. PCBs at concentrations of 50 ppm or greater were found in the insulating materials of approximately 70 percent of the ballasts analyzed. While this data represents only a small portion of ballasts manufactured prior to 1978 still in use today, the continued use of such ballasts would need to be authorized.

EPA is proposing at 40 CFR 761.30(q) to authorize the use and distribution in commerce of non-liquid materials which contain PCBs at any concentration (including, but not limited to, gaskets, insulation, plastics, plasticizers, fluorescent light ballast potting materials, electrical cable, dried paints, small rubber parts, adhesive tape, caulking, roofing and siding materials, waterproofing compounds, and ceiling tile coatings) in use prior to July 2, 1979, for the remainder of their useful life where monitoring indicates that the migration of PCBs from the material does not pose an unreasonable risk of injury. Under the proposed authorization, the PCB-containing materials must remain intact and in place in their existing application and location unless they are being removed for disposal. The authorization of continued use and distribution in commerce of these PCB materials do not include an authorization to remove the material from its existing location and subsequently reassemble or install the PCB material at a different location but would allow for continued use in a mobile application such as a vehicle or vessel. Such PCB materials currently in use that exhibit significant PCB migration, as discussed in proposed §761.30(q)(1)(iii), (iv) or (v), would not be in compliance with this authorization and would be required to be removed, contained by means of encapsulation (either with an epoxy-based or equivalent paint or sealant), or equipped with release controls in which a continual release is collected in a closed container and displaces only the air in the container (i.e., a leak collection system) to ensure personnel

are protected from dermal and inhalation exposures.

Additionally, the owner or operator of a facility with such a use of PCB material would be required to notify the Regional Administrator of the discovery of such material and submit documentary evidence that established the historical use of such material. Notification to the Regional Administrator would be required within 30 days of the effective date of the final rule or within 30 days of discovery thereafter. It would be required to include the location of the material, a description of its use, an estimate of the amount of material in use (e.g., number, square footage, pounds), the PCB concentration, expected useful life of the material, the condition of the material (e.g., potential for exposure), and any additional information that might be useful to the Regional Administrator. Secondly, the owner or operator of the facility would be required to post a PCB Mark ML as described in §761.40 in a prominent location near material containing PCBs as a warning of the presence of PCBs. They would also be required to make available to any potentially exposed employee and, upon request, to any other potentially exposed individual, information concerning the identity of the PCBs and any health risk associated with the PCB application. Failure to provide documentary evidence that substantiated the historical use of such material might result in the rejection of such claims by the Regional Administrator. Consequently, the continued use of such materials might be a violation of the PCB regulations.

Air monitoring readings and standard wipe test samples of exterior surfaces would have to be taken and recorded quarterly for the first year and annually thereafter until the material was removed. Records would be maintained in a central location at the facility for 3 years beyond the date of removal of the material for review by EPA officials. Air monitoring results of PCB levels above 0.001 milligram per cubic meter of air (mg/m^3) for a 10–hour workday, 40–hour workweek (the National Institute of Occupational Safety and Health's (NIOSH's) occupational exposure limit for all PCBs) or wipe samples of accessible exterior surfaces greater than 10 micrograms per 100 square centimeters (10 $\mu g/100cm^2$) would require that action be initiated within 24 hours of the occurrence to modify the release controls, to re-encapsulate the surface, or to remove the PCB-impregnated materials. In addition, individuals would be required to notify the EPA Regional Toxics Office by facsimile machine or overnight delivery mail services within 24 hours of the occurrence of an environmental release that exceeded the action levels listed above. The notification would indicate the actions that would be taken to bring the facility into compliance. However, if the release occurred during a weekend or Federal holiday, notification could be made during the next business day. This notification would not be in lieu of any other Federal, State, or local notification requirements such as those under CERCLA for the release of a hazardous substance (see 40 CFR 302.6).

At the end of their current useful life, all such PCB materials with a PCB concentration of 50 ppm or greater, and materials that came in contact with 50 ppm or greater PCBs, including leak collection systems, PCB-containing paint and other encapsulation materials, and all materials used during decontamination or cleanup procedures would have to be handled, stored, and disposed of in accordance with the PCB storage requirements at 40 CFR 761.65 and the disposal requirements at §761.60 or §761.62.

While the continued use of unauthorized pre-TSCA PCB materials is a violation of the existing PCB regulations, in most cases, premature removal of the media containing PCBs could only be achieved with great difficulty and at enormous expense given the extraordinary efforts that would be required to remove the PCBs. The conditions proposed by EPA for the continued use of these items (i.e., removal upon evidence of deterioration, installation of release controls, or encapsulation) would ensure no unreasonable risk from exposure to PCBs as a result of the continued use of these materials. Comments are therefore solicited on whether consideration should be given to developing authorizations for the conditional, continued use of these materials and whether additional restrictions should be imposed and if there are other situations which are similar to the pre-1978 authorization issues which should be addressed in this rulemaking. Comments are also solicited on whether the proposed authorization should allow for the movement and reassembly of the PCB-Containing material when such movement and reassembly will not adversely impact the integrity of the material (e.g., will not result in a risk of injury to health or the environment caused by the exposure to PCBs). Comments supporting a modification of the proposed authorization should also provide examples of the specific material and reuse scenarios that should be addressed.

EPA has no information indicating that PCBs were routinely used in the formulation of consumer products such as household paints, sealants, finishes or caulking. It believes however, that consumers could now occasionally obtain products such as industrial enamels or marine paints which were formulated with PCBs, through the purchase of these items as surplus. The sale of these unauthorized items containing PCBs is currently prohibited under TSCA. Identification and removal of these materials, once installed in households, could pose considerable costs to homeowners while increasing risk of exposure through removal. Because the PCBs are bound into these materials, EPA believes they would not pose a serious risk of exposure if left in place. Therefore, EPA is proposing a general use authorization at §761.30(q)(2) for the non-liquid PCBs that meet the definition of household wastes at the time of disposal. In unit II.A. of this preamble EPA discussed a proposed exemption for the disposal of household wastes containing PCBs. Today, EPA is also proposing a general authorization for continued use at §761.30(g)(3) for non-liquid items that do not leach PCBs at levels ≧50 µg/l as measured by the TCLP.

d. *Reuse of natural gas pipeline.* EPA received comments on both the reuse of and the disposal requirements for natural gas pipeline. A discussion concerning the disposal of natural gas pipeline appears at Unit II.D.3.e of this preamble. Regarding the reuse of pipeline, commenters contend that the inadvertent contamination of natural gas pipeline at or above regulated levels for PCBs all but eliminates any opportunity for the natural gas industry to reuse the pipe and other natural gas pipeline appurtenances. Requirements to dispose of or decontaminate the equipment often deprive these companies of the economic benefits associated with recycling, reusing, or selling the equipment. EPA, under a Memorandum of Understanding (MOU) with the Federal Energy Regulatory Commission (FERC), has been reviewing pipeline abandonment plans and issuing alternate disposal permits for the decontamination of pipeline since late 1987. Based on this experience, EPA does not view risks of injury to health and the environment from exposure to PCBs due to the continued use of PCB-Contaminated pipeline as being unreasonable.

PCBs when found in natural gas pipeline are generally located in the condensate that is collected from drips and geographical low points along the pipeline or in the moisture on the

interior of the pipe. Since these collection points are often dry, EPA is proposing, as an alternative for characterization purposes, surface levels of greater than 10 micrograms PCB per 100 square centimeters for dry pipe as the regulatory equivalent of 50 ppm, and 100 micrograms PCB per 100 square centimeters in dry pipe as the regulatory equivalent of 500 ppm with regard to the TSCA PCB regulatory requirements at part 761 (characterization of natural gas pipeline is discussed at Unit II.B.4. of this preamble). EPA is proposing to amend §761.30(i) to authorize the reuse of natural gas pipeline systems, provided the liquids have been removed. All removed liquids must be disposed of pursuant to the disposal requirements at §761.60(a)(3). EPA solicits comments on whether EPA should require marking of pipe that may be in temporary storage while testing is being conducted. Pipe in temporary storage is generally capped at each end and stacked in a restricted area along the perimeter of the pipeline system. EPA solicits comment on whether the Agency should require each pipe in a temporary storage area to be marked or whether only posting a sign in the storage area would be adequate.

In today's notice at §761.30(i), the reuse of PCB-Contaminated natural gas pipeline and appurtenances would be allowed in natural gas pipeline systems. Natural gas pipeline and pipeline appurtenances that were to be reused would have to be drained of free-flowing liquids and decontaminated pursuant to procedures proposed in §761.30(i). Any natural gas pipeline may also meet the decontamination level as proposed in §761.79(d). Based on experience gained from issuing alternate disposal approvals to pipeline companies, EPA is also proposing several additional uses. Acceptable proposed reuse scenarios are for the transport of bulk hydrocarbons, chemicals, or petroleum products; as a coal slurry pipeline; as casing to provide secondary containment under transportation systems such as highways or railroads; as temporary flume at construction sites; as culverts (less than 80 feet in length) in intermittent flow situations (i.e., as culvert for a driveway over a roadside ditch); as equipment skids; for sewage service with written consent of the Publicly Owned Treatment Works (POTW); for steam service; in totally enclosed compressed air systems; as irrigation systems where the pipe is less than 20 inches in diameter and 200 miles in length; or as industrial structural material such as fence posts, sign posts, gate posts, bridge supports, and overhead sign cross members. In addition to commenters' reactions as to whether natural gas pipeline should be authorized for reuse in these scenarios, EPA solicits comments on the other specific uses for which this pipe would be suitable. The reader should remember that the reuse provision is intended for contaminated equipment which is drained of all free flowing liquid (i.e., the surface is dry) and the surface contamination is demonstrated to be less than 100 micrograms PCBs per 100 square centimeters.

EPA is also proposing a parallel authorization for the use of PCBs in other pipelines or air compressor systems, with the consent of the Regional Administrator. The Agency is aware of the use of PCBs as lubricants in other air compressor systems not associated with natural gas pipelines and believes that these uses pose no greater risk.

3. *Disposal issues.* The disposal of non-liquid, bound materials, such as plastic insulating material containing PCBs found in electrical cabling and lead (Pb) cable insulated with PCB oil-soaked paper, were also identified by commenters to the ANPRM as issues that are not adequately addressed by the current regulations. Since the ANPRM, EPA has also received comments addressing the disposal requirements for the relatively small quantity of waste generated during the chemical analysis of PCBs.

a. *Disposal of PCB-bound material.* One commenter requested that EPA designate these materials as unregulated for disposal. The PCB concentration encased in this solid plastic insulating material ranges from less than 50 ppm to 500 ppm PCBs. The commenter argues that non-liquid, bound PCB materials are distinct from liquid PCBs and that the current exemption at §761.60(b)(2)(ii) that allows persons, except manufacturers, to dispose of PCB Small Capacitors in municipal landfills should be extended to cover manufactured items containing non-liquid, bound PCB materials. Alternatively, the commenter argues that the PCB bound plastic insulation should be treated as "other PCB Articles" having a PCB concentration between 50 and 500 ppm pursuant to the current §761.60(b)(5)(ii). The commenter suggests that these bound PCB materials should be viewed as having been drained of free flowing liquid and should be treated as unregulated for disposal under that section.

However, EPA is proposing provisions at §761.62 to address the disposal of PCB non-remediation wastes using one of four options: Incineration, chemical waste landfill, municipal solid waste landfill, or a disposal method approved by the Regional Administrator. Under this provision, the Regional Administrator could approve an alternate disposal method based, among other things, on technical, environmental, or waste-specific characteristics or considerations indicating that the disposal method would not pose an unreasonable risk of injury to health or the environment. EPA believes that this provision would provide the flexibility being sought by the commenter, and that expansion of the current exemption would therefore be unnecessary.

b. *Disposal of cable insulation containing PCBs.* Another commenter informed EPA of lead-sheathed cable containing PCBs in the oil-soaked paper that is used to wrap the copper conductors; the PCB levels typically range from 50 to 500 ppm with some levels reported as exceeding 100,000 ppm. Discarded lead cable is potentially stored for long periods of time, pending changes in the metals market, and then ultimately sent to scrap yards where the metal is removed and sold to recycling operations. The scrap yards then burn the PCB-soaked paper without regard to its PCB content. This may result in illegal disposal and site contamination by PCBs, dioxins, and dibenzofurans. Further, cables that are not contained in a conduit are often abandoned in place. The cable is ripped out to a convenient point, cut, and abandoned with no protection at all for the cut end. The PCB-containing oil will often leak, as free flowing oil, from the paper when the cable is cut or the covering damaged, thereby creating environmental concerns when cable runs are abandoned or old cable is improperly stored or disposed of.

According to the information submitted by the commenter, lead cable is used in high voltage distribution of electric power, typically 5,000 volts and above. This cable has been in use for quite some time (about 100 years), and although lead cable can be found everywhere, including in overhead distribution lines, the product typically was used in underground, submerged, or submersible applications. In particular, lead cable was used to supply primary power to vaulted network distribution systems and subway transformers. Almost all utilities serving metropolitan areas and most large industrial facilities either currently own or have owned significant quantities of lead cable. Large

commercial facilities that distribute primary power also have lead cable.

On August 25, 1982 (47 FR 37352), EPA promulgated 40 CFR 761.30(m) to authorize the use of PCBs in, and the servicing of, cable containing any concentration of PCBs for the useful life of the cable provided the cable is serviced (including rebuilding) only with dielectric fluid containing less than 50 ppm PCBs. This provision was based in part on a study conducted by the Edison Electric Institute (EEI) and the Utilities Solid Waste Activities Group (USWAG) that described voltage regulators, switches, electromagnets, and cable as mineral oil-filled electrical equipment, not designed to contain PCB dielectric fluid. The rulemaking record indicates that this oil-filled cable generally contained less than 50 ppm PCBs (Previous Rulemaking Record Ref. 6, Support Document for the Electrical Equipment Use Rule, Response to Comments, August 1982). Although this oil-filled cable was authorized for use until it reached the end of its lifecycle, EPA required that the disposal requirements at 40 CFR 761.60 and the servicing requirements at §761.30(m)(2) be followed for any cable found to contain a PCB concentration of at least 50 ppm.

Therefore, the issue being raised by the commenter suggests that other types of electrical cable containing PCBs may exist that were not anticipated when §761.30(m) was promulgated. As reflected at Unit II.D.2. of this preamble, proposed §761.30(q) would expressly allow the continued use of electrical cable, in a totally enclosed manner, until it reached the end of its useful life. However, the installation of materials containing PCBs as insulation and the processing and distribution in commerce, except for purposes of disposal, would continue to be unauthorized.

Comments are solicited on whether EPA should include electrical cable under the proposed authorization to be inserted at §761.30(q) or expand its interpretation of the current authorization at §761.30(m) to include, in addition to oil-filled cable, all electrical cable containing PCBs such as electrical cable encased with PCB-impregnated insulation materials, and lead cable containing PCB oil-soaked paper.

EPA also welcomes information on any other electrical cable containing PCBs, including its uses, PCB concentrations, and potential risks of exposure to workers, the general public, and the environment. For example, high-voltage cable used in underground coal mines may have been manufactured with PCBs in the conductor insulation. In 1954, the U.S. Bureau of Mines published fire-resistance standards for underground electrical equipment. In addition to requiring non-flammable liquid [e.g., PCB dielectric fluid] in liquid-filled transformers, the Bureau also published a fire test procedure which was mandatory for "trailing cables," or electric cables that are reeled out the back of mobile, high-voltage mining equipment such as continuous miners and shuttle cars (Ref. 56). The fire resistance test was considered prudent because trailing cables, which lie on the mine floor, are often damaged by equipment travel and can short out, causing an electrical fire. While the Bureau did not specify how such cable should be made, experience with naval vessels indicates that such cable could have been manufactured with PCBs to meet the test standards. Some of this cable may still be in use or may be abandoned with other electrical equipment in mine storage areas or in closed mines. An environmental hazard would exist if the cable is improperly disposed of. A hazard to workers would exist from inhalation of the fumes during an electrical short or from dermal contact when splicing cable. Therefore, EPA is seeking comment from any person who may know of past uses of PCBs in electrical cables.

In response to concerns raised about handling lead cable, EPA cannot emphasize strongly enough that caution must be exercised when handling any electrical cable which contains PCBs. First, caution must be exercised when servicing the cable to prevent the inadvertent release of PCBs into the environment. In this instance, restrictions attendant to the disposal of lead complicate the PCB disposal process, as environmental releases must be controlled when separating the PCB and lead materials to ensure further contamination is avoided. Further, to ensure the PCBs are not reintroduced into commerce, the lead cable must be decontaminated to remove the residual PCBs prior to sending it to a recycling operation. The processing and distribution in commerce for the purpose of disposal of regulated PCB wastes and their destruction require an approval (i.e., permit) from EPA (see §761.20(c)(2) and §761.60(a)). Owners and operators of scrap yards who engage in activities to decontaminate the cable (i.e., to remove the PCBs) and/or destroy PCBs at concentrations of 50 ppm or greater through the practice of "open burning" may be subject to an enforcement action and are conducting these activities in violation of the TSCA permit requirements if they do not possess a PCB disposal approval. Finally, owners and operators of recycling operations who accept lead cable containing PCBs for processing are operating in violation of the TSCA ban on processing PCBs if they have not obtained an exemption for their activities (see §761.20(c)).

The disposal activities identified by the commenter are currently regulated under the TSCA PCB regulations at 40 CFR part 761 to include abandonment in place, storage, disposal, permitting, and manifesting requirements for PCB wastes at concentrations of 50 ppm or greater. Therefore, from a regulatory perspective, no further rules are required to address the disposal of this cable. However, an outreach program designed to reach scrap and salvaging operations may be the most appropriate mechanism to ensure the owners and operators of these facilities are educated about their responsibilities regarding the TSCA PCB disposal approval requirements and potential liabilities under CERCLA for environmental releases of PCBs. EPA solicits the cooperation of the Institute of Scrap Recycling Industries, Inc. (ISRI) and any other individuals, organizations, or associations in developing a comprehensive mailing list of facilities to whom such an outreach program could be directed.

c. *Disposal of small capacitors.* Another commenter suggested that EPA define the disposal requirements for PCB Small Capacitors and then cross reference these disposal requirements to the CERCLA requirements for reporting releases of hazardous substances. The TSCA disposal requirements for PCB Capacitors are provided at §761.60(b)(2); CERCLA reporting requirements for hazardous substance releases are listed at 40 CFR 302.6. The regulations in 40 CFR 302.6(a) state: "Any person in charge of a vessel or an offshore or an onshore facility shall, as soon as he has knowledge of any release (other than a federally permitted release or application of a pesticide) of a hazardous substance from such vessel or facility in a quantity equal to or exceeding the reportable quantity determined by this part in any 24–hour period, immediately notify the National Response Center ((800) 424–8802; in Washington, DC (202) 426–2675)."

Since PCBs are a hazardous substance with a reportable quantity (RQ) of 1 pound under CERCLA, the question becomes which scenarios constitute a "release" under CERCLA. In the case of fluorescent light ballasts containing PCB Small Capacitors, open or closed drums

of light ballasts collectively containing 1 pound or more of PCBs, that are abandoned or otherwise disposed of, such as through placement in a municipal solid waste landfill, would generally be regarded as a reportable release under CERCLA. One point should be made clear; unlike TSCA or RCRA, CERCLA imposes no disposal requirements itself on the initial disposal (i.e., release) of hazardous substances such as PCBs, even if the release is in excess of the RQ for that substance. For specifics regarding the reporting requirements for the release of hazardous substances under CERCLA, readers are advised to contact EPA's Superfund/RCRA Hotline, which is the information service for the Office of Solid Waste and Emergency Response in Washington, D.C. (Toll-free (800) 424–9346, local for the Washington, D.C. area (703) 920–9810).

In promulgating the disposal and marking rule published on February 1978 (43 FR 7150), EPA decided not to impose special disposal requirements for small capacitors (except those owned by capacitor manufacturers or PCB Article manufacturers in which the small capacitor was placed as a result of manufacturing activities) due to problems associated with regulating this class of PCB wastes (e.g., enforcement difficulties, the expense associated with their collection/disposal, and issues surrounding the question of who should incur these costs). In reassessing whether steps should be taken to further limit the small capacitor exemption, EPA determined not to impose additional regulatory controls (44 FR 31528, May 31, 1979). However, because the disposal of large quantities of PCB Small Capacitors by commercial and industrial activities posed a somewhat larger risk to the environment than disposal by householders and other infrequent disposers, EPA encouraged commercial and industrial firms to establish a voluntary PCB Small Capacitor collection and disposal program that would result in the disposal of these capacitors in either a chemical waste landfill or an incinerator. EPA still recommends disposing of fluorescent light ballasts containing intact and non-leaking PCB Small Capacitors in an approved hazardous waste incinerator or an approved chemical waste landfill. Persons who can dispose of such fluorescent light ballasts under the household waste exemption should consider utilizing local hazardous waste collection efforts sponsored by city/county health departments, local fire departments or other local government entities for disposal of these items.

Under the current regulations, PCB Small Capacitors found in light ballasts generally are not required to be disposed of in a TSCA approved disposal facility (see §761.60(b)(2)(ii)). Readers are, however, advised that State and local governments may impose more stringent disposal requirements on items containing PCB Small Capacitors such as fluorescent light ballasts and are advised to determine all other disposal requirements prior to undertaking disposal. EPA's Office of Air and Radiation has developed guidance addressing these activities in conjunction with its "Green Lights Program" (Ref. 53). Once a PCB Small Capacitor starts leaking, it is regulated for disposal under §761.60(d) as a PCB Article and must be disposed of according to the disposal rules for PCB Articles at §761.60(b)(5) (Ref. 57). Also, §761.60(b)(2)(iv) identifies another exception: "Any PCB Small Capacitor owned by any person who manufactures or at any time manufactured PCB Capacitors or PCB Equipment and acquired the PCB Capacitors in the course of such manufacture shall be disposed of in ... an incinerator which complies with §761.70 or until March 1, 1981, ... in a chemical waste landfill which complies with §761.75." In practice, this means that, except for manufacturers of capacitors or manufacturers of equipment containing small capacitors, any quantity of intact, non-leaking small capacitors may be disposed of in a municipal landfill. As mentioned earlier in this section, EPA reevaluated the scope of the small capacitor exemption and determined not to impose additional regulatory controls. In the **Federal Register** notice of May 31, 1979 (44 FR 31528), EPA also warned readers that any PCB spillage that might result from failure of, or from damage to small capacitors, could be considered illegal disposal, as is the case for other spills of PCBs. If the insulating material inside the ballast, sometimes referred to as "potting" material, contains PCBs at greater than or equal to 50 ppm, then the entire ballast is regulated for disposal under current rules even if the internal small capacitor remains intact and nonleaking. Many facilities are disposing of light ballasts or their capacitors in TSCA incinerators to avoid the potential for Superfund liability should today's municipal landfills become subject to future CERCLA cleanup action. Therefore, EPA proposes to include a statement in §761.60(b)(2)(vii) in response to the commenter's suggestion that the PCB regulations cross reference the CERCLA requirements.

Since the publication of the ANPRM, EPA has received a TSCA section 21 petition from several fluorescent light ballast recyclers and the Hazardous Waste Treatment Council (Ref. 49). The petitioners requested that disposal requirements for intact and non-leaking small capacitors in fluorescent light ballasts at §761.60(b)(2)(ii) be amended to require incineration of fluorescent light ballasts or incineration of the PCB Small Capacitors or PCB potting materials removed by recycling the fluorescent light ballasts. EPA granted their petition and stated its intention to initiate a regulatory investigation to determine whether or not to amend the PCB Small Capacitor disposal requirements at §761.60(b)(2)(ii) (Ref. 50).

As noted earlier, EPA has discussed the disposal and phaseout of PCB Small Capacitors in various rulemakings. In 1979, EPA encouraged firms disposing of large quantities of PCB Small Capacitors to establish a voluntary collection and disposal program resulting in the waste capacitors going to chemical waste landfills or high temperature incinerators (44 FR 31514, 31528, May 31, 1979). In 1982, EPA revisited the issue of small capacitors, this time in regard to their potential phaseout. EPA concluded that because many of these PCB-containing small capacitors are encapsulated and contain minimal quantities (0.1 to 0.6 pounds) of fluid and a significant amount of absorbent materials such as paper, PCBs are rarely released from the capacitors during their use or from equipment using the capacitors. Therefore, EPA determined the exposure risks to humans, food, feed, water, and the environment were low (47 FR 37342 and 37349, August 25, 1982).

In their petition, petitioners raised a number of issues for which EPA is seeking information regarding the proposed amendment of the disposal requirements for intact and non-leaking PCB Small Capacitors, specifically those in fluorescent light ballasts.

First, the petitioners indicated that the PCBs are not only found in small capacitors but in the potting material of fluorescent light ballasts as well. EPA is seeking data on the level of PCBs found in the potting materials of fluorescent light ballasts and whether the PCBs were in the potting material prior to recycling, i.e., were the PCBs in the potting material because of a rupture of the PCB Small Capacitor. EPA is also seeking data on the percentage of ballasts recycled that contain PCBs in

either a small capacitor and/or the potting material, as well as the concentration of PCBs in the potting material. EPA is also seeking information regarding the manufacture of light ballasts that have PCBs in their potting materials, i.e., date of manufacture, PCB concentration, etc. However, any additional disposal requirements for fluorescent light ballasts with PCB Small Capacitors become moot if the ballast potting material contains PCBs. Fluorescent light ballasts with PCBs in their potting material meet the definitional requirements of PCB Articles under §761.3 and the disposal requirements for such items are already prescribed at §761.60(b)(5). If PCBs ≧50 ppm are found in the potting materials of fluorescent light ballasts, the issue of continued use becomes a significant problem because such PCBs are not authorized for use under §761.30. However, PCBs found at <50 ppm (and not the result of dilution) in the potting compound would qualify the fluorescent light ballast as an "Excluded PCB Products" as defined at §761.3.

Second, if EPA determines that additional disposal requirements need to be placed on fluorescent light ballasts containing PCB Small Capacitors, the number of ballasts that may be disposed of as municipal solid waste within a 1-year period needs to be determined. EPA is proposing at §761.60(b)(2)(viii) that any person may dispose of up to 25 intact and non-leaking fluorescent light ballasts containing PCB Small Capacitors as household waste in a municipal solid waste landfill within a 1-year period from a single household. The number 25 was chosen because under CERCLA the reportable quantity (RQ) for PCBs is 1 pound (40 CFR 302.4). If an estimate of approximately 2/3 ounce of PCBs in each small capacitor is used, 25 small capacitors equals just over 1 pound or the RQ for CERCLA. This number could be lower, such as 10 ballasts within a 1–year period as the petitioners suggested or higher, such as 3,000 per month which approximates the 100 kg per month small quantity exemption under RCRA. EPA is seeking information on the number of fluorescent light ballasts containing PCB Small Capacitors that should be allowed to be disposed of in a municipal solid waste landfill.

Finally, on a related issue, the petitioners indicated that fluorescent light ballasts containing PCB Small Capacitors sent to municipal solid waste landfills do not remain intact and nonleaking once they are placed in the landfill. EPA is seeking data indicating that the disposal practices at a municipal solid waste landfill, such as compaction, will cause the PCBs to leak into the environment. If true, EPA is seeking data in support of statements that the PCBs leaking from small capacitors in municipal solid waste landfills can create a risk to health and the environment through ground water contamination. Such information should include the degree of risk reduction that could be achieved, the costs of risk reduction methods, and the impacts of any regulation on the economy, small businesses and other affected entities.

d. *Large volume PCB liquids.* EPA also received a request to address the issue of disposal options for large volume liquid PCB wastes. Under current regulations at §761.60(a)(3), liquids at concentrations of 50 to 499 ppm may be disposed of in a high efficiency boiler meeting the requirements of §761.60(a)(3)(iii), in an incinerator meeting the requirements of §761.70, or a chemical waste landfill (CWL) meeting the requirements of §761.75, if information is presented to the CWL owner or operator that the fluid does not exceed 500 ppm and is not an ignitable waste as described in §761.75(b)(8)(iii). However, the commenter was referring to industrial sludges at 500 ppm or greater that must be disposed of by incineration or by an alternate method that has been demonstrated to be the equivalent of incineration.

In responding to a citizens petition under section 21 of TSCA that had been submitted to EPA on behalf of several potentially responsible parties to a Superfund cleanup (Refs. 5 and 6), the Agency indicated that "[a]s a matter of policy, EPA in 1985 determined to treat industrial sludge similarly to PCB liquids.... Under this policy, PCB-Contaminated industrial sludges may be placed in a TSCA landfill complying with 40 CFR 761.75, while sludges contaminated at greater than 500 ppm must be disposed of in a TSCA incinerator complying with 40 CFR 761.70."

As discussed earlier in this rule (see the discussion on "Large Volume PCB Wastes" at Unit II.A. of this preamble), EPA is proposing to consider the site-specific risk factors in determining the appropriate disposal mechanisms for PCB remediation wastes, a category of wastes which includes industrial sludges.

e. *Abandonment and disposal of natural gas pipeline.* There are approximately 1.5 million miles of natural gas pipeline in the United States, including approximately 275,000 miles of interstate transmission line with the remainder comprising local distribution systems. Several thousands of miles of pipeline are removed from service every year for a variety of reasons. One commenter suggested "that the regulations should allow for the abandonment in place of all distribution mains after removal of any liquids by reasonable means and the sealing of the ends of each segment of pipe." This commenter also suggested that the disposal requirements for drained hydraulic machinery and drained natural gas pipeline should be equivalent. Another commenter stated that §761.60(b)(5)(ii), which addresses disposal of "Other PCB Articles," should be revised to say "the handling, storage, and disposal of the drained article (gas pipeline) is not regulated." Moreover, one commenter suggested EPA revise the definition for PCB Items "so that natural gas pipelines can be regulated in a manner more in line with the risks presented."

A review of the history of the regulation of PCBs in natural gas pipelines is needed to put these comments into perspective. The use of PCBs in natural gas pipeline compressors and in the liquids found in natural gas pipeline is authorized at concentrations below 50 ppm (§761.30(i)). The current authorization does not extend to the use of PCBs in air compressor units that are routinely found at natural gas compressor stations. EPA believes that the risk of exposure associated with other PCB Articles such as hydraulic equipment are much different than the risk of exposure to the end-users of natural gas containing PCBs or the reuse of pipeline containing PCBs. In a final rule published in the **Federal Register** on May 31, 1979 (44 FR 31536), EPA authorized the use, including servicing, of PCBs in natural gas pipeline compressors at levels above 50 ppm until May 1, 1980. The authorization was intended to give individuals time to drain and refill these compressors with non-PCB fluid to further reduce the PCB concentration below 50 ppm. EPA determined that "[b]ecause of the small quantities and low concentrations of PCBs involved, ... this authorization will not result in exposure to PCBs that presents an unreasonable risk to health or the environment."

In 1981, EPA found that industry practices continued to result in the use of PCBs in at least 13 natural gas pipeline transmission systems at concentrations above 50 ppm, and in some instances above 500 ppm, in violation of the PCB regulations. To address the elevated levels of PCBs found in the pipeline systems, EPA implemented remedial plans with four

basic objectives: (1) To contain the contamination to limited areas of the transmission system; (2) to eliminate any further entry of PCBs into the system; (3) to remove remaining PCB contamination from these systems; and (4) to ensure proper handling of PCBs that were removed. Each of these 13 interstate pipelines were originally presumed to contain PCBs at levels greater than 50 ppm. Data collected since a 1981 compliance program was implemented showed the levels to be, in fact, greater than 500 ppm. This presumption did not extend to other interstate pipelines or to associated distribution system pipelines. Further, on July 10, 1984 (49 FR 28185), EPA amended the regulations to allow the continued use of PCBs at less than 50 ppm in the natural gas compressors and liquid of natural gas pipelines provided the compressors are marked in accordance with §761.45(a).

Therefore, commenters questioning the disposal requirements are advised that, when the natural gas pipeline has been operated in compliance with the PCB use authorization (i.e., the compressor and liquids contain less than 50 ppm), the handling, storage, and disposal of these items are currently not regulated. Reuse of this pipeline, such as for culverts, is not currently authorized by these rules; however, reuse of pipeline is specifically addressed in Unit II.D.2.b. and generally addressed in Units II.A.5. and 6. of this preamble. Items containing PCBs at levels of ≧50 ppm are subject to the disposal requirements at 40 CFR 761.60. However, PCB-Contaminated Articles that have been drained of all free flowing liquids could still be abandoned in place under proposed §761.60(b)(6)(ii), as under current §761.60(b)(5)(ii), but not used or reused.

Local distribution system pipe frequently shares public rights-of-way, thus underlying major public infrastructures such as roadways, water lines, sewer lines, and telephone and electrical service lines. Unlike interstate transmission lines, testing and removal of some distribution lines have a great potential for causing prolonged disruption of other utilities sharing these rights-of-way. Today's proposal at §761.60(b)(5) would allow segments of either interstate or distribution natural gas pipelines to be abandoned in place along these rights-of-way if certain activities were undertaken to limit the risk of exposure. EPA believes that it is not a function of who owns the pipeline but rather how disruptive a removal would be that is the determining factor for allowing abandonment in these circumstances. DOT requires that natural gas pipeline abandoned in place must be disconnected from all sources and supplies of gas; purged of gas (but not liquids); in the case of local distribution lines, physically disconnected from the customer; and sealed at both ends (49 CFR 192.727). EPA believes that these requirements do not provide protection from exposure to pipe containing PCBs, even of the small diameters routinely found in local distribution systems because the distribution company may lose physical control of the pipeline containing PCBs after abandonment. EPA specifically requests data on levels of PCB contamination in local distribution systems and the protection from exposure to PCBs afforded by the DOT requirements for abandonment.

EPA proposes at §761.60(b)(5)(i)(A), that when levels of PCB contamination cannot be determined because condensate samples cannot be collected and the pipe is too small (having an inside diameter of 4 inches or less) to be accurately wipe sampled, the pipe may be abandoned in place if it is either filled to 50 percent of its volume with grout or high density polyurethane foam and sealed closed at each end, or sealed closed at each end and included in a public service notification program, such as a "one-call" underground utility warning program under DOT regulations at 49 CFR 192.614.

The proposal also provides a series of options for the removal with subsequent disposal or decontamination of pipeline containing PCBs and defines procedures for determining the level of contamination and whether the pipeline contains liquid. PCB-Contaminated natural gas pipeline, i.e., pipeline containing or contacting PCBs at concentrations of 50 – <500 ppm, or with surface concentrations of >10 – <100 micrograms PCB per 100 square centimeters, or natural gas pipeline containing PCBs at any concentration and having an inside diameter less than or equal to 4 inches could be disposed of in a solid waste landfill or an industrial furnace. In addition, natural gas pipeline containing PCBs at any concentration could be disposed of in a TSCA chemical waste landfill, a TSCA incinerator, by a TSCA approved alternate disposal method, or as a PCB non-remediation waste in compliance with proposed §761.62. Pipe containing or contacting PCBs at concentrations of less than 50 ppm or with surface concentrations of ≦ 10 micrograms per 100 square centimeters may currently be reused only as natural gas pipeline in the same natural gas system (same company) pursuant to the use authorization at §761.30(i); §761.30(i) does not also authorize distribution in commerce. In §761.79, *Decontamination*, EPA proposes cleanup levels and procedures for surfaces for reuse and for determining current regulatory status. This section is also applicable to natural gas pipelines and associated equipment.

f. *Disposal of solvents*. EPA, in response to several comments and a related judicial decision [In the matter of: Rollins Environmental Services (N.J.), Inc., Docket No. II-TSCAPCB-88-0116 (July 13, 1989), *Rollins Environmental Services (NJ) Inc. v. EPA*, 937 F.2d 649 (D.C. Cir. 1991)], is proposing to clarify the disposal requirements relating to solvents used in decontamination procedures. Current regulations at §761.79(a) explicitly require the disposal of solvents used to decontaminate PCB containers in a TSCA approved facility once the PCB concentration in the solvent reaches 50 ppm PCBs. Section 761.79 does not address the disposal requirements for solvents used to decontaminate that do not reach 50 ppm. Existing rules at §761.1(b) require solvents used in decontamination to be disposed of as PCBs regardless of the final concentration of PCBs in the solvent. Such solvents have been in contact with PCBs and as such are regarded as containing the concentration of the original PCBs because of the principle of anti-dilution. The PCB rules currently contain no other provisions for decontamination; however, EPA has approved various decontamination-like activities under §761.60(e). PCB disposal approvals for decontamination-like activities, issued under §761.60(e), specify disposal requirements for solvents. In the Rollins Circuit Court decision, the disposal requirements for solvents that contain less than 50 ppm PCB used to decontaminate PCB containers were found to be unclear. In order to clarify this situation, EPA is proposing to amend the provisions at §761.79 to allow hydrocarbon solvents containing less than 50 ppm PCBs to be used in accordance with the provisions for used oil as outlined in §761.20(e) or to be decontaminated themselves through processes such as filtration.

g. *Disposal of waste generated during the chemical analysis of PCBs*. Chemical analysis is needed to determine PCB concentrations for the purposes of determining compliance with the PCB regulations; characterize PCB contamination; determine the effectiveness of various decontamination and treatment technologies; and determine PCB levels in humans and their food chain. The chemical analysis of PCBs includes

sample preparation, sample extraction, extract concentration, extract cleanup, addition of PCB standards, and instrumental analysis. There are several possible wastestreams resulting from the chemical analysis of PCBs: excess sample, potentially contaminated drying agent (anhydrous sodium sulphate), extract solvent removed during extract concentration (acetone, hexane, methylene chloride, etc.), cleanup column packing materials (alumina, florisil, etc.), cleanup liquids (concentrated sulfuric acid), glassware, filtering materials, extracted sample material, and excess extract. In addition, analytical instrumentation is contaminated and therefore regulated if regulated PCBs are analyzed.

The relatively small amount of PCBs extracted in a sample is often diluted significantly in most potential laboratory wastes, and most wastes that cannot be recycled contain materials that should absorb PCBs. Extraction of small amounts of PCBs resulting from PCB analysis would likely be more burdensome than disposal in a controlled disposal facility and would result in less reduction in risk. Therefore, EPA is proposing at §761.64 special disposal provisions for laboratory waste.

All samples, including extracted sample material, would remain regulated for disposal, but could be returned to the site of generation for disposal according to the concentration measured in the sample. EPA is also proposing to permit, under certain conditions, the recycling for reuse of limited quantities of organic solvents used in the chemical analysis process described above. This change would result in cost savings to the laboratory by not having to replace used solvent, that could otherwise be safely and economically recycled by distillation within the laboratory, and would also result in minimization of laboratory waste solvents for disposal. In addition, EPA is proposing to allow the disposal of small quantities of non-liquid waste according to their existing (or presumed) concentration even though that concentration is known to be the result of dilution from performance of chemical analysis. EPA believes that the relatively small quantity of these wastes which are generated, their low concentrations of PCBs in non-liquid materials, and the significant quantity of materials in the non-liquid waste which would absorb PCBs present make disposal of these materials in a RCRA approved or TSCA approved landfill a safe and economical option.

h. Transboundary movement of PCBs for disposal. EPA periodically receives requests from individuals wishing to import or export PCBs for disposal. Current regulations at 40 CFR 761.20(b)(2), promulgated under section 6(e)(1) of TSCA, authorize the import or export for disposal of PCBs only at concentrations less than 50 ppm. EPA believes there are instances where the import or export for disposal of PCBs at higher concentrations would not pose an unreasonable risk of injury to health or the environment. EPA therefore proposes to amend §761.20(b)(2) and add §761.20(b)(3) to create certain categorical exceptions to the general ban on import for disposal of PCBs at 50 ppm or greater and to clarify what constitutes import or export for purposes of this regulation. This proposal would also establish a petition procedure under proposed §§761.20(b)(4) and (c)(3) under which other imports and exports for disposal could be allowed on a case-by-case basis. This section of the proposal would not alter the current ban on import or export of PCBs at 50 ppm or greater for purposes other than disposal (including import for use, reuse, or recycling), or affect the meaning of the terms "import" or "export" for any other provisions of TSCA.

When EPA addressed the issue of import and export for disposal in 1979, it noted that regulation of these types of activities could be accomplished under TSCA section 6(e)(1), which governs disposal activities, or alternatively under section 6(e)(3), which governs manufacture and import activities (44 FR 31514, 31526 (May 31, 1979)). Based upon the authority in section 6(e)(1), EPA elected to issue comprehensive regulations that temporarily authorized the import and export of PCBs for disposal, otherwise known as the "Open Border Policy." EPA decided not to extend these regulations in 1980 and they expired (45 FR 29115 (May 1, 1980)).

In 1984, EPA issued the current PCB regulations that address import and export for disposal (40 CFR 761.20(b) and 761.60(h)). Section 761.60(h) provides that the import and export of PCBs and PCB Items for purposes of disposal are regulated under section 761.20. Section 761.20(b)(2) authorizes only the import or export for disposal of PCBs at concentrations of less than 50 ppm. The current rules do not authorize import or export for disposal of PCBs at higher concentrations. In the absence of a general rule that allows the import or export for disposal of such PCBs, the only way that such wastes may currently be imported or exported is if EPA grants an exemption pursuant to TSCA section 6(e)(3).

This rule is designed to control the transboundary movement of PCB waste in a manner consistent with the Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and their Disposal. EPA is requesting comment on the circumstances under which the U.S. border should be opened to transboundary shipments of PCBs for disposal. The options range from allowing all imports for disposal under section 6(e) to maintaining the current closed border status, and might include opening the border to PCBs from a limited geographic area such as the Great Lakes drainage basin. Today's proposal, if finalized, would retain the general prohibitions on import and export of PCB wastes at concentrations of 50 ppm or greater, with certain exceptions described below.

Import. Proposed §761.20(b)(2) would allow three exceptions to the general prohibition on import of PCBs for disposal. Proposed §761.20(b)(3) would clarify what constitutes import for purposes of this regulation. EPA could add categorical exceptions to proposed §761.20(b)(2) and (b)(3) should the need arise in the future.

(1) *Imports of PCBs at concentrations less than 50 ppm.* Because the Administrator has made the finding that PCBs at concentrations less than 50 ppm present no unreasonable risk to health or the environment, import for disposal of these PCBs would continue to be allowed.

(2) *Import of PCB wastes from United States territories or possessions that are outside the customs territory of the United States into the customs territory of the United States for disposal.* TSCA and the regulations issued thereunder at 40 CFR Part 761 regulate the manufacture, import, distribution, processing, use, storage, and disposal of PCB waste in the United States. The terms "United States" and "States" are defined at sections 3(13) and 3(14) of TSCA to include "any state, D.C., Puerto Rico, Virgin Islands, Guam, the Canal Zone, American Samoa, Northern Mariana Islands, or any other territory or possession of the United States." TSCA does not define imports specifically, but section 13 of TSCA requires the Secretary of the Treasury to refuse entry into the customs territory of the United States (as defined in general headnote 2 of the Tariff Schedules of the United States) of any chemical substance, mixture, or article offered for entry if it fails to comply with any rule under TSCA. In the Tariff Schedules, "customs territory of the United States" is defined as "any State of the United States, the District of Columbia, and

Puerto Rico." Thus, a problem arises when a territory or possession which is outside the customs territory of the United States attempts to ship PCB wastes back into the customs territory of the United States for disposal. Any such transfer of such PCB wastes at concentrations of 50 ppm or greater would be considered a prohibited import under existing regulations. This is problematic because most United States territories and possessions outside the customs territory do not have adequate disposal facilities. Since PCBs persist in the environment, improper disposal of PCBs in those territories or possessions could create an unreasonable risk to health or the environment in the territory or possession of the United States. Therefore, EPA proposes to allow transfers of PCBs from United States territories or possessions that are outside the customs territory of the United States into the customs territory of the United States for disposal.

(3) *Imports of PCBs for disposal where EPA determines that it is in the interests of the United States and will not result in unreasonable risks to health or the environment.* In addition to the categorical exceptions listed above, there may be instances in which it would be in the interests of the United States to allow import of PCBs for disposal. This might be the case where PCBs were located outside the United States, but in close proximity to the United States, and adequate disposal facilities were not available in the country in which they were located. Import of the PCBs into the United States for disposal might be in the interests of the United States to mitigate an unreasonable risk to health or the environment in the United States that could not be mitigated by other means. It might be in the interests of the United States to allow import of PCBs for disposal to implement a federal law such as CERCLA, or to carry out United States obligations under a treaty or other international agreement. EPA would not be inclined to find that import for disposal was in the interests of the United States solely because disposal of the PCBs in this country was less expensive. EPA proposes to allow imports for disposal that are in the interests of the United States on a case-by-case basis where they would not pose an unreasonable risk of injury to health or the environment.

Under its section 6(e)(1) authority to regulate disposal, EPA proposes to allow these case-by-case exceptions to the ban on import for disposal of PCBs at concentrations of 50 ppm or greater at EPA's initiative or in response to a petition. Under proposed §761.20(b)(4), any person may petition EPA for an exception to the prohibition on import for disposal, and EPA may grant such an exception if it finds that to do so would be in the interests of the United States and would not result in unreasonable risk of injury to health or the environment.

Petitions would be filed with the Director, Chemical Management Division. The Director has the authority to issue TSCA PCB disposal approvals in certain instances and is responsible for coordination and oversight of PCB disposal activities in the United States. Therefore, the Director is in the most advantageous position to require proper disposal of imported PCBs. Petitions would have to be submitted on an individual basis for each individual that would be subject to the exception. If EPA determined that it was appropriate to create a categorical exception, it could do so by adding through rulemaking to the categorical exceptions proposed at §761.20(b)(2) and (b)(3). Information to be included in the petition is specified at proposed §761.20(b)(4)(i) through (vii). The petitioner would be notified of EPA's decision by letter.

To implement the proposed §761.20(b)(2) through (4), EPA is also proposing at §761.20(b)(5) that all PCBs at concentrations greater than or equal to 50 ppm that are imported for disposal must be disposed of in an EPA designated facility which has a TSCA PCB disposal approval. Each facility's TSCA PCB disposal approval would have to contain specific conditions addressing at a minimum its designation to receive specified shipments of imported PCBs for disposal, analytical data on wastes to be imported including their compatibility with the facility's approved waste disposal techniques, prior notification and certification to EPA of adequate disposal capacity, use of the manifest system, provisions for financial responsibility for the imported PCBs from the port of entry through final disposal, appropriate recordkeeping for these activities, and any other conditions that EPA found were necessary to ensure that the import and disposal of PCBs did not present an unreasonable risk of injury to health or the environment. Since EPA cannot easily reach foreign generators of imported PCBs to enforce liability provisions of TSCA or other Federal statutes and cannot be assured that shipments of imported PCBs could be returned to their country of origin if they could not be disposed of at the designated facility, conditions would be included in disposal approvals to address these situations. Imported PCBs could also be decontaminated under the proposed changes to §761.79. However, the PCBs would have to be imported to a commercial storage facility which had a PCB commercial storage approval, unless exempt, including special approval conditions for imported wastes, as noted above.

Export. When EPA announced the expiration of the Open Border Policy in 1980 it stated, with regard to exports, that it would not grant an exemption unless the nation to which the export was destined had proper facilities for ultimate disposal (See 45 FR 29115). EPA believes that export of PCBs to other countries needs to be limited so as not to pose a risk of injury tohealth or the environment in those countries and that to the maximum extent practicable, each nation should manage its own waste within its own borders. Therefore, EPA is proposing at §761.20(c)(3) to allow export for disposal of PCB waste at concentrations of 50 ppm or greater on a case-by-case basis unless EPA has reason to believe that the PCBs in question will not be properly managed, where the receiving country has an international agreement consistent with the international obligations of the United States relating to transboundary movements of PCBs and their disposal, with the U.S. Government concerning such exports; the government of the receiving country certifies to EPA that it has received accurate and complete information about the waste, consents to receive it, and has adequate disposal facilities to assure proper management; and the exporter identifies waste containing liquid PCBs or PCB-containing electrical equipment. As an example, vessels are sometimes exported for salvage of the considerable amounts of metal they contain. PCBs present in integral components of the ships, such as wire cable or air handling system gaskets, could be exported with the ship under conditions specified in the export approval. EPA could require as a condition of approval for export that PCBs found in large capacitors, transformers, and hydraulic or heat transfer fluids, be removed prior to export for disposal. EPA could allow such exports for disposal on its own initiative or in response to a petition. Other information that would have to be included in the petition is set out at proposed §§761.20(c)(3).

Other transboundary shipments. Certain types of movement of PCB wastes accross national borders is not considered to be either import or export.

(1) *Transport of PCB waste generated in the United States through a foreign country (and any residuals resulting*

from cleanup of spills of such waste in transit) for reentry into the United States for disposal. The proposal would clarify that PCB waste generated in the United States may be transported through a foreign country and returned to the United States for disposal. For example, PCB waste generated in Michigan could be transported across Canada for disposal in New York. Any residual PCB waste resulting from the cleanup of spills that might occur in transit could also be brought into the United States for disposal. Otherwise, it would be impractical and inefficient to transport PCBs generated in certain parts of the United States to nearby United States disposal facilities. This provision is included in §761.20(b)(3) as a clarification. For purposes of this regulation, EPA considers such shipments to be transit shipments, not exports or imports.

(2) *Return for disposal of wastes that result from PCBs that were procured domestically by the U. S. Government, taken overseas for use by the U. S. Government, and that have remained under U. S. Government control since the time of procurement (including any residuals resulting from cleanup of spills of such wastes during use, storage, or in transit).* In conjunction with U. S. Government operations, PCBs may be taken to United States facilities abroad for use. Because these PCBs have always been the property of the United States, and because disposal facilities for these wastes might not be readily available overseas, they would be permitted back into the United States for disposal along with any residuals resulting from cleanup of spills occurring during use, while in storage for reuse or awaiting shipment for disposal, or in transit. For purposes of this regulation, EPA would not consider these shipments to be exports or imports.

i. *Landfilling of liquid PCBs.* EPA proposes to remove the provisions allowing for the disposal of liquid PCBs, which have been stabilized on-site prior to disposal, at a chemical waste landfill, §761.60(a)(2)(ii), §761.60(a)(3)(ii), and §761.75(b)(8)(ii). These provisions were established in the May 31, 1979 rulemaking, since at the time of the rulemaking there was a limited number of incinerators permitted to burn PCB waste and disposal capacity was a concern. Currently, and as can be reasonably expected in the future, the amount of low concentration PCB liquids anticipated to be designated for disposal and in storage for disposal can easily be accommodated within the existing and anticipated future PCB disposal technologies other than landfilling. The existing PCB disposal and storage for disposal regulations and the amendments proposed in this rulemaking are expected to accommodate the surplus in the disposal capacity supply.

Further support for this deletion of a disposal option for liquid PCBs having low PCB concentrations is the prohibition on landfilling liquid hazardous wastes containing PCBs under the RCRA land disposal restrictions at 40 CFR 268.42.

j. *Self-Implementing requirements for research and development for PCB disposal activities— 1. General.* This change would eliminate the time-consuming process of obtaining an R&D approval in order to engage in limited R&D into PCB disposal. R&D for PCB disposal not conforming with the limitations of this section would require written approval or written waiver of the requirements of a §§761.60(e), 761.60(i)(2), or 761.70(a) or (b) approval by the Regional Administrator in the EPA Region where the R&D would occur. Persons engaged in research and development into PCB disposal technologies would now be required to obtain an EPA identification number.

EPA proposes at §761.60(j) a self-implementing approval for research and development (R&D) for PCB disposal activities. Limitations are proposed for the amount of PCB material disposed of, the concentration of the PCBs disposed of, the total amount of PCBs, and the duration of the R&D for disposal activity. All treated and untreated PCB materials from a PCB R&D for disposal activity would be required to be disposed of according to §761.60(a)-(e).

2. *Definition of R&D for PCB Disposal.* An individual engaged in R&D for PCB disposal activities is someone who is not accepting PCB waste on a commercial scale; the person is involved solely in the R&D for preliminary investigation and limited scale up of PCB disposal technologies and may or may not possess a TSCA PCB R&D Approval issued according to §§761.60(e), 761.60(i)(2), or 761.70(a) or (b).

3. *Limitations.* EPA is proposing at §761.60(j) that the maximum quantity used annually under this exemption for PCB treatability study samples be 70 cubic feet for solid material or 500 gallons for liquid material. This should be a sufficient amount of material for conducting small-scale treatability studies. If additional material is needed to conduct the study, the Regional Administrator may at his or her discretion grant requests on a case-by-case basis for quantity limits in excess of those specified or require a formal R&D approval if the increased quantity could present an unreasonable risk to health or the environment.

In addition to a quantity cut-off, EPA is proposing at §761.60(j) to limit the maximum concentration for PCB waste that is used in a treatability study to 10,000 ppm for those utilizing the 500 gallon or 70 cubic feet volume cap or 1 kilogram (kg) of pure PCB waste annually at the facility. It has been EPA's experience in the past in reviewing applications for R&D approvals and in discussions with those in the waste treatment field, that it is rare that one would need a sample that contains more than 10,000 ppm PCBs to conduct a small-scale treatability study. The concentration limits are also proposed based on the Agency's concern with the potential risks associated with the distribution in commerce (without a manifest) and handling of high concentration PCBs.

EPA is also limiting the approvals under proposed §761.60(j) to one calendar year to evaluate the progress and scope of the R&D and to plan for potential formal permitting of successful technologies.

4. *Permitting and exceeding the limitations.* Under the proposal, a the laboratory conducting the treatability study conforms to the criteria of §761.60(j), then it is not subject to the permitting requirements of §§761.60(e), 761.60(i)(2), or 761.70(a) or (b). The Agency feels that the criteria in proposed §761.60(j) coupled with the applicable provisions of OSHA regulations at 29 CFR part 1910 provide adequate oversight and protection to health and the environment to forego the need for formal permitting. The Regional Administrator or Director, CMD would, however, have the authority even in cases where the R&D activity would not exceed the maximum allowable volume (500 gallons of liquid or 70 cubic feet of solid) or the maximum allowable concentration (10,000 ppm or 1 kg of pure PCB), to require the requestor to submit a formal permit application if the disposal activity could present an unreasonable risk of injury to health or the environment. Under proposed §761.60(j), the Regional Administrator in the Region in which the R&D disposal activity is proposed would have to be informed in writing at least 30 days prior to the commencement of the disposal activity.

5. *Notification.* Individuals engaged in conducting R&D for PCB Disposal would also be required to submit EPA Form 7710–53, even though they may have notified EPA as a "Permitted Disposer." There is a new category on EPA Form 7710–53 designated as R&D/

Treatability included for the notification.

III. Other Regulatory Changes and Clarifications

The following issues were identified in the ANPRM as items where changes may be appropriate. These revisions include providing clarification on certain provisions (e.g., the 1–year time limit for storage and disposal requirement) and amending the regulations where appropriate, eliminating seemingly duplicative requirements (e.g., marking), and creating new provisions to promote efficiency in disposal operations (e.g., temporary storage of greater than 500 ppm PCB liquids).

A. Marking

The regulations at §761.40(b) and (e) essentially express the same requirements with regard to the marking of transport vehicles when loaded with PCBs in the liquid phase at concentrations of 50 ppm or greater. In the ANPRM, EPA solicited comments on the best remedy for this regulatory duplication. In response to the ANPRM, commenters expressed general support for EPA's overall objective to clarify the language and eliminate duplication in the marking regulations. Several commenters suggested that both §761.40(b) and (e) be deleted and totally rewritten. Other suggestions included combining the paragraphs, rewriting both subsections, or deleting one and updating the other.

In today's proposal, EPA proposes to eliminate this duplication by combining references to the marking requirement for transport vehicles at §761.40(b) and (e) under proposed paragraph (d), thus leaving the requirements for the remaining PCB Items under paragraph (e). This amendment would not result in any substantive change.

Further, EPA has determined that Large Low Voltage Capacitors often are not identified and disposed of properly at the time of removal, because they are not required to be marked while in use. Therefore, EPA is proposing to strengthen the marking requirements for Large Low Voltage Capacitors to include those still in use. Because of these identification and disposal concerns, the Agency is proposing at §761.40(k) that all PCB Equipment in use containing PCB transformers or PCB Large Capacitors be marked with the mark ML.

The Agency is also aware of reports that PCB Capacitors were not marked because they were assumed not to contain PCBs. To clarify what capacitors must be assumed to contain PCBs, EPA is proposing to amend the definition of "Capacitor" in §761.3 to clarify that a capacitor whose PCB concentration is unknown generally must be assumed to contain 500 ppm or greater PCBs. This should make it evident to readers that this rule applies to the marking, use, and recordkeeping requirements, and not just disposal.

B. Department of Transportation Containers for Storage of PCB Waste

Currently, the regulations at §761.60(b)(2)(vi) and §761.65(c)(6) specify the use of Department of Transportation (DOT) specification containers for PCB storage and disposal. Section 761.65(c)(7)allows liquid PCB waste to be storedin containers that are larger than the DOT containers specified at §761.65(c)(6), provided they meet OSHA requirements (§761.65(c)(7)(i)). In addition, a Spill Prevention Control and Countermeasure (SPCC) Plan must be prepared and implemented in order for these larger containers to be used. For non-liquid PCB waste, containers larger than those specified in §761.65(c)(6) may be used, if they provide as much protection against leaks and exposure as the DOT containers, and they are of the same relative strength and durability. In short, the current regulations require the most durable containers be used for storing and/or transporting PCBs, which in most cases, and in particular when storing PCB/radioactive waste, may not be the best alternative (See discussion at Unit II.C.—PCB/Radioactive Waste).

EPA is proposing to amend §761.60(b)(2)(vi) and §761.65(c)(6) by deferring to the DOT container requirements for the storage and transportation of PCBs. EPA proposes to eliminate all citations to specific container type and to cross reference the new performance-based DOT container requirements set forth in the DOT Hazardous Material Regulations (HMR) at 49 CFR Parts 171–180. EPA regulates PCBs at a much lower concentration than DOT. Therefore, EPA would also like to emphasize that although some material may not be subject to DOT regulations, part 761 would still require these materials to be packaged in accordance with the DOT regulations, that is, in DOT authorized containers. PCBs are shown in the Hazardous Materials table at 49 CFR 172.101, in Packing Group II. However, under those regulations PCBs that are transported by highway or rail need only be packaged pursuant to Packing Group III. PCB/radioactive, PCB/fissionable material, PCB/mixed waste, and PCB/hazardous waste not packaged in accordance with the HMR are not allowed to be transported. Additionally, readers are advised that the HMR as amended on December 21, 1990 (55 FR 52402) prohibits the construction of DOT specification packaging previously designated for the storage of PCB waste (i.e., DOT Specification 5, 5B, 6D, 17C, 17E, and 17H containers) effective October 1, 1994. Further, transportation of PCBs in these outdated DOT specification containers is not authorized beyond September 30, 1996. Although most commenters agreed with EPA's decision to defer to DOT, one commenter suggested that EPA continue to list all containers authorized by DOT. However, such an approach would defeat EPA's objectives in amending the PCB rules which are to provide flexibility to industry and to minimize the resource burden associated with updating the PCB regulations each time DOT modifies its requirements.

C. Definition of a PCB Transformer and PCB-Contaminated Electrical Equipment

The proposed amendment to the definition of a PCB Transformer at §761.3 provides: "PCB Transformer means any transformer that contains 500 ppm PCBs or greater. A transformer is a PCB Transformer if: the nameplate indicates that the transformer contains PCB dielectric fluid; the owner or operator has any reason to believe that the transformer contains PCB dielectric fluid; or the transformer dielectric fluid has been tested and found to contain PCBs at 500 ppm or greater. A transformer is assumed to be a PCB Transformer if: the transformer does not have a nameplate; records do not exist that indicate the type of dielectric fluid; or records do not exist that indicate the PCB concentration." In order to clarify the current definitions of "PCB-Contaminated Electrical Equipment" (specifically PCB-Contaminated Transformer within this definition) at §761.3, EPA is proposing incorporate into this definition the provisions of the "assumption rule" in this preamble to the PCB to the PCB Ban rule (44 FR 31517, May 31, 1979).

EPA inspectors have suspected that some owners of transformers are abusing the "assumption rule" to avoid the stricter disposal requirements of §761.60. An example of such an avoidance technique is the removal of the manufacturer's nameplate or other identifying information that could be used to classify a transformer as PCB. Additionally, the possibility exists that a transformer may have been serviced with fluid containing 500 ppm PCBs or greater. For purposes of clarification, "records" as used above refers to

servicing records, manufacturers certifications and/or other data that would indicate or impact PCB concentration. Generally, commenters expressed support for EPA's effort to clarify the existing definition of a PCB Transformer.

In addition, the current definition of PCB-Contaminated Electrical Equipment at §761.3 which includes "oil-filled electrical equipment," has been misinterpreted to mean that a transformer with any oil in it could be assumed to be PCB-Contaminated (50 to 499 ppm). To further clarify this definition, the Agency is proposing to add the word "mineral" before the words "oil filled". In addition, language would be added to this definition which states that "a transformer is assumed to contain PCBs at 500 ppm or greater, if it is an untested mineral oil transformer and reasons exist to believe that the transformer was at any time serviced with fluid containing PCBs at 500 ppm or greater." Historically, mineral oil transformers encompassed the vast majority of non-askarel transformers; however, over time the types of non-askarel transformers have expanded to include, for example, silicone filled transformers. Adding this clarification would reestablish the Agency's intent when this definition was added to the regulation in August of 1982 (46 FR 37342) that mineral oil filled transformers are assumed to be PCB-Contaminated (50 to 499 ppm)

Some commenters suggested that instead of amending the definition, the Agency should consider requiring that these units be tested prior to disposal. Others commented that EPA should provide immunity from enforcement action to owners who assumed their oil-filled electrical equipment was PCB-Contaminated Electrical Equipment when it was later determined that the transformer contained PCBs at 500 ppm or greater.

While the costs of testing have decreased since 1979, EPA is not proposing to change its long standing policy, which does not require testing transformers prior to disposal, while the equipment is in use. Nonetheless, owners of electrical equipment containing PCBs should consider verifying the concentration prior to disposal to avoid violations of TSCA. In addition, EPA is not proposing to issue a blanket exemption from enforcement action for use of a mineral oil transformers assumed to contain less than 500 ppm PCBs but later found to contain PCBs at 500 ppm or greater. The regulations at §761.30(a)(1)(xv) currently describe procedures for bringing such transformers into compliance with the use authorization provisions. For example, in order to qualify for the current use authorization, all PCB Transformers were required to have been registered with fire response personnel by December 1, 1985 (§761.30(a)(1)(vi)). PCB transformers erroneously assumed to have been contaminated at less than 500 ppm PCBs must be registered within 30 days of discovery of the actual contamination level with the required fire response personnel (§761.30(a)(1)(xv)(D). If it cannot be demonstrated (e.g., by the production of the receipt from a registered letter used to register the transformer and signed by the fire response personnel) that, this registration has taken place, then that PCB Transformer is not authorized for use under §761.30.

The Agency is seeking information regarding numbers of small transformers or other electrical equipment that contains PCBs. These small transformers or other types of small electrical equipment generally do not have nameplates and are not easily sampled. Some examples of this type of equipment are: potential transformers, current transformers, instrument transformers, grounding transformers, voltage transformers, and ignition transformers. These small transformers can range in size from several inches to several feet in height. Such small transformers can be filled with oil, epoxy, or tar-like potting compounds that contain PCBs, or they could be "dry". Since these small transformers generally do not have a nameplate, under the proposed amendment to §761.3 they would have to be assumed to be PCB Transformers and would be subject to the use requirements at §761.30(a) and the disposal requirements at §761.60(a).

The Agency is also soliciting comments regarding the disposal requirements that could be imposed on these small transformers or other similar types of small electrical equipment. Their disposal requirements could resemble those for small capacitors (e.g., 3 pounds of dielectric fluid (§761.60(b)(2)(ii)) or could be expanded to include the size (physical dimensions) or the total weight of the equipment as well. Such small transformers or similar small electrical equipment, meeting the size or weight conditions, could be authorized for disposal in an approved chemical waste landfill under §761.75, or if less stringent disposal was deemed protective, in a municipal solid waste landfill.

D. Drained PCB-Contaminated Transformers

Drained PCB-Contaminated Electrical Equipment is unregulated for disposal under the existing regulations at §761.60(b)(4) and may be salvaged through smelting, a process recognized by EPA as an acceptable form of disposal when certain conditions are met. EPA solicited comments in the ANPRM on whether the Agency should consider amending the regulations for the disposal of drained PCB-Contaminated Electrical Equipment to ensure that the equipment is properly disposed of and is not illegally reused. Possible remedies such as decontamination and stricter controls to ensure that units were completely drained were not well received by commenters. In particular, most commenters stated that the anecdotal information that drained PCB-Contaminated Electrical Equipment carcasses were used for barbecue grills reflected isolated instances of non-compliance.

Considering the low potential exposure to humans and the environment and the valuable metals that could be salvaged for recycling, EPA is proposing to modify the disposal requirements at §761.60(b)(4) for drained PCB-Contaminated Electrical Equipment by including this equipment under the proposed general ban against open burning of PCBs and allowing disposal only in facilities that are permitted, licensed, or registered by a State to manage municipal or industrial wastes (excluding thermal treatment units), in an industrial furnace or in a TSCA approved disposal facility (See Unit II.B.2. of this preamble). Finally, EPA also proposes to add language to §761.60(b)(4) which states that for a period of not less than 48 hours, equipment should be allowed to drain, so that as much liquid as possible is removed from the equipment to further reduce PCB content prior to disposal.

E. Transfer of Totally Enclosed PCBs

Under current rules, PCB Items with concentrations of 50 ppm or greater, sold before July 1, 1979, for purposes other than resale may be distributed in commerce in a totally enclosed manner (§761.20(c)(1)). While under §761.20(c)(1), totally enclosed PCB Items such as transformers, and Large High and Low Voltage Capacitors ≧50 ppm (as defined in §761.3) may be distributed in commerce (e.g., sold), EPA requested comment in the ANPRM on the requirement that records be maintained on these transactions. Generally, commenters were very

supportive of the requirement that records be maintained to document the distribution in commerce of these items.

With the proposed recordkeeping requirement at §761.180(a)(2)(ix), EPA seeks to prevent illegal disposal of PCB Items, including PCB and PCB-contaminated transformers and Large Capacitors, by those who explain the disappearance of such items by claiming a sale has occurred. To minimize the potential for illegal disposal, EPA is proposing that the name, address, and phone number of the parties to which the item was transferred, the date of transfer, and the identifying number of the item be recorded in the annual document log for any distribution in commerce of a PCB Item (excluding small capacitors) with a concentration of 50 ppm or greater. In addition, EPA suggests that summary information relevant to the equipment (e.g., PCB content, servicing, and inspection records) and its compliance with applicable sections of part 761 be passed on to the new owner.

EPA had anticipated in the ANPRM that this recordkeeping requirement would be imposed pursuant to a sale. However, in order to avoid claims that the transaction is exempt from the proposed recordkeeping requirement because it involved no transfer of money, EPA is proposing to require that any transfer of ownership resulting in the transformer or other PCB Item being distributed in commerce, be included in the recordkeeping requirement.

The intent behind this proposed recordkeeping requirement is to identify instances of illegal disposal hidden behind the guise of a transfer of ownership. As such, EPA is seeking to require additional information on transactions which result in the removal of the transformers and capacitors from the property. In this proposal, EPA would not require the annual document log to identify the transfer of ownership of PCB Items (excluding small capacitors) with a concentration of 50 ppm or greater when that transfer was included in a real estate transfer. For example, a company sells a warehouse and the surrounding property. As long as the transformers and capacitors were transferred in the same transaction as the real estate, a separate log of the transaction would not be necessary.

A few commenters to the ANPRM suggested that the sale of totally enclosed electrical equipment should be banned outright. EPA believes that the sale or transfer of totally enclosed PCB Items should not be banned and that there is still a legitimate need for such equipment. However, EPA believes that additional controls are needed to ensure proper disposal of such equipment.

One commenter stated that a recordkeeping requirement would be impossible since not all PCB Items (e.g., PCB-Contaminated Transformers, or Large Capacitors) are marked with a serial number. Although EPA proposes that the records include the serial number of the equipment, the absence of a serial number should not preclude EPA from tracing an illegal disposal. Therefore, EPA is proposing that any internal identification number that the company uses to identify the specific PCB Item be included in the records. Any facility with PCB Items (excluding small capacitors) with a concentration of 50 ppm or greater not equipped with manufacturer identification numbers should develop some mechanism for identifying those pieces of equipment for activities such as maintenance or quarterly inspections. The proposal would require permanent marking, such as engraving of an internal identifying number in a prominent location on the equipment, as a means of identifying this equipment. Absent a manufacturer's identification, the company's own identification number would have to be documented on the records.

Several commenters recommended that the recordkeeping requirement be included in the annual record requirements at §761.180(a). EPA agrees that this would be an appropriate method of maintaining the records of a transfer of ownership of a PCB Item (excluding small capacitors) with a concentration of 50 ppm or greater. Therefore, EPA is proposing to implement this requirement by adding paragraph (ix) to §761.180(a)(2).

F. Change in Reportable Quantity — Spill Cleanup Policy

In attempting to provide more consistency with other Federal statutes, EPA solicited comments on whether §761.125(a)(1) should be modified to the new reporting requirement to the National Response Center. Changing the notice requirements from 10 pounds to 1 pound or more of pure PCBs, would reflect changes made to the reportable quantity (RQ) under CERCLA at 40 CFR part 302. In addition to seeking comments on this issue, the Agency restated its objective in establishing the TSCA PCB Spill Cleanup Policy of April 2, 1987; i.e., to provide guidance for the cleanup of recent (after May 4, 1987) or fresh spills. Commenters conveyed general support for changing the National Response Center RQ to 1 pound or more of pure PCBs. However, some suggested addressing old spills by applying the TSCA PCB Spill Cleanup Policy, while others recommended changes to the Regional reporting requirement. In considering these options, EPA concluded it is inappropriate to change the current policy to address these issues at this time. EPA's objective in initiating this rulemaking is to provide flexibility and to remove redundancies without weakening the existing policy. Finally, further discussion of EPA's position regarding the remediation of old spills can be found by referring to Unit II.A., "Large Volume PCB Wastes" in this notice.

In this rule, EPA proposes to change only the notice of a reporting requirement to the National Response Center at §761.125(a)(1) by lowering the RQ to 1 pound or more of pure PCBs to be consistent with CERCLA.

G. PCB Storage Requirements

1. *Indefinite storage of PCB Articles designated for reuse.* EPA regulations specifically state at 40 CFR 761.65(a) that any PCB Articles or PCB Containers that are stored for disposal shall be removed from storage and disposed of within 1 year from the date when it was first placed into storage. However, there currently is no comparable provision in the regulations that addresses the length of time a PCB Article may be stored for reuse. Further, EPA has been made aware of situations where PCB Transformers and PCB-Contaminated Transformers have been held "in storage for reuse" well beyond a time when it is reasonable to expect the equipment could be reused. This storage is being done under the pretext that the equipment is being retained as "spares" for critical components of existing electrical systems or that at some future date the owner will service the unit. It was not EPA's intent to allow PCB Articles that clearly could not be reused due to their state of disrepair, and therefore should be disposed of, to remain in storage for "reuse." This activity constitutes illegal disposal and creates additional risks of environmental exposure to PCBs while the equipment is "in storage for reuse."

EPA is aware, however, that there are many legitimate instances which warrant the storage of PCB equipment for many years for the purpose of reuse as spares for critical components of electrical systems. These are typically intact and nonleaking PCB Articles which are treated as if they were in service. Many comments received in response to the ANPRM suggested that limiting storage for reuse would in effect amount to a new use restriction without any apparent basis from the standpoint of protection of health and the

environment. Nevertheless, EPA is aware of other situations for which restrictions are warranted to minimize potential risks to the environment and health from exposure to PCB Articles which are being stored for reuse.

There are many compelling reasons for allowing the storage for reuse of PCB Articles. Since transformers, for example, can easily have an active service life of more than 40 years, disposing of this equipment prematurely based upon an arbitrary time limit would not be economically prudent nor serve any environmental goals. Placing such a piece of electrical equipment in storage for reuse to be used as a spare or in emergency situations is both prudent and economically sound. EPA is proposing to minimize the potential risks associated with the storage for reuse of this equipment, that once it is placed in storage for reuse it be treated as if it were in use (i.e., in-service).

Commenters provided a number of scenarios in which extended storage for reuse is warranted: (1) Some PCB Articles are designed and manufactured for very specific use and size requirements and for which replacement is imperative for the continued uninterrupted operation of a facility (i.e., power rectifiers to convert electrical power to a usable form for specific manufacturing operations, side-mounted bushings, etc.); (2) certain industries must maintain inventories of all vintages of spare equipment, for example, owners of locomotive and stationary PCB Transformers often maintain these units in storage for reuse for a number of years prior to reinstalling and reusing the transformer; (3) aircraft and airport operations require airport safety and facility operational flexibility and expedient maintenance capabilities; (4) changes in facility ownership or business transactions may result in the premature storage of some PCB Articles; (5) there may also be difficulties forecasting electrical demand or specialty needs and obtaining parts for repair which are not readily available; and (6) if spares of older designs that had been removed from service for reuse could not be maintained, significant changes to system design would be necessary and in-service equipment would have to be replaced.

Although EPA takes these many factors and situations into consideration, there are nevertheless, situations where the storage for reuse policy is abused. This abuse results, or has the potential to result, in serious environmental damage. It is these situations which the Agency is seeking to control by limiting the time allowed for storage for reuse and imposing other safeguards.

Certain types of businesses, by their nature (e.g., brokers, junk yards, service shops, etc.), accumulate larger quantities or volumes of PCBs than owners or users (e.g., a utility or industrial facility). Besides accumulating large volumes of PCB equipment that in many cases are in disrepair and may not be intact and non-leaking, these businesses have no intent of reusing the equipment themselves. The equipment may be awaiting repair prior to some future resale or may be in storage for "reuse" prior to purging for metal reclamation. In many cases, these units "in storage for reuse" remain for years in locations that are exposed to the elements which further compromise the integrity of the unit.

Therefore, EPA is proposing to add new §761.67 to limit storage for reuse in an area that was not designed, constructed and operated in compliance with §761.65(b) for a maximum of 3 years from the date a PCB Article was taken out of service or 3 years from the effective date of the final rule, whichever is later. PCB Articles placed into storage for reuse would have to be labeled at the time the PCB Articles were taken out of service, or upon the effective date of the final rule, and placed into storage for reuse. In addition, the storage for reuse of any PCB Article would have to comply with all marking and recordkeeping regulations. Information required on these labels would include the date the equipment was placed into storage for reuse, or the effective date of the final rule if the other date is not known, a projected location for the future use of the equipment, and the date the equipment was scheduled for repair or servicing, if appropriate.

Individuals would be required, upon request of an EPA inspector, to provide records of the potential use for the stored articles, a description of any leak containment precautions, and the PCB status (PCB or PCB-Contaminated) of the PCB Article.

PCB Articles that are intended to be stored for reuse for a period longer than 3 years would have to be disposed of unless the person storing the PCB Article had requested and received from the Regional Administrator for the Region in which the Article is located a written approval for an extension of the 3-year period. Anyone requesting an extension would be required to do so in writing to the Regional Administrator no later than 6 months prior to the expiration of the storage for reuse period. Requests for an extension of the storage period must include the rationale for exceeding the storage limitation on an article-by-article basis. All extension requests would be subject to approval by the Regional Administrator and any conditions the Regional Administrator deems necessary to protect health or the environment. A record of these evaluations would have to be kept at the storage site for a minimum of 3 years. EPA also requests comment on the inclusion of site-specific or nationwide exemption or waiver provisions in addition to the proposed waiver provision.

One option for stored equipment would be to reclassify the equipment in storage for reuse. EPA, in another rulemaking, is currently considering modifications to the reclassification regulations to facilitate a widespread application of the reclassification procedures. Such an approach would significantly reduce the risk that might be posed by the longterm storage for reuse of PCB or PCB-Contaminated equipment. PCB Equipment that is reclassified to non-PCB status (i.e., <50 ppm) would not be subject to any of the storage for reuse restrictions proposed today. EPA recommends that owners and users or brokers and servicers of PCB equipment develop their own "reuse or reclassification schedule" to account for properly retained equipment. The schedule should include a simple inventory to aid in monitoring the status of the equipment. This may include the reclassification schedule and/or the purpose for storing for reuse.

One question raised in response to the ANPRM was whether the time between a piece of equipment's removal from service for repair and its return to the owner is considered storage for reuse. Until a determination is made that the piece of equipment can or cannot be repaired, any storage of that piece of electrical equipment prior to such a determination is considered storage for reuse. The owner of malfunctioning equipment that has been sent off-site for repair will still be subject to the 1-year time limit for storage and disposal, beginning on the date it was determined the equipment could not be repaired. Although service facilities may hold units for several months while scheduling the unit for repair, EPA views prolonged storage in such situations as an abuse of the storage provisions. Records must be maintained by the servicers, for review by PCB inspectors, of the dates of receipt of the equipment for repair, the type of malfunction, and the anticipated date

for return of the equipment to the owner or user.

2. *Clarification of the 1-year time limit for storage and disposal.* EPA proposes to clarify the requirement at §761.65(a) that states that a PCB Article or PCB Container must be disposed of within 1 year from the date the item is first placed into storage. EPA is proposing to amend the language at §761.65(a) to explicitly state EPA's original intent that the 1-year period begins on the date when the equipment is taken out of service and designated for disposal (when it is determined by a servicer, for example, that the equipment cannot be repaired) not when the equipment is placed into storage for disposal.

Currently, the 1-year time limit for storage and disposal of drums, which are used to collect liquid from various PCB Articles, and for other containers used to store the accumulation of PCB wastes such as oil, rags, booties, cleanup debris, etc., starts on the day an item is first placed into the container for storage for disposal. EPA is not proposing to allow the accumulation in containers of these items for periods of greater than 1 year except as proposed in Unit III.G.3 of this preamble. Currently this waste has to be stored in containers. However, comments suggested that this is not a common practice and may lead to disagreements within the regulated community. Therefore, EPA is proposing to change the language at §761.65(a) from "PCB Article and PCB Containers" to "PCBs or PCB Items" to effectively capture all storage scenarios.

For transformers that are taken out of service but are not drained until later, the 1-year clock, for both the oil and the transformer, starts when the transformer is taken out of service and designated for disposal (i.e., the date of removal from service for disposal). EPA also wants to clarify that the start date for the 1-year period for disposal (and any other applicable requirements) for PCBs legally returned into the United States for disposal (see Unit II.D.3.h and proposed §761.20(b)(3)) is the date the PCBs reach the port of entry in the continental United States, or the date the PCBs reach the port of entry if the disposal facility is outside the continental United States or if the waste is stored during transport for more than 10 days in a State. This policy applies to certain PCBs, to include wastes containing PCBs at less than 50 ppm which are imported for disposal. The policy also applies to PCBs purchased in the United States., by the U.S. Government, taken overseas for use (including any wastes directly resulting from the remediation of these PCBs), and subsequently returned to the United States for disposal in an approved facility from U.S. embassies, U.S. military installations, other U.S. Government installations or territories, and PCBs imported under any Federal administrative order issued under TSCA or any Federal court action.

3. *Situations which warrant an extension or waiver of the 1-year time limit for storage and disposal.* In the June 10, 1991 ANPRM, EPA solicited comments on whether an extension of the 1-year time limit for storage and disposal requirement would be appropriate in situations, for example, innovative PCB destructive technologies; such as biological treatment technologies that may take more than 1 year to achieve acceptable levels; and the absence of disposal capacity, specifically for PCB/radioactive wastes. Comments on alternative options, procedures and/or restrictions for dealing with such situations were also requested. EPA received several comments, most of which supported the establishment of a provision which would allow the Regional Administrator for the Region in which the material is stored, or the Director, CMD, if the Director issued the permit, to recognize situations which require more than the 1-year time limit for storage and disposal, and to grant an extension to the requirement.

Commenters also identified other situations for which they believe equal consideration should be given to extending the 1-year time limit for storage and disposal. These situations included: (1) Technologies, such as thermal separation (thermal desorption) and bioremediation, that require more than 1 year to process waste at a remediation site; (2) limited expedited remedial action undertaken ahead of the main remediation effort; and (3) conflicting remediation or disposal requirements associated with the presence of certain co-regulated wastes from which the PCBs cannot be separated (i.e., such as mine cable coated with a solid anti-fouling compound containing both PCBs and mercury).

Most commenters supported the grounds for extension cited in the ANPRM (justification of need, demonstration that treatment/disposal options are being pursued, and the submission of periodic progress reports). Other commenters offered variations on the EPA proposal including: (1) Modify regulations to allow DOE to seek an extension on a complex-wide, multifacility basis to address the PCB/radioactive waste situation and to submit reports on a biennial basis; (2) for PCB/radioactive wastes, also require compliance with ALARA principles; (3) use a letter rather than the permit process as the mechanism for granting extensions; (4) make the extension effective upon submission of the request, or alternatively, make the extension automatic if the Agency does not object within 90 days; and (5) eliminate the 1-year limitation for extensions.

EPA has considered these suggestions and is proposing several changes to §761.65(a). First, criteria for extending the 1-year time limit for storage and disposal requirement include, but are not limited to: A demonstrated need to store wastes beyond the 1-year time limit due to a lack of disposal capacity, the absence of a treatment technology, or insufficient time to complete the treatment/destruction process and a demonstration that relevant treatment or disposal requirements are being pursued. Additional criteria for PCB/radioactive waste, PCB/fissionable radioactive wastes, or RCRA/mixed wastes and PCB/RCRA wastes could also be required to comply with the requirements of the appropriate Federal, (i.e., Nuclear Regulatory Commission or EPA) or State regulatory authorities.

Anyone storing PCB waste that was subject to the 1-year time limit could provide written notification to the Regional Administrator for the Region in which the PCB waste was stored that they had been unsuccessful in their continuing attempts to dispose of their waste within the 1-year time limit and could receive an extension for one additional year provided certain conditions were met. Second, the Regional Administrator could grant additional extensions of 1-year or longer upon receipt of a justified request. Third, EPA would consider including site-specific time frames for storage and disposal, where appropriate, when approving a TSCA PCB storage or disposal application or a modification to a previously issued approval (see §761.60(e) or §761.65(d)).

However, EPA is less receptive to allowing organizations to develop complex-wide (i.e., nationwide) justifications and/or reports of their storage and disposal activities. If the data were allowed to be submitted in an aggregate form, resources would be required to disaggregate the information and transmit the data to the appropriate Regional Administrator. Nonetheless, EPA would consider aggregation of these data on a Regional basis for submission to and approval by the Regional Administrator for the Region in which the materials are stored.

Finally, under the proposal EPA may impose conditions when approving

requests for an extension. These conditions would vary due to the specifics of each situation. Therefore, it is not possible to list every conceivable requirement that could be imposed on a facility in granting additional or longer extensions. EPA is proposing that the Regional Administrator or the Director, CMD, may require any information deemed necessary to ensure protection of health and the environment, and may likewise require that additional steps be taken during the storage period, such as marking, inspection, recordkeeping or financial assurance or complying with ALARA principles for PCB/radioactive wastes to protect health or the environment.

EPA wishes to make a distinction between those situations for which an extension of the storage and disposal requirement may be legitimate (see example (3) above) versus those situations that would result in the abuse of such an extension, such as the acceptance of PCB wastes in excess of the capacity limitations imposed either by the permit or the physical constraints of the technology being used. EPA does not believe an extension of the storage and disposal requirement is warranted because of failure to initiate attempts to obtain disposal capacity, the cost of disposal, or to allow for the aggregation by multiple generators of PCB wastes into one vehicle for shipment. EPA is not modifying its view that PCB wastes should be properly managed and disposed of as quickly as possible, and therefore is not inclined to take steps that would relieve the generator of its responsibility to remove the PCBs from the environment in a timely manner. On the other hand, individuals engaged in on-site remediation activities are most likely conducting those activities in accordance with some instrument developed by EPA, another Federal agency, or a State that provides instruction on what/how the project is to be conducted and when the project is to be completed (as the case may be for examples (1) and (2) above). In these instances, the TSCA PCB permit and 1-year time limit for storage and disposal may not apply. (Also see the discussion regarding the Coordinated Approval provision at Unit III.K. of this preamble.)

EPA would also consider extension requests to be legitimate when an individual's ability to store and dispose of PCBs within the 1 year is inhibited by other Federal or State disposal/remedial requirements (e.g., RCRA, CERCLA, the Clean Water Act (CWA), the Clean Air Act (CAA)), or any statute governing remedial actions which involve PCBs at or derived from federally-regulated levels.

4. *Temporary storage of PCB liquid at 500 ppm or greater.* Under the existing regulations at §761.65(c)(1), temporary storage is allowed for certain PCB Items, including PCB Containers that are filled with liquid containing PCBs at concentrations of 50 to 499 ppm in an area that does not meet the requirements of paragraph (b) of that section for up to 30 days from the date of their removal from use. In the case of liquid PCBs, a Spill Prevention, Control, and Countermeasure (SPCC) Plan must be in place for the temporary storage area in accordance with 40 CFR part 112. The current regulations, however, do not authorize temporary storage of liquids containing PCBs with a concentration of 500 ppm or greater. However, the current regulations at §761.20(c)(2) authorize the processing and distribution in commerce of PCBs and PCB Items greater than 50 ppm for purposes of disposal.

The Agency does not believe that there are significant risks associated with temporarily storing for disposal PCB liquids at concentrations greater than 500 ppm provided the waste is in containers meeting DOT specifications and an SPCC plan is implemented. In the ANPRM, EPA suggested two approaches to amending the regulations to allow the temporary storage of liquids greater than 500 ppm: (1) To add a provision to allow temporary storage of liquid with concentrations of 500 ppm or greater at §761.65(c)(1), or (2) to consider the holding/storing of this liquid as a step in the disposal process. Most commenters supported the option of amending the temporary storage provision at §761.65(c) as opposed to amending the provision at §761.20(c) which allows the processing and distribution in commerce of PCBs and PCB Items for disposal. Many commenters also suggested increasing the 30-day time allotted for temporary storage.

The Agency believes it is appropriate to extend the allowance for temporary storage for disposal of liquid PCB waste above 500 ppm, but not beyond the existing 30-day limit. The point of the 30-day temporary storage provision is to allow for the accumulation of waste prior to shipment to a disposal facility or commercial storage facility. This rationale should also apply to liquids above 500 ppm, especially when one considers the preponderance of PCB Transformer owners who are opting for reclassification of these units. To have them build or ship to a formal storage area in each instance would be unduly burdensome.

EPA is proposing that the 30-day temporary provision at §761.65(c)(1) be extended to liquids at 500 ppm or greater, provided an SPCC Plan is in place and the liquid waste is in stationary bulk storage tanks (excluding rolling stock such as, but not limited to, tanker trucks) or DOT specification containers.

5. *Storage of large PCB Capacitors and PCB-Contaminated equipment on pallets next to a qualified storage area.* The storage for disposal of non-leaking and structurally undamaged Large High Voltage capacitors and PCB-Contaminated Transformers on pallets next to qualified storage areas was permitted until January 1, 1983, under the May 31, 1979, PCB rule (formerly 40 CFR 761.42(c)(2)). This provision was designed to relieve the burden on PCB storage facilities until EPA-approved incineration facilities were commercially available.

In light of the fact that EPA was initiating an accelerated phaseout of Large PCB Capacitors (Final Electrical Equipment Use Rule, August 25, 1982, 47 FR 37342), EPA recognized that there would be a need for additional storage space for this type of equipment. Therefore, temporary storage for disposal was allowed indefinitely after January 1, 1983, on pallets next to a qualified storage facility for PCB-Contaminated Electrical Equipment and PCB Large High Voltage Capacitors (§761.65(c)(2)).

In today's proposal, EPA is proposing to delete §761.65(c)(2) from the PCB regulations since the October 1, 1988 phaseout date (§761.30(l)(1)) for most uses of PCB Large High Voltage Capacitors has passed and there should no longer be a need for additional storage space for this type of equipment. In addition, EPA does not believe that this provision is needed for PCB-Contaminated Electrical Equipment because this equipment is typically drained prior to disposal and the drained hull or carcass is not subject to the storage for disposal provisions of §761.65.

The current PCB regulations do not prohibit expansion of the storage capacity of a given storage area as long as, in the case of commercial storage facilities, the closure plan, and financial assurance mechanisms are also adjusted to reflect the increased amount of waste stored at the facility. EPA believes that the deletion of this provision for storage on pallets next to a qualified storage area will not result in undue hardships on existing storage facilities.

EPA is soliciting comments on the appropriateness of deleting this provision and also seeks information

from storers of PCB waste as to whether they are currently utilizing the provisions of §761.65(c)(2).

6. *Alternate storage of PCBs.* EPA is proposing a modification at §761.65(b)(2) to the storage requirements to allow the storage of PCBs and PCB Items designated for disposal in waste management units permitted by EPA under section 3004 of RCRA or by a State authorized under section 3006 of RCRA to manage hazardous waste in containers. This proposal would also allow the storage in units otherwise regulated by a State under a TSCA look-alike law or approved as part of a PCB disposal approval. EPA believes that the RCRA requirements for permitted container storage units provide an equal level of protection to the TSCA requirements, and preclude an unreasonable risk of injury from PCBs (i.e., recordkeeping, waste tracking, secondary containment, monitoring for leaks, inspections, and financial assurance and closure requirements). This proposal does not extend to units operating in interim status under RCRA. All other requirements for PCB wastes, including but not limited to containerization, marking, recordkeeping, manifesting, and spill cleanup would continue to apply. Any PCBs or PCB Items that are currently required to be stored in compliance with 40 CFR 761.65(b)(1) would be eligible. PCBs, especially large volume wastes, which would otherwise be required to be stored in compliance with this section could be stored instead under the terms and conditions of a PCB disposal approval. It may not be feasible or desirable to construct a PCB storage area where large volumes of PCB remediation wastes or PCB Items are concerned. EPA views storage and disposal of PCB wastes as a continuum and believes this issue of storage of large volume wastes is best addressed on a case-by-case basis through the PCB approval or other permitting process. However, anyone subject to the PCB storage requirements could choose to follow §761.65(b)(1) and not avail themselves of these other options.

7. *Storage requirements for PCB Article Containers.* Under §761.65(c)(5), PCB Articles and PCB Containers are required to be checked periodically for leaks, and §761.65(c)(8) requires that they be dated when they are placed into storage. By not including PCB Article Containers in §761.65(c)(5) and (c)(8), a loophole exists that allows a storage unit owner to omit dating and inspecting these containers and to circumvent the 1-year time limit for storage and disposal requirement. Therefore, EPA is proposing to correct this oversight by replacing the phrase "PCB Articles and PCB Containers" with "PCB Items" wherever it occurs in §761.65(c)(5) and (c)(8).

8. *Recordkeeping requirements for storage unit operators.* Certain additional recordkeeping requirements for storage unit operators are being proposed under §761.180(a)(1) and (b)(1). The first addition would be to require the operator to maintain a record of the inspections for leaks, and cleanups, that must be performed under §761.65(c)(5). Currently, EPA inspectors have no way to verify that unit operators are complying with these requirements.

In addition, EPA is proposing that storage unit operators keep an up-to-date written inventory or log of what they are currently holding in their unit. The annual log requires similar information; but since it is an annual summary, it does not reflect what is actually in a unit on a given day and thus is of no assistance to an EPA inspector performing a site inspection. Although this would be an additional recordkeeping requirement, EPA believes that it would not place any additional burden on unit operations. EPA believes that most operators maintain some sort of inventory; maintenance of such is almost a necessity to properly manage a facility, as well as to ensure compliance with the 1-year time limit for storage and disposal deadline, and to collect data for the annual log. Allowing EPA inspectors access to this inventory would greatly facilitate on-site inspections, particularly at larger facilities. Also, since the purpose of this inventory is to facilitate on-site inspections, EPA is requiring that the inventory be maintained on-site at the storage unit, rather than at a central facility. This requirement to maintain the inventory on-site applies only to this inventory, and affects no other portion on the annual records.

9. *Revision to storage unit criteria.* Proposed §761.65(b)(1)(iv) would reflect the proposed definition of "Porous surface" found at §761.3. This proposed definition includes concrete and cement within the definition of "Porous surface." The reference to Portland cement or concrete in §761.65(b)(1)(iv) as impervious would be inconsistent with the proposed definition of "Porous surface." The references to Portland cement and concrete would not be deleted, however, from §761.65(b)(1)(iv) because this would create a situation where all existing storage units that have used Portland cement or concrete would be out of compliance. Therefore, the references have remained, albeit parenthetically, to Portland cement or concrete as acceptable. EPA would recommend, however, that nonporous surfaces be used for curbing and flooring for storage units since cleanup of nonporous surfaces is easier and less costly.

H. ASTM References

EPA has incorporated by reference several test standards developed by the American Society for Testing and Materials (ASTM) which describe various testing and sampling procedures for conducting PCB analyses. These standards are referenced throughout 40 CFR part 761, and a listing of the applicable test methods can be found in the back of the CFR under the heading "Material Approved for Incorporation by Reference;" 40 CFR chapter I (parts 761, 763)—Subchapter R—Toxic Substances Control Act, Environmental Protection Agency.

EPA published a final rule on April 16, 1992, which updated the listing of the ASTM test standards incorporated by reference in the PCB regulations. In that rule, EPA indicated that copies of ASTM standards were available for inspection and copying at the TSCA Public Reading Room. This notation is also included at §761.19 which states: "Copies of the incorporated material may be obtained from the TSCA Public Docket Office (7407) Rm. B–607, Northeast Mall, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, or from the American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103." On May 21, 1992, ASTM contacted EPA and requested that the Agency either produce a copy of an existing agreement that grants EPA permission to reproduce ASTM standards (i.e., copyrighted material) or refrain from making further copies until permission is granted.

While EPA does not believe that copyright law prohibits the copying of copyrighted materials that are part of a statute or regulation, EPA has offered to refer requests for copies of the ASTM standards to ASTM. EPA's offer, however, makes clear that EPA will continue to satisfy requests for these documents under the Freedom of Information Act. Therefore, in today's notice, EPA is proposing to modify the regulatory text at §761.19.

EPA also received one comment reminding the Agency of an earlier commitment to propose the addition of ASTM Method D–4059, "Standard Method for Analysis of Polychlorinated Biphenyls in Insulating Liquids by Gas Chromatography," which ASTM has validated through a series of round

robin tests, to the list of references. Copies of the test method, ASTM D–4059, are available for public inspection at the TSCA Nonconfidential Information Center (7407), Office of Pollution Prevention and Toxics, Rm. B–607, Northeast Mall, at the address listed earlier in this notice. Copies of the standard are available from the ASTM, 1916 Race Street, Philadelphia, PA 19103. Instead of incorporating this standard, EPA proposes adding §§761.60(g)(1)(iii) and (2)(iii) to identify ASTM D–4059 and other applicable EPA procedures as standards that can be used for the analysis of PCBs when using gas chromatography. Comments are invited on whether the PCB regulations at 40 CFR part 761 should be amended to include this procedure.

I. Manufacture of PCBs for Disposal-Related Studies

EPA received comments that the current regulatory requirement to obtain a rearch and development (R&D) approval (§§761.60(e) and (i) and §761.70(a) and (b)) limits innovative development of effective remediation technologies such as identifying biological and other innovative processes that destroy or contain PCBs, developing technologies that can enhance those processes, finding methods of separating PCB contaminants from other media, and identifying contaminants present in environmental samples so that appropriate remediation techniques may be selected and applied. A comment was submitted for EPA's consideration citing as rationale for a change the regulation's inflexible and harmful effects on international scientific exchange and U.S. competitive/technological advancement.

The commenter included a suggestion that EPA eliminate the requirement to obtain a R&D approval for research into the disposal of PCBs, allow the manufacture of 13.23 lbs. of PCBs per facility annually, and eliminate restrictions placed on the import/export of PCBs. The comment would require notification of the Regional Administrator of the facility's site, the amount of PCBs to be handled, whether R&D activities were laboratory scale or not, and whether PCBs would be manufactured. Additionally, the principal researcher would be required to certify that the R&D facility would be in compliance with the terms of the PCB regulations. Other features of the comment included storage of materials pursuant to the requirements at §761.65(b) and (c), labelling the work areas with the ML mark, maintenance of a log covering materials received and shipped (e.g., date, source, PCB weight, media), compliance with OSHA laboratory and recognized research practices, disposal of materials within 1 year of completion of the R&D activity, and a provision that the Regional Administrator could terminate the R&D activities if a determination could be made that the PCB regulations had been violated or that bona fide R&D activities were not being conducted at the facility. Finally, the material would be shipped in compliance with DOT regulations, or if applicable, the laws of a foreign nation.

The potential quantity of PCBs the comment would allow each R&D facility to manufacture (i.e., 0.5 kilograms within 30 days, or roughly 13.23 pounds per year per facility) is of particular concern to the Agency. EPA recognizes the public policy importance of PCB research; however, there is a need to maintain a certain level of control over the manufacture of PCBs for R&D activities. Further, as more countries ratify international agreements to control the movement of PCBs across their borders, it would be inappropriate for the United States to establish a rule or policy that would allow the indiscriminate transboundary movement of PCBs.

EPA has considered the commenter's proposal and in §761.80(e) is proposing to grant a class exemption to all R&D facilities to manufacture (including import) PCBs solely for the facility's own research for the development of PCB disposal technologies, but not for purposes of distributing in commerce the PCBs that are manufactured. For purposes of this rulemaking provision, use "solely in a facility's own research" would mean use by the manufacturer or one of its wholly owned subsidiaries conducting disposal-related research and development. All PCBs and materials containing PCBs, regardless of concentration, resulting from the conduct of disposal-related studies, would be required to be decontaminated or disposed of pursuant to the original PCB concentration. EPA proposes to limit PCB manufacturing, including import, activities to no more than 454 grams (or 1 pound) of PCBs per year. Since PCBs are generally used in extremely small quantities (i.e., micrograms) during R&D activities, EPA believes, based on its experience in issuing R&D approvals, that an annual limitation on the manufacture of PCBs at no more than 1 pound for each R&D facility should be adequate. Individuals wishing to exceed this amount would be required to submit a petition pursuant to TSCA section 6(e)(3)(B) and the interim procedural rules at 40 CFR part 750. Likewise, EPA is proposing to grant a class exemption at §761.80(g) to allows the processing and distribution in commerce of PCBs for the purpose of exporting PCBs for research and development.

To be included in the class exemption, a petition for an exemption from the manufacturing prohibitions would have to be received by EPA within 60 days of the effective date of the final rule or 60 days prior to engaging in this activity. Renewals of or modifications to the petition would be required annually pursuant to the interim procedures for manufacturing exemptions at §750.11(e)(1), as finalized in the **Federal Register** of April 11, 1994 (59 FR 16991). In order to reduce the paperwork burden of the renewal process for the class, EPA would deem a properly filed request for a renewal of the exemption by any member of the class as a renewal request for the entire class. In addition, to ensure the manufacture of PCBs is being conducted for purposes of research and development into the disposal of PCBs, EPA is proposing that the Regional Administrator be notified in writing 30 days prior to the commencement of R&D activities that require the manufacture of PCBs. However, this notification would not be required if an individual has obtained a PCB R&D approval from EPA pursuant to §§761.60(a), (i)(2), and §§761.70(a) or 761.70(b) and the approval contains a provision regarding the manufacture of PCBs.

In granting an exemption under section 6(e)(3)(B) of TSCA, a demonstration must be made that there is no unreasonable risk of injury to health or the environment associated with the exempted activity and that good faith efforts have been conducted to find a substitute for PCBs.

OSHA regulates workplace safety in laboratories under 29 CFR 1910.1450. These regulations define "laboratory" as "a facility where the 'laboratory use of hazardous chemicals' occurs. It is a workplace where relatively small quantities of hazardous chemicals are used on a non-production basis." "Laboratory scale" means "work with substances in which the containers used for reactions, transfers, and other handling of substances are designed to be easily and safely manipulated by one person." "Laboratory scale" excludes those workplaces whose function is to provide commercial quantities of materials.

Under 29 CFR 1910.1450, an employer, among other requirements, must develop and carry out the provisions of a written Chemical Hygiene Plan for employees working in

laboratories. Appendix A of that section is non-mandatory, but provides guidance to assist employers. The guidance in Appendix A was extracted from "Prudent Practices for Handling Hazardous Chemicals in Laboratories," which is available from the National Academy Press, 2101 Constitution Avenue, NW., Washington, DC 20418.

"Prudent Practices" is cited in the OSHA regulations because of its wide distribution and acceptance and because of its preparation by members of the laboratory community through the sponsorship of the National Research Council. "Prudent Practices" deals with both safety and chemical hazards, while the OSHA laboratory standard is concerned primarily with chemical hazards.

EPA believes that the limited manufacture (i.e., 1 pound or less of PCBs) and use of PCBs in conducting research pursuant to the OSHA workplace safety requirements would not result in an environmental release of PCBs or risks of exposure to PCBs due to the highly trained nature of laboratory workers and scientists, the limitation on the volume of production, and the current marking regulations that require containers be labelled as containing PCBs. Instrumentation contaminated with PCBs would be required to be decontaminated in accordance with current requirements at §761.79, using a triple rinse procedure in which each rinse is 10 percent or greater of the volume of the container, or disposed of pursuant to the regulations at 40 CFR 761.60. Finally, all wastes, including diluted PCB materials and any PCB residues or other contaminated media, would be subject to the 1–year time limit for storage and disposal requirements at §761.65 and §761.60 and the manifesting requirements at §761.207 et seq.

The good faith efforts finding does not apply because other chemicals cannot be substituted in toxicological, environmental or analytical testing for PCBs.

The Agency solicits comments on its proposal to establish a class exemption that authorizes the limited manufacture, or import, of PCBs for use in one's own research for the purpose of conducting disposal-related studies.

J. PCB Samples and Standards

EPA has received a number of inquiries as to whether "round robin" analytical exercises or inter-laboratory studies require exemptions from the ban on the distribution of PCBs. EPA's response has been that these exercises may be exempt if they meet the requirements of the current provision at §761.80(g). These kinds of activities are normally conducted as quality assurance measures to test or verify a laboratory's performance using a given chemical analysis methodology.

In authorizing the processing and distribution in commerce of small quantities of PCBs for research and development in 1984, EPA was addressing the need to process and distribute in commerce PCBs for activities such as toxicological and environmental testing and analytical testing that include analyzing and monitoring PCBs in the air, soil, surface waters, and sediments; conducting bioassays and toxicological studies; and producing reference standards for identifying PCBs using gas chromatography (49 FR 28162, July 10, 1984). "Small quantities for research and development" is currently defined at §761.3 as "any quantity of PCBs (1) that is originally packaged in one or more hermetically sealed containers of a volume of no more than five (5.0) milliliters, and (2) that is used only for purposes of scientific experimentation or analysis, or chemical research on, or analysis of, PCBs, but not for research or analysis for the development of a PCB product."

EPA intends to retain the class exemption at §761.80(g) so that these activities may be continued without disruption. So as not to change the scope of the class exemption at §761.80(g), EPA proposes to modify §761.80(g) by adding to it the criteria currently found at §761.3 in the definition of small quantities for research and development. Further, EPA is proposing, for purposes of consistency, to modify the provision at §761.80(o) that addresses the renewal requirements for the class exemption at §761.80(g). Under current section §761.80(g)(2), any person or company covered by the class exemption who expects to exceed the limitation on the amount of PCBs that may be processed or distributed in commerce in 1 year (100 grams or 0.22 pound) must report to (i.e., petition) EPA, identifying the sites of PCB activities and the quantity of PCBs to be processed or distributed in commerce pursuant to §761.80(g)(2). EPA is proposing to modify §761.80(o) to clarify that activities being conducted under the class exemption may be continued only when the activities conform to the provision at §761.80(g). To increase the quantities of PCBs that are processed or distributed at §761.80(g)(2), individuals must submit a written request to the Director, CMD for approval to exceed the 100 grams limit prior to engaging in the activity. Each request must include a justification for the increase. Any increase granted will be in writing and will extend only for the time remaining in a specific exemption year.

EPA also recognizes that some laboratories may work with amounts of media containing PCBs that are needed for chemical analysis procedures at required quantitation levels and which will not fit into 5.0 milliliter hermetically sealed vials. For example, many non-academic research scenarios require the use of contaminated media to conduct chemical analyses; to conduct health and environmental studies; and as quality assurance samples for evaluating innovative disposal technologies. Increasing efforts are being devoted to remediating PCB contamination, whether under TSCA or some other environmental statute. As a result, the use of media containing PCBs as quality assurance environmental samples plays a much larger role in the disposal universe than it did initially. Today, environmental samples containing PCBs are required and are used in conducting research activities to determine toxicity, health, environmental, and other effects. The Agency's intent in proposing to broaden the use authorization at §761.30(j) and to add a class exemption for processors and distributors of media containing PCBs at §761.80(i) is to promote required testing for toxicity and health effects which may be used in setting risk-based cleanup levels at PCB remediation sites.

1. *Use authorization.* Under the current §761.30(j), PCBs may be used in small quantities for research and development. That term is narrowly defined at §761.3. PCB uses not compatible with the limitations established by that definition can only be authorized through rulemaking or a disposal approval under §§761.60(e), 761.60(i)(2), or 761.70(a) and (b), if the PCBs are to be used in conjunction with developing disposal technologies. This proposal would delete the definition of "small quantities for research and development" and would modify §761.30(j) to allow the use for research and development of PCBs in organic liquids and contaminated media other than organic liquids which did not exceed the proposed material limitations. This change would eliminate the time-consuming process of obtaining an approval or awaiting regulatory changes for the use of PCBs when conducting tests to determine toxicity, health, environmental, and other effects.

Under proposed §761.30(j), permissible research and development activities would include, but not be

limited to, scientific experimentation or chemical research on PCBs, and the chemical analysis of PCBs and testing to determine: biochemical transport processes; environmental transport processes; the effects of PCBs on aquatic and terrestrial environments; and the health effects of PCBs such as general toxicity, subchronic toxicity, chronic toxicity, specific organ/tissue toxicity, neurotoxicity, genetic toxicity, and metabolic products. However, permissible research and development activities would not include research or analysis for the development of a PCB product. This section would allow the continued use of PCBs in limited quantities for research and development provided the PCBs were originally packaged in hermetically sealed containers no larger than 5 milliliters, or as samples of environmental media containing PCBs in containers larger than 5 milliliters that had been packaged pursuant to the DOT performance standards at 49 CFR parts 171–180 when the following requirements were met:

(a) The Regional Administrator was notified in writing 30 days prior to the commencement of any R&D activity authorized under this section. Notifications would have to include information which identifies the sites of PCB R&D activities, the quantity of PCBs to be used, the type of R&D process to be used, the kind of material being treated, and includes an estimate of the duration of the PCB activity.

(b) No more than 100 grams of pure PCBs could be used annually at a facility.

(c) All PCB wastes (e.g., spent laboratory samples, residuals, unused samples, contaminated media/instrumentation, clothing, etc.) would have to be stored in a unit that complies with the storage requirements of §761.65(b).

(d) Manifests were used for all R&D PCB wastes being transported from the R&D facility to a storage and/or disposal facility.

(e) Requests would have to be submitted in writing to the Regional Administrator for approval to exceed the 100 grams in total weight of pure PCB limitation for use in non-disposal PCB research and development activities. Such requests would have to provide a justification for the additional quantity needed, as well as specify the quantity of PCBs that would be needed. The approval would be in writing, signed by the Regional Administrator, and include all requirements that would be applicable to the R&D activity.

All R&D facilities would have to comply with the applicable storage and disposal requirements of subpart D, and applicable Federal, State, and local laws and regulations. The requirements at §761.207 to manifest PCB waste at concentrations of 50 ppm or greater would not apply to PCB samples taken from any PCB waste and sent off-site to be used for research and development under proposed §761.30(j). In addition, all PCB wastes would be subject to the 1–year time limit for storage and disposal requirements at §761.65.

This proposal would create a distinction between PCB wastes that a generator decides to place into storage or send to a disposal facility for final disposal, to which manifesting requirements would still apply, and PCB samples that remain in use for quantitative analysis of constituents in the samples and PCBs which are sent for treatability or other limited research and development for PCB disposal activities, such as, materials containing ≧50 ppm PCBs as a result of a spill. Samples of materials containing PCBs and meeting the requirements of the proposed revised use authorization would be considered "PCB materials in use" and not PCB wastes. Manifests would not be required to return unused samples under §761.30(j), or untreated samples under §761.60(j), to the site of generation, such as a Superfund remediation site, or under the provisions of proposed §761.77, Coordinated Approval. (See Unit III.K. of this preamble for a discussion of the Coordinated Approval.) However, spent laboratory or R&D samples could not be placed back in use after completion of the study. Materials not returned to the site of generation would then be considered wastes and would be required to be disposed of pursuant to the provisions at §761.60. Individuals handling waste that had been subsequently placed into storage for disposal or shipped to a disposal facility would again be subject to the notification and manifesting requirements of subpart K.

EPA also received a proposal regarding research and development activities in which the commenter questioned why regulatory approval is required for PCB R&D activities when no such impediment is imposed on facilities that are engaged in research involving neurotoxins, bioactive micro-organisms, and highly radioactive substances. Proposed changes in §761.30(j) would make it clear that EPA has interpreted that research on the physical properties, chemical properties, chemical analysis, toxicity, health effects, and environmental effects of PCBs falls under the use authorization in that paragraph. Treatability research on the disposal of any kind of PCB waste, using any kind of disposal technology, including the use of microorganisms to degrade, destroy, or chemically alter PCBs, falls under disposal and not use, and is being addressed in the new proposed §761.60(j). Facilities that conduct treatability research or R&D into PCB disposal would have to comply with applicable notification requirements of subpart K, the storage and disposal requirements of subpart D, and applicable Federal, State, and local laws and regulations. To comply with the notification requirements of §761.205, the facility would have to notify EPA using EPA Form 7710–53, "Notification of PCB Activity". (For the reader's convenience, a copy of the draft revised form is inserted in this part of the preamble; when the rule becomes effective, the final version may be used to notify EPA of PCB waste handling activities. The form will not appear in the codified text.)

BILLING CODE 6560–50–F

EPA

United States
Environmental Protection Agency
Washington, DC 20460

Form Approved
OMB No. 2070-0112
Approval Expires 2-28-96

Notification of PCB Activity

Return To:

Operations Branch (7404)
Office of Pollution, Prevention & Toxics
U.S. Environmental Protection Agency
401 M. Street, S.W.
Washington, DC 20460

For Official Use Only

TSCA PCB ID Number

1. Name of Facility

Name of Owner Facility

2. EPA Identification Number *(if already assigned under RCRA)*

3. Facility Mailing Address *(Street or PO Box, City, State, & Zip Code)*

4. Location of Facility *(No. Street, City, State, & Zip Code)*

5. Installation Contact *(Name and Title)*

Telephone Number *(Area Code and Number)*

6. Type of PCB Activity *(Mark 'X' in appropriate box. See instructions)*

- ☐ A. Generator with onsite storage facility
- ☐ B. Storer (Commericial)
- ☐ C. Transporter
- ☐ D. R&D / Treatability
- ☐ E. Approved Disposer
- ☐ F. Industrial Furnace / High Efficiency Boiler

7. Certification

Under Civil and criminal penalties of law for the making or submission of false or fraudulent statements or representations (18 U.S.C. 1001 and 15 U.S.C. 2615), I certify that the information contained in or accompanying this document is true, accurate, and complete. As to the identified section(s) of this document for which I cannot personally verify truth and accuracy, I certify as a company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate, and complete.

Signature

Name and Official Title *(Type or Print)*

Date Signed

Paperwork Reduction Act Notice

The public reporting burden for this collection of information is estimated to average 1.5 hours per response. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing and reveiwing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information to the Chief, Information Policy Branch (2136), U.S. Environmental Protection Agency, 401 M Street, SW, Washington DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked ATTENTION: Desk Office for EPA.

EPA Form 7710-53 (Rev. 10-93)
Previous editions are obsolete.

Item-by-Item Instructions for Completing the EPA Form 7710-53

Return completed form to:

Operations Branch, 7404
Office of Pollution Prevention and Toxics
U.S. Environmental Protection Agency
401 M Street S.W.
Washington, DC 20460

No information on the form may be claimed confidential.

Type or print in black ink except Item VII, "Certification." If you must use additional sheets, indicate clearly the number of the item on the form to which the information on the separate sheet applies.

Item I -- Name of Facility: Enter the name of facility and the name of owner of the facility.

Item II -- EPA Identification Number (If already assigned under RCRA): Enter the identification number the facilty was assigned under the RCRA hazardous waste notification regulations. If no identification number has been assigned, leave this space blank.

Items III and IV -- Facility Mailing Address and Location: Complete Items III and IV. Please note that the address you give in item IV, "Location of Facility," must be a physical address, not a post office box or route number. If the mailing address and physical location are the same, you may enter "Same" in Item IV. If the facility is a mobile incinerator, you may enter "Mobile" in Item IV, and provide the mailing address for the installation contact in Item III.

Item V -- Installation Contact: Enter the name, title, and business telephone number of the person who should be contacted regarding information submitted on this form.

Item VI -- Type of PCB Activity: Mark the appropiate boxes to show which PCB activities are taking place at this facility.

A. Generator with onsite storage facility: You are a generator with an onsite storage facility under this notification requirement if you are a user, owner, or processor of PCBs or PCB Items and you maintain your own storage facilities subject to 40 CFR 761.65(b) or (c)(7) for PCBs. If you are a generator with an onsite storage facility, mark an "X" in this box.

B. Commercial storer: You are a commercial storer if you own or operate a storage facility which is subject to the storage facility standards of 40 CFR 761.65(b) or (c)(7), and which engages in offsite storage activities involving the PCB wastes generated by others. Most commercial storers of PCB waste perform waste storage services in exchange for a fee or other compensation, but the receipt of compensation is not necessary for your storage facility to qualify as a commercial storer of PCB wastes under this notification requirement. It is sufficient that your facility stores PCB wastes generated by others. See definition of commercial storer in 40 CFR 761.3. If you are a commercial storer, mark "X" in this box.

C Transporter: If you move PCBs by air, rail, highway, or water, then mark "X" in this box.

D. R&D / Treatability: If you are engaged in conducting R&D into PCB disposal technologies and cannot accept waste on a commerical scale, mark an "X" in this box. You should also check this box if you conduct treatability studies even though you may have marked the "Approved Disposer" box.

E. Approved Disposer: If you currently hold a valid EPA approval to dispose of PCBs in concentrations of 50 ppm or greater in a landfill, through alternative technology or incineration, mark an "X" in this box.

F. Industrial Furnace/High Efficiency Boiler: If you operate an enclosed device as defined in 40 CFR 260.10 that is used to disposed of PCBs, or if you dispose of PCBs in compliance with § 761.60 (a)(2) or (3) (i.e., high efficiency boilers) or § 761.60 (a)(4) (i.e., industrial furnaces), mark an "X" in this box.

Item VII -- Certification: This certification must be signed by the owner, operator, or an authorized representative of the facility. An "authorized representative" is a person responsible for the overall operation of the facility (i.e., a plant manager or superintendent, or a person of equal responsibility). All notifications must include this certification to be complete.

EPA Form 7710-53 (10-93) Reverse

BILLING CODE 6560-50-C

Although processors/distributors would have the option of expanding their processing/distributing activities, they would also incur the responsibility of providing, in the form of a petition, notification to EPA if they chose also to process and distribute in commerce media containing PCBs.

In the ANPRM, EPA solicited comments on whether it should codify its policy that exempts EPA laboratories and other U.S. Government agency laboratories, i.e., the National Institute for Standards and Testing (NIST), from the processing and distribution in commerce prohibitions when such activity is being conducted to effectively implement or enforce the regulations. Since an accurate determination of PCB concentration is the basis for compliance with many of the PCB regulations, such activities are crucial for effective compliance by the regulated community and effective enforcement by EPA. Therefore, the class exemption at §761.80(i) is intended to also address the need for EPA and other Federal Government laboratories to process and distribute in commerce small quantities of PCBs for purposes of supporting enforcement or compliance activities.

EPA is proposing at §761.80(p) that a properly filed request for a renewal of the exemption by any member of the class would be deemed a renewal request for the entire class.

Individual processors/distributors wishing to exceed the limit of 100 grams by total weight of pure PCBs proposed at §761.80(i) would have to obtain approval from the Director, Chemical Management Division who may grant approval, without further rulemaking, to any processor or distributor who qualifies for the exemption.

The standards imposed by TSCA section 6(e)(3)(B) for granting an exemption based on no unreasonable risk and good faith efforts to develop substitute substances must be addressed. EPA believes that no unreasonable risk would result from the processing and distribution in commerce of media containing PCBs because such samples would be handled by laboratories that have established procedures for handling hazardous materials. (See Unit III.I. of this preamble for a discussion of the OSHA laboratory workplace safety requirements.) Further, EPA believes that the use of such samples would further enhance efforts to implement, comply with, and enforce the requirements for PCBs under TSCA. Once the use of such samples was over, persons who had used the samples would be subject to any Federal, State, and local law governing the disposal of the PCBs, including the rules found in 40 CFR part 761. The good faith efforts finding does not apply because other chemicals cannot be substituted for PCBs for these purposes.

K. State Enhancement Activities

In the ANPRM, EPA solicited comments on a proposal to recognize other Federal and/or State-issued PCB storage and disposal permits with the view toward limiting concurrent Federal/State and multi-Federal permitting of PCB storage and/or disposal facilities. (Implementation of Federal requirements promulgated under section 6 of TSCA regulating the manufacture, processing, distribution in commerce, and use of PCBs would not be affected by this proposal.) Under this proposal, dual or multiple permitting requirements could be eliminated where the TSCA PCB Program would recognize PCB remediation and disposal activities that were implemented and monitored under another authority. The goal is to encourage recognition of other regulatory authorities and participation by additional States to implement some form of a PCB disposal program under, for example, an expanded State RCRA hazardous waste program. In that way, limited EPA resources could be diverted to other issues or areas where no other Federal or State PCB presence now exists. EPA was interested in obtaining information on the perceived impacts of recognizing PCB disposal programs that are implemented under either an expanded State waste management program (i.e., by listing PCBs as a hazardous waste) or a TSCA look-alike program (i.e., by establishing a State PCB disposal program that is analogous to the TSCA PCB Program through the development of State legislation and implementing regulations). Comments were solicited on enforcement activities and other factors associated with implementing such a proposal (e.g., issues of national consistency, policy advantages and/or disadvantages, etc.). Many comments submitted in response to the ANPRM reflect a misunderstanding of the State enhancement proposal.

Roughly 30 comments were received on this issue with nearly 50 percent of the commenters in favor of the concept. Those in favor of the proposal supported any reduction in duplicative permitting requirements that would lower the cost of compliance, but viewed TSCA look-alike programs as the preferred approach.

Those opposed to the proposal voiced strongly held views that differences between Federal requirements, coupled with inconsistency among State-imposed requirements, would severely hamper and complicate compliance efforts, create confusion, result in increased costs to the regulated community, and possibly serve as a barrier to interstate commerce. Additionally, differences between the TSCA and RCRA requirements were cited as having the opposite effect of alleviating the burden for the regulated community in complying with the PCB disposal requirements. Examples cited of scenarios where each of these disadvantages would be evident include utilities operating across State lines or entities with interstate activities (e.g., natural gas transmission companies) and facilities with multiState locations.

Several commenters questioned EPA's authority to establish a State-delegated PCB disposal program. These commenters believe that TSCA's legislative history mandated implementation of the PCB disposal program at the national level, and that anything short of a nationally orchestrated program would be

abdicating EPA's responsibility. EPA disagrees with the legal interpretation and believes that this argument is not compelling as a policy matter since PCB disposal facilities are currently subject to both Federal and State regulations governing PCB disposal. Furthermore, recognition of the actions of another authority is not an abdication since EPA retains authority to enforce the TSCA PCB regulations. Additionally, one commenter advocated transferring the PCB Disposal Program to the RCRA program, or totally suspending the TSCA disposal requirements if a State chooses to regulate PCBs under their expanded hazardous waste management program. The State enhancement proposal is not intended to serve as a mechanism for "delegating" EPA's responsibility for implementing any of the statutory requirements of TSCA. Federal oversight of PCB storage and disposal activities under State permits would still be undertaken. One commenter suggested that all facilities should be required to register the use of PCB Transformers with EPA. If the intent of such a registration program is to enhance monitoring capabilities over the disposal of this equipment, EPA believes that it would be permissible under TSCA for a State to promulgate its own requirements for that purpose.

TSCA section 18 addresses preemption of State law. Section 18 provides, with a few exceptions, that the provisions of TSCA shall not affect the authority of any State or political subdivision of a State to establish or continue in effect regulation of any chemical substance, mixture, or article containing such chemical substance or mixture. Under section 18(a)(2), however, a State or locality is preempted from regulating a chemical substance or mixture to protect against a risk of injury to health or the environment where EPA has acted under section 6 of TSCA to protect against such risk. An exception to this preemption provision applies when the State regulation concerns a requirement "described in" TSCA section 6(a)(6), i.e., the manner or method of disposal of a chemical substance or mixture. This provision, referred to as the "parenthetical exception" to preemption, is enclosed in parentheses at the beginning of section 18, subsection (2)(B). EPA has interpreted the "parenthetical exception" to mean that State PCB disposal rules are not preempted because they describe the manner or method of disposal of PCBs. Other examples of situations that would not be preempted by TSCA include: (1) A State regulation that is identical to EPA's regulation; (2) a State requirement that is "adopted under the authority" of another Federal law; (3) a State prohibition on the use of the substance or mixture in the State (other than in its use in the manufacture or processing of other chemical substances or mixtures); or (4) when a State or local government prevails in a petition to the Administrator for a rule that would exempt them from the preemption requirement on the grounds that the State requirement is consistent with Federal requirements, providing "a significantly higher degree of protection" while not unduly burdening interstate commerce.

1. *Coordinated approval.* In the ANPRM, EPA requested comments on whether to adopt regulatory changes to reduce the need for concurrent permitting for PCB storage and disposal by allowing recognition under TSCA of PCB storage and disposal permits issued under expanded State hazardous waste or TSCA lookalike programs, or under other Federal environmental statutes (e.g., CERCLA site remediation, RCRA corrective action, and National Pollution Discharge Elimination System permitting). The regulated community often must procure both Federal and State permits prior to commencing PCB storage or disposal activities. Current Federal requirements for PCB storage and disposal under TSCA, including the permitting requirements, are set out at 40 CFR 761.60, 761.65, 761.70, and 761.75. Additional requirements are proposed in this notice at §761.61.

EPA received several comments; those commenters maintained opposite views on this proposal. Comments addressing the TSCA PCB Coordinated Approval mechanism suggested that such a "program would trigger undesirable regulatory responses under various environmental statutes for activities that fall under the jurisdiction of only one particular statute." Although section 6(e)(1)(A) of TSCA requires the Administrator to prescribe methods for the disposal of PCBs, section 9(b) of TSCA further requires the Administrator to coordinate actions taken under the Act with actions taken under other Federal laws administered in whole or in part by the Administrator. Section 9(b) further requires the Administrator to use such authorities to protect against such risk, if a determination can be made that the risk to health or the environment can be eliminated or reduced to a sufficient extent by actions taken under other Federal laws. Therefore, EPA believes the TSCA PCB Coordinated Approval provision is a viable alternative to issuing duplicative TSCA PCB storage and disposal approvals.

As with EPA's May 19, 1980, final rule under RCRA (45 FR 33325), EPA sees little value in requiring duplicative permit proceedings and duplicate paperwork. A State that opts to expand its State hazardous waste program by including PCBs would be operating under an expanded State authority, not under a federally-authorized or delegated program. In that event, the State may elect to regulate all or some aspect of the disposal program. Standards developed by EPA under programs such as the RCRA Land Disposal Restriction Requirements, RCRA Corrective Action permits, remediation projects initiated under CERCLA, and/or expanded State hazardous waste programs which must incorporate Federal standards as their baseline regulatory requirements are likely to provide a level of protection adequate for eliminating or reducing to a sufficient extent the risks to health or the environment from exposure to PCBs and to require little or no further review under TSCA.

Remediation of PCB contamination, based on site-specific conditions, may trigger compliance with several Federal requirements such as TSCA, RCRA, CERCLA, and the National Pollution Discharge Elimination System (NPDES permitting), just to name a few. Additionally, State environmental requirements, such as the California listed or New Jersey "X-Code" waste requirements, also may need to be factored into the regulatory requirements equation. For illustrative purposes, an example of a current permitting scenario which resulted in multiple layers of various State/Federal involvement and the benefits that would be derived under this proposal are presented here:

A manufacturing facility which discharged waste waters into a river located adjacent to the facility discovered PCB contamination in the soils and the groundwater of a nearby residential community. Wells were drilled and PCB-laden oil was found. Prior to the installation of oil/water separators in 1965, untreated process and stormwater flowed into a brook (which flows through the property) and the river. This facility housed, among other things, a Transformer Division, and from 1932 to 1977 insulating oil containing PCBs was used extensively in the operation of its transformer plant. In addition, hazardous wastes, including wastes containing PCBs, were generated as a result of these and other manufacturing processes. The wastes were disposed of both on- and off-site.

PCB contamination in the river had been an issue since the late 1970s when studies conducted by EPA and the two neighboring States detected PCBs in the sediments, fish, and waters of the river. The facility had obtained a NPDES permit from EPA for discharges into a navigable waterway (in early 1978) and Interim Status under RCRA in 1980. In 1981, the facility was required by EPA and the resident State Department of Environmental Protection (DEP) to conduct three major studies focussing on: (1) The hazardous waste disposal practices at the facility, (2) a determination of the extent of on-site contamination, and (3) an assessment of the PCB contamination and corrective action alternatives for the nearby river. The studies concluded that sediment along the river was contaminated with 39,000 pounds of PCBs.

Using the authority of the State's Superfund Law, the facility was required in 1981 to install groundwater pumps and remove PCB containing oil from the top of the groundwater. In 1987, the facility installed a slurry wall to minimize migration of the PCBs towards the river. In 1988, EPA's Regional office issued a TSCA disposal permit for a high temperature, thermal oxidizer incinerator for the destruction of the oil containing PCBs. Also in 1988, the facility was required by the State DEP to make necessary repairs at the dam to decrease future transport of PCBs downstream.

Finally, in October 1988, EPA initiated the corrective action process under the provisions of the Hazardous and Solid Waste Amendments (HSWA) of 1984 to RCRA. A draft RCRA Part B permit to initiate cleanup was developed by EPA in early 1989, and the final RCRA Corrective Action Permit was issued in early 1991. In addition, EPA's TSCA PCB disposal permitting program had issued several R&D permits to conduct pilot-scale experiments of the effectiveness of various bioremediation processes as viable cleanup technologies. In summary, the facility was required to obtain operating and air emission permits from the State DEP, corrective action permits from EPA under RCRA, a TSCA operating permit for the thermal incinerator (issued by the Region), TSCA R&D permits for pilot-scale experiments (issued by EPA Headquarters), and a NPDES permit for water discharges.

If the TSCA PCB Coordinated Approval proposal were a reality, the TSCA PCB Program could have recognized, in this case, permits that could have been issued by the State for the operation of the thermal incinerator and the R&D permits for experimental disposal technologies if the State elected to either implement an expanded PCB program under its RCRA authority or to establish a TSCA look-alike PCB disposal program. In addition, action taken under any Federal authority (e.g., RCRA or CERCLA) to require remediation of PCB contamination could also be recognized as not posing an unreasonable risk of injury and thus suitable for a TSCA PCB Coordinated Approval.

One commenter, although supporting the concept of regulating PCB disposal activities under an expanded State hazardous waste program for stationary technologies, encouraged EPA to maintain centralized control over PCB mobile technologies. However, such an approach is not acceptable to EPA since there are limited situations whereby the Administrator can preempt the State's authority to regulate PCB disposal activities. Although the TSCA PCB Coordinated Approval provision would not require the owner or operator of a mobile, or multiple, but identical stationary unit to obtain a single approval from EPA, it also would not require the owner or operator of such a unit to obtain multiple approvals from each State in which the disposal technology will be used.

The owner or operator of a mobile, or multiple, but identical stationary unit may want to obtain a TSCA Coordinated Approval to ensure the Federal and State requirements are harmonized. A State may chose to permit mobile technologies that will be used exclusively in that State, and EPA would respect its authority to do so. However, an approval that has been obtained from one state may not be acceptable to EPA in developing a TSCA Coordinated Approval that is intended for use in multiple States.

Although the process for implementing a TSCA PCB Coordinated Approval mechanism was not discussed in the ANPRM, EPA considered establishing a self-implementing or an interactive coordinated approval process. The two approaches are discussed below.

a. *Interactive approach.* EPA proposes at §761.77 to recognize permits issued under other Federal laws administered by EPA and State PCB disposal authorities using an interactive TSCA PCB Coordinated Approval mechanism. EPA believes the interactive approach described below would provide the Agency the best opportunity to effectively oversee PCB activities that are conducted under another statutory authority. In addition, the interactive coordinated approval would maximize the Regional Administrator's ability to serve in a preventative rather than a reactive role in those instances where unintentional negligence by the regulated community could result in risks of injury to health and the environment from exposure to PCBs.

At §761.77, EPA is proposing to include as a condition of the TSCA PCB Coordinated Approval all requirements, conditions, and limitations of a non-TSCA permit or other waste management document issued by a State or under another statute administered by EPA prior to the effective date of this rule. The provision allows for both simultaneous coordination under the TSCA PCB permitting authority and the other State or Federal permitting authority when a waste management document does not exist and the subsequent review and approval (or inclusion of additional conditions, if deemed appropriate) of an existing waste management document. The facility could commence PCB waste storage or disposal operations only after the Regional Administrator received and reviewed a request for a TSCA PCB Coordinated Approval that included a copy of the non-TSCA approval and a verification that the facility had submitted EPA Form 7710–53 and received an EPA I.D. Number, which most facilities would already have for their hazardous waste management permit. The Regional Administrator would either issue the TSCA PCB Coordinated Approval accepting the non-TSCA approval as written provided the relevant standards of §761.77(b) through (g) have been met, request additional information, impose additional conditions, or require the owner or operator of the facility to obtain a TSCA PCB approval.

If, at any time during the facility's operation under the TSCA PCB Coordinated Approval the Regional Administrator determined that the facility was in violation of any requirement of the Approval (e.g., failure to comply with the TSCA PCB reporting and recordkeeping requirements, violation of the conditions of a non-TSCA permit or waste management document, or operation of the facility in a manner that might result in an unreasonable risk of injury to health or the environment), the Regional Administrator could issue a notice of deficiency, revoke the TSCA PCB Coordinated Approval or require the owner or operator of the facility to apply for a Federal TSCA PCB approval. The owner or operator of the facility could continue operations until the TSCA approval was issued; however, a facility could not commence operation until it received a TSCA PCB approval

if it received a notice of deficiency from the Region. The deadline for submitting the permit application and the Regional Administrator's rationale for requiring a TSCA approval would be reflected in the Regional Administrator's written notice of deficiency.

b. *Self-implementing approach.* This approach would allow the owner or operator of a facility with a Federal environmental waste management document (e.g., signed ROD, final RCRA permit) or State-issued final PCB permit to commence operations after (1) filing EPA Form 7710–53 and obtaining an EPA identification number, (2) providing written notification to the Regional Administrator and (3) receiving confirmation of receipt of that notification from the Region. Under TSCA, the Region would intervene in the facility's operations only in those instances of non-compliance, for example, with the non-TSCA permit or TSCA reporting and recordkeeping requirements, or operation of the facility in a manner which would result in an unreasonable risk. The Federal or State agency issuing the underlying environmental waste management document would be the lead organization in the development and issuance of that document, monitoring of its implementation and enforcement of its provisions. EPA's responsibility under TSCA for oversight in those instances would include enforcement of the TSCA PCB Coordinated Approval rules and could result in the Regional Administrator exercising his/her authority to require the owner or operator of the facility to obtain a TSCA approval. A detailed description of the proposed process follows.

Under the self-implementing approach, facilities with a State issued PCB permit or a permit issued by EPA (or an authorized State Director) under another Federal law administered by EPA for PCB remediation, storage, and disposal activities would be recognized by EPA as having a TSCA PCB approval provided the permit or other waste management document generally addresses those disposal activities normally covered by a TSCA PCB approval. Additionally, the facility would have to be in compliance with the conditions of that permit and the TSCA PCB reporting and recordkeeping requirements of §761.180 and §761.202 through §761.218. Owners or operators of facilities storing or disposing of PCBs pursuant to a permit issued under another environmental statute such as a CERCLA ROD, a RCRA Corrective Action permit, or an expanded RCRA-authorized State hazardous waste program would be required to obtain an EPA I.D. number (or confirm an existing number), provide written notification to the Regional Administrator for the Region in which the facility is located that they would like to handle PCBs in accordance with a permit that addresses the remediation, storage, and/or disposal of PCBs and receive written confirmation of receipt of the notification to the Region. A separate formal TSCA PCB approval would not be required. The owner or operator of the facility could commence operations immediately once an EPA I.D. number for PCB activities was obtained (or confirmed), written notice was given to the Regional Administrator, and the Regional Administrator confirmed that the owner's notification had been received. A Region could also respond with a notice of deficiency in those instances where the Region determines that a TSCA PCB Coordinated Approval is not available or appropriate and a TSCA PCB approval is needed.

If, after a TSCA PCB Coordinated Approval has been issued, conditions such as, but not necessarily limited to, the following exist, the Regional Administrator for the Region in which the facility is located would have sufficient basis to issue a notice of deficiency and/or require the owner or operator of the facility to submit an application for a TSCA PCB approval:

(1) Current or subsequent substantive violations of the permit conditions and/or the TSCA reporting and recordkeeping requirements.

(2) Operation of a facility in a manner that may result in an unreasonable risk of injury to health or the environment.

(3) The program under which the permit was issued has expired or the permit has been revoked.

(4) For CERCLA actions, requirements conducted pursuant to a ROD have been completed or the facility is not in compliance with the conditions of the ROD.

In the event the Region required the owner or operator of the facility to obtain a TSCA approval, the Regional Administrator would establish a deadline for the owner or operator of the facility to submit an application (generally not less than 30 days from receipt of the notice of deficiency) for a TSCA PCB approval. However, the owner or operator of the facility would be able to continue operations under the provisions of the TSCA PCB Coordinated Approval until the TSCA approval is issued (except in the instance where a notice of deficiency was issued, then a TSCA PCB approval would first be required). After issuance of the TSCA approval, EPA would no longer recognize the State or other Federal permit for that facility as being the equivalent of a TSCA PCB approval.

The primary responsibility for compliance monitoring and enforcement of the permit or waste management document would reside with the Federal or State agency issuing that permit or waste management document. These underlying permits or waste management documents would be deemed to be requirements of TSCA whose breach is a prohibited act under section 15 of TSCA. EPA would reserve its rights to conduct inspections and take enforcement actions under TSCA or any other applicable Federal statute. It is EPA's intent to exercise its authorities in consultation with or at the request of the other Federal program or State agency issuing the permit or waste management document. However, based on any information, EPA could act without consultation, especially where a facility poses an immediate risk of injury to health or the environment or where EPA's intent is to initiate a criminal investigation or criminal or civil judicial action.

EPA proposes to add §761.77 to reflect the interactive approach and solicits comments on the concept of a TSCA PCB Coordinated Approval and EPA's proposed implementation of this proposal.

2. *PCB State Enhancement Grants.* Also cited in the ANPRM was EPA's proposal to make resources, as appropriated by Congress, available through the TSCA section 28 State grant mechanism. A Notice of Availability for the PCB State Enhancement Grant Program was published in the **Federal Register** of March 4, 1991 (56 FR 9008). This notice solicited applications for financial assistance to support current State activities to establish a PCB disposal program. Funding under this program was not anticipated to continue beyond fiscal year 1992. Under the State grant proposal, EPA would partially fund efforts by the States to establish a State PCB disposal program through the development of State legislation and regulations of PCB disposal activities. States were also required to provide a "match" of 25 percent of the total cost of the project.

Several commenters were not in favor of EPA's encouragement of the listing of PCBs under State hazardous waste programs. Additionally, some commenters voiced concern that EPA was trying to delegate its responsibility to the States to enforce Federal requirements. And finally, commenters were also skeptical of whether there would be adequate funding under the grants to implement State disposal programs.

TSCA grants were to be used as "seed" money to complement ongoing State PCB disposal activities. In creating the TSCA section 28 grant provision, the intent of Congress was to provide financial assistance to selected States to complement and augment EPA's efforts authorized under the Act (Ref. 55). It had envisioned that those States most heavily impacted by chemical pollution problems, upon application and approval by EPA, would receive assistance from EPA. To be eligible for a grant, States would have to be engaged in the process of listing PCBs under its hazardous waste laws or in adopting TSCA look-alike laws for the storage and/or disposal of PCBs. The process for establishing a PCB disposal program would have to have been completed by September 30, 1992. Since the response to the **Federal Register** notice soliciting applications for assistance was limited, the program has been discontinued.

L. Clarification of the Requirement to Request Approval for Alternate Methods of Disposal

Section 761.60(e) of the PCB regulations states that persons who are required to incinerate PCBs and PCB Items and who can demonstrate that an alternate method exists for destroying these PCBs or PCB Items and that this alternate method can achieve a level of performance equivalent to §761.70 incinerators may submit a written request to the EPA for an exemption from the incineration requirements of §761.70 or §761.60.

It was never the Agency's intent that the submission of an application for an alternate disposal method in lieu of incineration be optional, as could be construed by the use of the word "may" in §761.60(e). EPA, therefore, proposes to amend §761.60(e) to clarify that written approval to use an alternate method of destroying PCBs or PCB Items must be obtained from the appropriate EPA official prior to any use of the method to destroy PCB waste.

M. Wet Weight/Dry Weight Clarification

This rule proposes to clarify the basis on which PCB concentrations are to be determined for the purpose of identifying applicable requirements under the PCB rules. Proposed §761.1(b) of this rule would require that PCB concentrations for non-liquid materials, which contain no liquids which pass through the filter when using the paint filter test method (EPA Method 9095 in "Test Methods for Evaluating Solid Waste" (SW–846), be determined on a dry weight basis according to the definition proposed at §761.3. The proposed rule would require the PCB concentration to be determined on a wet weight basis for liquid PCBs as proposed to be defined at §761.3, i.e., homogeneous flowable material containing PCBs and no more than 0.5 percent non-dissolved materials. This rule would also establish requirements for determining PCB concentrations in situations where separate, distinct phases were present within samples of materials containing PCBs.

On April 6, 1990 (55 FR 12866), EPA published a proposed rule that sought to clarify how to determine the PCB concentration in media where water is present. However, several comments on the April 6, 1990 proposed rule indicated that it could be read to require determination of PCB concentrations of all samples, including liquid samples, by removing (drying, evaporating or condensing) the liquids and thus leaving only PCBs. This Notice responds to those comments by clarifying the April 6, 1990 proposal and proposes distinct requirements for determining the PCB concentration in liquids, non-liquids, and multiphasic liquid/liquid and liquid/non-liquid samples.

The April 6, 1990 Notice proposed that PCB concentrations be determined on a dry weight basis for all substances (non-liquids or liquids) regulated under part 761, including, but not limited to, dielectric fluids, contaminated solvents, oils, waste oils, heat transfer fluids, hydraulic fluids, paints, sludges, slurries, dredge spoils, soils, materials contaminated as the result of spills, and other chemical substances or combination of substances, including impurities and byproducts and any byproduct, intermediate, or impurity manufactured at any point in a process. EPA assumes that most substances or mixtures, from which samples will be taken for the determination of PCB concentrations by chemical analysis, will fall into the categories listed above, with the addition of wastewater. Water may be present in some of these substances or mixtures in varying amounts and for various reasons.

The PCB current regulations do not require a specific chemical analytical method for the determination of PCB concentrations. Many chemical analysis procedures, used to determine PCB concentrations, require accounting for the presence of water in samples in a way that accomplishes EPA's objectives in this rule. However, there are some chemical analysis procedures that could be used for PCBs, but that were developed to address more general objectives. Therefore, these more general chemical analysis procedures may either offer several options for accounting for water in samples or require a different way to account for water than would be appropriate for determining the PCB concentration to meet the requirements and intent of the PCB regulations.

The overall purpose of the proposed revisions to §761.1(b) is to ensure a consistent and reproducible basis for determining the concentration of PCBs in the PCB-containing medium. Such a basis would enable the Agency to apply the PCB rules in a consistent manner. To determine the PCB concentration of a nonliquid, as will be discussed below, the medium of concern is the non-liquid material because it is the most likely repository of the PCBs. Therefore, any water in the sample should be accounted for in the determination of the PCB concentration of the sample because the amount of water can significantly bias the PCB concentration in the sample.

For liquid samples, however, the medium of concern is the liquid itself; therefore, to determine the PCB concentration in that medium, one may determine the PCB concentration on a wet weight basis. (For example, for water samples, the medium of concern is the water, and it would not make sense to exclude the water.)

1. *Liquid PCBs, including organic liquids and wastewater.* "Liquid PCBs" would be defined in §761.3 as homogenous flowable material containing PCBs and no more than 0.5 percent by weight non-dissolved materials. The proposed revisions to §761.1(b) would require concentrations for liquid PCBs to be determined on a wet weight basis. "Wet weight basis" means reporting chemical analysis results by including the weight of all dissolved water in a homogeneous liquid. If the liquid is homogenous, the PCBs will be distributed throughout the medium evenly. For nonhomogenous liquid samples, however, PCBs are more likely to be more concentrated in one component of the sample than they are in others because of the physical and chemical properties PCBs possess (e.g., PCBs are hydrophobic). Thus, for these samples, the proposal would require each phase of a non-homogeneous liquid to be separately analyzed (on a wet weight basis). EPA recognizes, however, that even if each phase of a liquid sample is separately analyzed, some small amounts of water that are not separable may be found in a particular phase (i.e., some small amount of water may be found in oil).

For liquid samples containing water, the separable water must be removed, and each phase of the sample must be separately analyzed (on a wet weight basis). Separable water is water that may

be readily physically separated, e.g., by the use of a separatory funnel, filtration, or by decantation.

EPA notes that most organic liquids in which PCBs are found (including mineral oil dielectric fluid, heat transfer fluid, oil based hydraulic fluid, and rinse solvents) usually do not contain more than 1 or 2 percent of non-separable water. This non-separable water usually is in a suspension or in solution. Since the amount of non-separable water is usually very low compared to the amount of organic liquid, the effect of non-separable water on the concentration of PCBs in these organic liquids is relatively small. Thus, EPA believes that allowing the non-separable water to be included in the analysis would generally not affect the regulatory status of a sample. When there is non-separable water in an organic liquid, chemical analysts will normally use a desiccant to remove even this small amount of non-separable water from the liquids during chemical analysis. These small amounts of non-separable water are removed to avoid potential interference to PCB instrumental response from water and potential damage to the chemical instrumentation. Even though the small amounts of non-separable water removed by desiccation could be accounted for, they normally are not accounted for because this non-separable water has limited influence on the PCB concentration of the organic liquid.

Also, EPA notes that wastewater samples consist almost entirely of non-separable water. For wastewater samples the analyst will normally use an organic solvent to extract the PCBs from the wastewater. Even though the PCBs are removed from the water during the determination of the PCB concentration, chemical analysts do not consider this determination to be on a dry weight basis. Since wastewater may contain significant amounts of suspended materials, this rule proposes to identify how much suspended material may be present in the water to still be considered a homogenous liquid for the purpose of determining PCBs in water. If wastewater contains greater than 0.5 percent non-dissolved non-liquids, the wastewater would be considered to be "multiphasic liquid/non-liquid." If wastewater contained other immiscible liquids separable by decantation, the PCB concentrations for those other liquids would be considered to be "multiphasic liquid/liquid."

2. *Non-liquid PCBs.* "Non-Liquid PCBs" are proposed to be defined at §761.3 as PCBs which contain no liquids which pass through the filter when using the paint filter liquids test method (EPA Method 9095 in "Test Methods for Evaluating Solid Waste" (SW–846). Proposed §761.1(b) would require PCB concentrations for non-liquid PCBs to be defined on a dry weight basis. "Dry weight basis" would be determined as reporting chemical analysis results by excluding the weight of the water from the weight of the sample.

In addition, for purposes of this proposal, any chemical analysis process which removes and/or accounts for the amount of water present in non-liquids complies with the requirement to determine the PCB concentration in non-liquids on a dry weight basis. These processes include some or all of the following: filtration, decantation, and heating at low temperatures followed by cooling in the presence of a desiccant. The determination of the PCB concentration in the non-liquid would be based on the weight of PCBs in the weight of the resulting dried non-liquids. Water separated from non-liquids through filtration or decantation would be treated as a liquid sample as described in Unit III.M.1., "Liquids Including Organic Liquids and Wastewater" above.

Soils, sediments, and sludges are examples of PCB containing media that can contain varying amounts of water and still pass the paint filter liquids test for non-liquids. In addition, there are any number of other PCB containing media such as paper, wet automobile shredder fluff, and other fiber products that can also contain varying amounts of water and pass the paint filter liquids test for non-liquids as well. These non-liquid PCBs may contain a relatively large amount of non-separable water compared to the amount of non-separable water that can be contained in the organic liquids normally encountered in PCB samples. For the purposes of determining PCB concentrations of soils, sediments, and sludges on a dry weight basis, the amount of water not separated from these non-liquid samples by filtration or decantation would have to be accounted for in reporting the PCB concentration.

3. *Mixtures of liquids and/or non-liquids.* In multiphasic samples, that is, samples containing (a) both non-liquids and liquids or (b) more than one liquid phase, chemical analysts usually separate non-liquids from liquids and immiscible liquids from each other before chemical analysis. This separation eliminates the potential consistency and reproducability problems and also provides meaningful comparisons of PCB concentrations for regulatory purposes. The separation techniques employed in the laboratory to separate non-liquids from liquids must result in equivalency to the paint filter liquids test in order to assume a complete separation of liquid and non-liquid materials.

In a sample containing more than one phase, where the phases are capable of being separated from each other (by procedures such as decantation and filtration), the proposed rule would require the phases to be separated from each other prior to chemical analysis, and the PCB concentration for each separate phase of the mixture sample to be determined individually. Separated non-liquids would be required to be analyzed on a dry weight basis and liquids would be required to be analyzed on a wet weight basis.

N. Oil-filled Equipment Manufactured After the Ban

In the applicability section of part 761 at §761.1, EPA is proposing to add paragraph (g) to provide clarification with regard to the classification of oil-filled equipment manufactured after the ban on the manufacture of PCBs took effect on July 2, 1979. The purpose of this clarification is to recognize that oil-filled equipment manufactured after the ban, accompanied either by documentation provided by the manufacturer or a label or mark affixed by the manufacturer certifying, based on test data, that the equipment does not contain PCBs, does not fall into the assumption category, under the definition of "PCB-Contaminated Electrical Equipment" at current §761.3, that all oil-filled equipment where PCB concentration is unknown must be assumed to be greater than 50 ppm PCBs. For purposes of this proposed rulemaking, the criteria for demonstrating that the transformer contains no PCBs are: the equipment must have been originally manufactured with no PCBs after the effective date of the ban (July 2, 1979), and must not have been serviced with any PCBs.

At Unit III.C. of this preamble, EPA is proposing to amend the definition of "PCB-Contaminated Electrical Equipment" to indicate that the reference to "oil-filled" means mineral-oil and that not all equipment that contains an oily substance can be assumed to be PCB-Contaminated. Similarly, proposed §761.1(g), would clarify that oil-filled (mineral or otherwise) equipment that was manufactured after the ban on the manufacture of PCBs that was certified to contain no PCBs at the time of manufacture and has not been subsequently serviced with fluids containing PCBs should not and will not

be assumed to be PCB-Contaminated. In fact, this equipment is not subject to the provisions of 40 CFR part 761.

O. PCB Voltage Regulators

The current regulation at §761.30(a)(1)(xv) requires owners of mineral oil transformers that the owner had assumed to contain 50 to 499 ppm PCBs, that are tested and found to contain 500 ppm or greater PCBs, to bring those units into compliance with all the applicable provisions of part 761. EPA is proposing at §761.30(a)(1)(xvi) the same requirements for voltage regulators. Accordingly, voltage regulators, assumed to be PCB-Contaminated, that are later tested and found to contain 500 ppm PCB or greater would be required to come into compliance with part 761. Voltage regulators which were marked or otherwise known to contain PCBs at greater than 500 ppm would also be required to come into compliance with all the applicable requirements of part 761. Section 761.30(h) would also be revised to reflect this change.

In many respects, voltage regulators are designed to function in a manner similar to transformers. They consume a small amount of current and adjust their output voltage with precise limits based on voltage and current needs of the power system. Though the actual size and fluid requirements of voltage regulators vary depending upon precise voltage rating, age, and manufacturer, voltage regulators of less than 100 KVA contain approximately 30 gallons of fluid and those over 100 KVA approximately 200 gallons. Voltage regulators were manufactured with mineral-oil fluid of which 14 percent contained PCBs greater than or equal to 50 ppm and less than 2 percent contained greater than or equal to 500 ppm PCBs.

Based on this data, EPA does not expect many voltage regulators to be above the 500 ppm PCB level; however, as with mineral-oil transformers later tested and found to contain above 500 ppm PCB, those that were found to be 500 ppm or greater would be treated in the same manner as transformers at 500 ppm or greater.

The impetus for this proposal is to ensure that voltage regulators that are found to contain 500 ppm or greater PCBs are properly marked while in service, their locations are marked, records are kept pursuant to §761.180, they are registered with fire departments, and they are properly disposed of when they are taken out of service. As well as soliciting comments on this proposed change in general, EPA is soliciting comments on the appropriateness of requiring enhanced electrical protection for voltage regulators as is the case for mineral-oil transformers later found to contain greater than or equal to 500 ppm PCBs.

In addition, EPA is soliciting comments on whether it is sufficient to simply add voltage regulators to existing §761.30(a)(1)(xv) (renumbered in this proposed rule as §761.30(a)(1)(xvi)) or whether a separate subparagraph should be added to address this issue because voltage regulators containing greater than or equal to 500 ppm PCB should not be treated in the same manner as PCB Transformers. If there are compelling reasons to treat these voltage regulators differently due, for example, to their size, location, or use, EPA welcomes suggestions on the most appropriate way to regulate these pieces of PCB electrical equipment.

P. Registration Requirements for PCB Transformers Containing ≧ 500 ppm PCBs

Pursuant to section 18(b) of TSCA, the State of Connecticut petitioned EPA for an exemption from the preemption provisions of section 18(a)(2) to allow the State to require, among other things, the registration of PCB Transformers (i.e., transformers with dielectric fluid at ≧500 ppm PCB) with the Connecticut Department of Environmental Protection. Connecticut argued that this notification would provide a significantly higher degree of protection for State residents and emergency response personnel from the risks posed by PCB Transformers than the current Federal rules under TSCA because (1) State emergency response personnel often respond to fires and spills at sites throughout the State and (2) State administrative actions such as issuing warnings regarding fishing, swimming, or other activities that could increase human exposure to PCBs when fires or spills occur, could be made in a more timely manner. While EPA sees merit in these arguments, EPA believes that residents of every State would be better protected by a uniform, nationwide registration requirement, where EPA would receive the data and make it available to Federal and State emergency response personnel.

Today's rule proposes a new §761.30(a)(1)(vii) to require all owners of PCB Transformers to register their transformers with the U.S. Environmental Protection Agency, Office of Enforcement and Compliance Assistance (2245), 401 M St., SW., Washington, DC 20460 no later than 90 days after the effective date of the final rule. PCB Transformers subsequently identified or received from another location would have to be registered with EPA no later than 30 days after identification or receipt. To minimize data gathering and processing, EPA proposes that transformer owners would only have to report information about their transformers that is currently required under §761.180(a), to be included on their annual document logs. The registration would include the following information: (1) Transformer location (address) and number of PCB Transformers, (2) kilograms of PCB liquid in each PCB Transformer, and (3) name, address, telephone number and signature of the owner, operator, or other authorized representative certifying the accuracy of the information submitted. If a PCB Transformer is transferred to a different location after it is registered, information concerning that transfer would be recorded in the former owner's annual document log. (See discussion at Unit III.E.—Transfer of Totally Enclosed PCBs.) Anyone who took possession, either through transfer of location or sale of a PCB Transformer 90 days after the effective date of this rule would be responsible for demonstrating that the newly acquired PCB Transformer was registered with EPA under this proposed provision or, if the new owner could not make that demonstration, he would have to register that PCB Transformer within 30 days of the transfer.

The regulations at §761.30(a)(1)(vi) and (vii) currently include requirements for registering all PCB Transformers with fire response personnel and owners of any nearby commercial buildings. State and local authorities may also have notification requirements for emergency response personnel. Owners of transformers at industrial sites could fulfill the current requirement by registering with their on-site fire brigade, while owners of PCB Transformers in or near commercial buildings had to register with the local fire department. Subsequent review of the regulated community's compliance with these registration requirements by the Office of the Inspector General of EPA and EPA Regional personnel found that many fire departments, including those serving large cities, had not received registration information for a large percentage of those PCB Transformers which should have been registered. In addition, many owners could not demonstrate that they had registered their transformers, as required to continue each unit's authorization for use.

Therefore, the registration requirements proposed today would extend to all PCB Transformers in use or in storage for reuse, even if a specific PCB Transformer was registered under the current requirements at §761.30(a)(1). Under proposed §761.30(a)(1)(vii)(C), this requirement would be a part of the authorization for continued use for each PCB Transformer.

EPA solicits comments on this proposal and the petition from the State of Connecticut. If EPA does not promulgate today's proposed uniform national registration requirements, then it would be inclined to promulgate an exemption under section 18(b) to allow any State to implement its own registration requirements for transformers.

Q. Rectifiers

It has come to EPA's attention that a certain number of oil-filled and solid-state rectifiers (devices that convert AC current to DC current) contain PCBs. While rectifiers are not specifically authorized for use in the PCB regulations, it is EPA's intent to authorize at proposed §761.30(r), the continued use of rectifiers in a similar manner as transformers to be consistent with EPA's use authorizations for non-totally enclosed electrical equipment.

To add specificity to this proposed authorization for rectifiers, EPA is soliciting comments and data on the following: (1) The number of rectifiers currently in use, (2) the extent of PCB contamination in rectifiers, (3) the size of such units and whether EPA should adopt a *de minimis* volume amount (as is the case with capacitors, i.e., capacitors with less than 3 pounds of fluid are considered small and generally not regulated under TSCA for disposal) at which rectifiers would be regulated under TSCA, (4) the number of oil-filled vs. solid state rectifiers, and (5) any information that will assist EPA in supporting a use authorization for this type of equipment. Proposed §761.30(r) would authorize PCBs at any concentration to be used in rectifiers and PCBs at less than 50 ppm to be used in servicing rectifiers for the remainder of their useful life.

R. Use of PCBs in Scientific Equipment

It has come to EPA's attention that certain types of scientific equipment have historically used PCBs as a medium for comparative measurements. Specifically, EPA has been made aware of the historic use of PCBs in studies of birefringence and viscoelasticity of long chain polymers (Ref. 58). The PCBs serve as a high viscosity medium to uniformly reduce all movement to facilitate comparisons of long-chain polymers. These studies date back to well before the enactment of TSCA and have included hundreds of thousands of comparable reference data runs. Other media could be used to replace PCBs in these instruments, but none yield results comparable to the large historical reference data set using PCBs as reference standards. While PCBs are not specifically authorized for specialized uses in scientific equipment, it is EPA's intent to authorize at proposed §761.30(s), their continued use in situations where the PCBs were in use as of the date of publication of today's proposal. Additional information is requested as to why substitutes are not available or otherwise could not be used and why the continued use of PCBs presents no unreasonable risk to health and the environment.

In order to add specificity to this proposed authorization, EPA is soliciting comments and data on the following: (1) The types and number of scientific applications for which PCBs are currently in use; (2) explanations as to why substitutes can not be used in each identified scientific application; (3) the size of such units and whether EPA should adopt a *de minimis* volume amount; (4) the types of PCBs used; (5) descriptions of how releases and exposures to PCBs are minimized during preparation, operation, and disassembly of the testing equipment; and (6) any additional information that will assist EPA in supporting a use authorization for PCBs in scientific equipment. In all authorized and unauthorized scientific uses or applications of PCBs, the disposal of the PCBs and any contaminated equipment is fully regulated under TSCA.

S. Remove Outdated Material

In response to a request to remove outdated material from the Code of Federal Regulations, EPA is proposing to remove the provisions at §761.20(c)(3) that require the submission to EPA of a notice at least 30 days prior to the export for disposal of PCBs or PCB Items; the regulations had authorized export for disposal until May 1, 1980. In deleting the notification requirement, EPA proposes to retain the prohibition against exporting PCBs for disposal after May 1, 1980, as reflected at §761.20(c)(3) in today's notice.

Likewise, several use authorizations specified deadlines by which certain activities were to cease. Section 761.30(a)(1)(iii), which prohibits the installation of PCB Transformers in or near commercial buildings after October 1, 1985, contains provisions for the continued installation of such transformers in emergency situations or for reclassification up until October 1, 1990. Since these provisions are now obsolete, EPA is proposing their removal, with the exception of the provision to allow the indefinite installation of Mineral Oil PCB Transformers, which is still valid and would be retained. Therefore, §761.30(a)(1)(iii)(A) through (D) would be deleted, with the exception of the requirements of §761.30(a)(1)(iii)(C)(2)(ii) and (C)(2)(iii), which would be retained and redesignated as §761.30(a)(1)(iii)(A) and (iii)(B), respectively. The definition of "emergency situation" under §761.3 would therefore be rendered unnecessary and also would be deleted.

The provisions at §761.30(b), which authorize the use in and servicing of railroad transformers, contain procedures for phasing in a reduction of the PCB concentration for dielectric fluids used in railroad transformers. Essentially, the use of greater than 1,000 ppm PCBs in these transformers was prohibited after July 1, 1986. Therefore, EPA is proposing to amend paragraph (b)(1) by deleting paragraphs (b)(1)(i) through (b)(1)(vii) at §761.30(b)(1) "Use restrictions." Paragraph (b)(1) would be amended to restrict the use of PCBs in the dielectric fluids of railroad transformers to <1,000 ppm after July 1, 1986 (as is currently required by §761.30(b)(1)(vi)). Further, EPA is proposing to delete §761.30(b)(2)(ii) "Servicing restrictions." and to redesignate §§761.30(b)(2)(iii) through (vii) as (b)(2)(ii) through (vi). The provisions at §761.30(c) "Use in and servicing of mining equipment" would be revised to delete the conditions listed at paragraphs (c)(1) through (c)(5) since the timeframe of the authorization for the use and servicing of mining equipment containing PCBs has lapsed and these conditions are no longer relevant. The introductory paragraph for §761.30(c) would also be amended to delete the processing and distribution in commerce servicing authorization for PCBs greater than 50 ppm used in mining equipment which expired on January 1, 1982. The authorization would be revised to allow servicing only with PCBs at a concentration level of less than 50 ppm.

Sections 761.30(d)(1) through (d)(5) set conditions on the use of PCBs at concentrations of 50 ppm or greater prior to July 1, 1984. The recordkeeping requirement under paragraph (d)(5) expired on July 1, 1989 (5 years after the deadline). Therefore, paragraphs (d)(1) through (d)(5) are effectively obsolete, and EPA is proposing their deletion.

Similar provisions for hydraulic systems under §761.30(e)(1) through (e)(5) are also being proposed for removal. The introductory paragraphs for §§761.30(d) and 761.30(e) would be amended to allow heat transfer or hydraulic systems that were in operation after July 1, 1984 at a concentration level of less than 50 ppm PCBs to be serviced to maintain a concentration level of less than 50 ppm PCBs. This action is being proposed so that heat transfer and hydraulic systems that were in compliance (containing less than 50 ppm PCBs in their fluids) could be serviced to maintain PCB levels at less than 50 ppm should the PCB levels rise above 50 ppm because of leaching from the systems. Heat transfer and hydraulic systems could only be serviced with fluids containing PCBs at less than 50 ppm.

T. Chart of Marking and Recordkeeping Requirements

The following chart has been prepared to help clarify the marking and recordkeeping provisions discussed in this proposed rule. It summarizes the marking and recordkeeping provisions as they exist now under 40 CFR part 761, as well as the proposed changes discussed above in Unit III of this preamble.

TABLE 1.—PCB MARKING AND RECORDKEEPING REQUIREMENTS

Regulated items	Existing marking requirements	Existing in-service records [1]	Existing disposal and storage-for-disposal records [1]	Proposed changes resulting from rule
PCB Containers	ML on item, ML on transport vehicle if carrying 45 kg or more liquid PCBs	Total Kg weight of all containers, description of contents	Date container, serial or I.D. No, Kg weight of each, description of contents, dates of removal; transport; and disposal, total No. & Kg weight	Mark transport vehicle carrying over 45 Kg liquid or solids
PCB Article Containers	ML on item	Total Kg weight of all containers, description of contents	Serial or I.D. No., Kg weight of each, description of contents, dates of removal; transport; and disposal, total No. & Kg weight	Date article container
PCB Transformers	ML on item, ML on access to unit (doors, etc), ML on transport Vehicle	Total No. of units, total Kg weight, inspection & maintenance records	Date article, serial or I.D.No., Kg of fluid in each, dates of removal; transport; and disposal, total No. & Kg weight	Record of sale, record of in-service registration with EPA
PCB Large High Voltage (LHV) Capacitors.	ML on unit or on protected location	Total No (-protected location records if applicable)	Date article, serial or I.D. No., Kg of fluid in each, dates of removal; transport; and disposal, total No. & Kg weight	Record of sale
PCB Large Low Voltage (LLV) Capacitors.	ML on item when removed from use.[2]	Total No.	Date article, serial or I.D. No.Kg of fluid in each, dates of removal; transport; and disposal, total No. & Kg weight	Record of sale, in-service marking
PCB Small Capacitors	([2])			
PCB Contaminated Electrical Equipment.	Not required	Not required	Not required (once drained)	Record of sale
PCB Equipment that contains Large High Voltage (LHV) Capacitors or transformers.	ML on item when removed from use or distributed in commerce	Records required for LHV Capacitors or transformers	Records required for LHV Capacitors or transformers	In-service marking, record of sale
Natural Gas Pipelines & Compressors (≥2 ppm).	ML on item			Appurtenances & air compressor systems added to definition
Bulk PCB waste	ML on container		Kg weight/quantity & dates of each batch in or out. Also disposition of each batch out, total Kg weight	
Storage areas	ML on area		Annual records as required under §761.180	Maintain inventory on site, records of inspections, generators must also file Annual Reports, records of attempts to dispose of within 1–year
Transport vehicles	ML on vehicle if contains PCB transformer(s) or 45 kg or more liquid PCBs		Marking also required if carrying 45 Kg or more solid PCBs	
Access to PCB Transformers	ML or approved mark			

TABLE 1.—PCB MARKING AND RECORDKEEPING REQUIREMENTS—Continued

Regulated items	Existing marking requirements	Existing in-service records [1]	Existing disposal and storage-for-disposal records [1]	Proposed changes resulting from rule
PCB motors, hydraulic and heat-transfer systems [3].	ML on item			Record of sale
Pre-TSCA Uses				ML in facility, records of historical use, air monitoring, & wipe sampling

[1] Annual recordkeeping requirements are bolded.
[2] Manufacturers are required to mark non-PCB Large Low Voltage capacitors, small capacitors, and fluorescent light ballasts with a "No PCBs" label until 7/1/98.
[3] The use of these PCB items is no longer authorized.

IV. Proposed Amendments to the Notification and Manifesting Rule

Since the promulgation of the PCB Notification and Manifesting (N&M) rule on December 21, 1989 (54 FR 52716) a number of issues have been raised that were not contemplated when the final rule was being drafted. Some of these issues were raised by litigants who petitioned the Agency for review of the rule or by other waste handling associations. Other items which are being proposed in today's notice have been previously promulgated under RCRA regulations and seem appropriate for inclusion in the PCB N&M rule. Some of the issues below are simply clarifications and are not intended to result in changes to the codified sections of 40 CFR part 761. EPA is soliciting comments on the following proposed amendments and clarifications to the PCB N& M rule.

A. Small Quantity Exemption for Solids

On June 27, 1990 (55 FR 26204), EPA issued a correction to the N&M rule that among other things sought to clarify the definition of "Commercial storer of PCB waste" at §761.3. The word "liquid" was added to the phrase "exceeds 500 gallons of PCBs" so that the phrase now reads "exceeds 500 liquid gallons of PCBs." This excluded facilities that were storing at any one time less than 500 gallons of liquid PCB waste from the need to seek approval as a commercial storer of that waste.

In a petition for review of the N&M rule, filed with the District of Columbia Circuit Court of Appeals on September 25, 1990, the petitioner claimed that EPA acted arbitrarily when it narrowed the small volume exemption in the definition of commercial storer so that only storers of liquid PCB wastes at amounts of less than 500 gallons would qualify. EPA agreed that there were certain classes of businesses (e.g., companies performing PCB waste treatability studies and laboratories affiliated with PCB handling companies) that on occasion may possess relatively small quantities of solid PCB waste generated by others. Under the current rule, these companies do not qualify for the exemption for small quantity liquid and, therefore, must apply for approval as commercial storers of PCB waste.

EPA agreed there may be reasons for establishing a small quantity exemption for solids to complement the rule's small quantity exemption for liquids. EPA also indicated to the petitioner that until a formal amendment to the rule was promulgated, no enforcement action would be taken against a facility storing small quantities of PCB solids without a commercial storage approval if the following requirements were met:

(1) Timely notification to EPA of its PCB waste activities.

(2) Storage at no time of more than 70 cubic feet of PCB solid waste, the approximate volumetric equivalent of 500 gallons.

(3) Compliance with all other applicable requirements as set forth in TSCA or the PCB rules.

This proposed rule would add a small volume exemption for storage of no more than 70 cubic feet of non-liquid PCBs to the definition of "commercial storer of PCB waste" at §761.3. EPA is soliciting comments on the appropriateness of this small volume exemption for solids and in particular, whether 70 cubic feet is an appropriate cutoff.

Also in the proposed amendment to the definition of commercial storer at §761.3, EPA is clarifying a point on the change of ownership or release of title of PCB waste and how that relates to a person becoming or not becoming a commercial storer of PCB waste. The following example illustrates the proposed clarification. If a facility that generates and stores its own waste (e.g., transformers) is sold (or the title otherwise changes ownership), the new owner (or holder of the title) does not become a commercial storer of PCB waste because the owner is now a storer of waste generated by someone else. The waste, along with the facility, is now owned by the purchaser, and the purchaser is storing its own waste; therefore the purchaser is not a commercial storer.

B. Clarification of Exception Reporting

EPA is proposing to amend §761.215(b), (c), and (d), which discuss the times when a generator, commercial storer, or disposer must submit One-year Exception Reports to the EPA Regional Administrator. Currently, a disposer is required to submit a One-year Exception Report whenever both of the following occur:

(1) The PCB waste is received on a date more than 9 months from the date the PCB waste was removed from service for disposal as indicated on the manifest.

(2) The disposer could not dispose of the PCB waste within 1 year from the date of removal from service for disposal.

A generator is required to submit the Exception Report when a copy of the manifest with the hand-written signature of the owner or operator of the designated facility has not been received within 45 days of the date the waste was accepted by the original transporter. Also, a generator or commercial storer who manifests PCBs or PCB Items to a disposer of PCB waste must submit the Exception Report when both of the following occur:

(1) The waste was transferred to the disposer within 9 months of the date of removal from service for disposal as indicated on the manifest.

(2) The generator or commercial storer has not received within 13 months from the date of removal for disposal a Certificate of Disposal (CD) or they receive the CD and it indicates that the waste was disposed of on a date more than 1 year after the date of removal from service for disposal.

These sections of the regulation do not, however, indicate when the disposer, commercial storer, or

generator has to submit the One-year Exception Report to the Regional Administrator. EPA is proposing to amend §§761.215(b), (c), and (d) to require that the disposer, commercial storer, or generator submit the One-year Exception Report to the Regional Administrator no later than 30 days from the discovery of the passage of the regulatory deadlines. EPA solicits comments on the appropriateness of the proposed 30–day period.

C. Timing for Submission of the Certificate of Disposal

Section 761.218(b) requires that a Certificate of Disposal (CD) be sent to the generator indicated on the manifest that accompanied the shipment of PCB waste to the disposal facility within 30 days of the date that disposal of the PCB waste identified on the manifest was completed. Section 761.215(d)(2) indicates that one of the occasions when a generator or commercial storer should submit a One-year Exception Report to the Regional Administrator is when the CD is not received from the disposer within 13 months from the date of removal from service for disposal (DORFSFD).

EPA wishes to clarify that there may be different DORFSFD dates for different individual items on any given manifest. This means that some items listed on the manifest will need to be disposed of earlier than others to meet the 1–year time limit for storage and disposal. Due to the fact that there may be different disposal dates for different items on the same manifest, there will also be different CDs associated with those different disposal dates (unless of course, the entire shipment listed on the manifest is disposed of before the 1–year anniversary of the item with the earliest DORFSFD). The generator may either submit more than one manifest per shipment based on whether or not there are different DORFSFDs for the items in the shipment or attach a continuation sheet to reflect the different DORFSFDs. This may be time consuming initially, but will ensure that the generator receives a proper CD that identifies the specific PCB Items (noting the generator's identifying number, if assigned) to close the disposal loop on the generated waste. EPA wants to make clear that it is not appropriate to base the disposal of the item on the manifest with the latest DORFSFD or, correspondingly, to send the CD based on that item.

D. No Manifest for Pre-1978 <50 ppm Spills

EPA proposes to amend §761.207(j). This section describes what wastes, based on PCB concentration and factoring in whether or not dilution has occurred, are subject to the manifesting requirements. The section now states that if the waste contains less than 50 ppm PCBs, but comes from a source that contained greater than 50 ppm PCBs, the waste is subject to the manifesting and disposal requirements. Cited as an example is PCB spill cleanup material containing less than 50 ppm when the spill involved material containing greater than 50 ppm.

The proposed amendment at §761.207(j) would specify that there is no manifest requirement for material currently below 50 ppm that derives from pre-April 18, 1978, spills (of any concentration) or pre-July 2, 1979 spills less than 500 ppm. This is because (1) the material "as found" is below the regulatory threshold that would make it subject to the disposal requirements of subpart D, and (2) the original spilled material was either below or not subject to the disposal requirements of part 761, subpart D at the time of the original spill.

In addition, the manifest requirement does not apply to material derived from spills that have been decontaminated in accordance with EPA's spill cleanup policies. In other words, material containing PCBs that has been decontaminated to the policy standards to a level below 50 ppm would not be treated as if it contained greater than 50 ppm PCBs for disposal purposes, and could be disposed of in a municipal landfill or by other non-PCB disposal methods. This position is consistent with EPA's regulations that permit material that has been contaminated as the result of a spill of PCBs to be distributed in commerce if the material is decontaminated in accordance with the applicable spill cleanup policies. (See 40 CFR 761.20(c)(5).)

EPA is soliciting comments on the proposed amendment to §761.207(j) to make it clear as to when one does or does not have to manifest PCB waste material that is less than 50 ppm.

E. Notification by Transporters

It has come to the Agency's attention that there is some confusion in the regulated community as to whether a subcontractor or a "permanently leased operator" can use the EPA Identification Number (EPA ID number) issued to an unrelated company that has notified as a transporter.

Since any person engaged in the transportation of regulated PCB waste must, under current §761.205, apply for and receive an EPA ID number, a "permanently leased operator" or a subcontractor must notify separately and receive a separate and distinct EPA ID number to transport PCB waste. The intent of the PCB N&M rule would be subverted if this were not the case. The Agency would have no record of who was doing the actual physical transport of PCB waste. Theoretically, a company could apply for a master ID number that could be used by hundreds of permanently leased operators or subcontractors. This would be clearly contrary to the intent of the N&M rule which is to have a record of each PCB waste handler. The regulations at §761.3 define a "Transporter of PCB waste" as "...any person engaged in the transportation of regulated PCB waste ..." and §761.205 requires that all transporters notify EPA of their PCB waste handling activities.

F. Renotification for Changes in Facility Operations

Sections 761.202 and 761.205 discuss who must obtain an EPA ID number and how to obtain such an ID number through the use of EPA Form 7710–53. EPA wishes to clarify that when a facility has previously notified the Agency of its PCB waste handling activities using EPA Form 7710–53 and those activities change (e.g., the owner or operator of the facility notified EPA as a commercial storer and now wants to engage in the transport of PCB waste, or notified as a transporter and a commercial storer but no longer wishes to engage in the activity of transporting PCB waste), the notifier must resubmit EPA Form 7710–3 to reflect those changes. Other examples of when a PCB waste handler must renotify the Agency include, but are not limited to, when the company stops handling PCB waste or changes the facility's location. Indication in a cover letter or on the form itself that this is a resubmission based on changes in facility operations and not a new submission will help to facilitate the process.

EPA is proposing to add this requirement for resubmission of EPA Form 7710–53 when there is a change in a facility's status to new §761.205(f). EPA is proposing that the resubmission be submitted to EPA no later than 5 work days after the change was made.

G. Transfer of Ownership of Commercial Storage Facilities

EPA is proposing to amend §761.65 by adding a new paragraph (j) to include language on the procedures and timing associated with the transfer of ownership of a commercial storage facility. The timing and procedures would apply to facilities with either interim or final approval.

Existing commercial storage facilities had until August 2, 1990, to submit a completed application to EPA and receive interim status to operate until the application was formally approved or denied. Section 761.65(d)(3) describes the information that must be included in the application, such as a closure plan, closure cost estimate, and financial assurance for closure. The N&M rule did not, however, discuss procedures and criteria for transferring ownership of a facility with interim status or final approval to operate (as is the case under the regulation implementing RCRA at 40 CFR 270.72(a)(4)). The Agency is soliciting comments on the following proposed procedure as a way to address the issue of transfer of ownership of commercial storage facilities.

The Agency would recognize the transfer of interim status or final approval for commercial storage facilities if all the following conditions were met:

(1) The transferee demonstrated it had established, by the date of transfer, financial assurance for closure pursuant to §761.65(g) using a mechanism effective as of the date of final approval. This would assure that there would be no lapse in financial assurance for the transferred facility.

(2) The transferee submitted a new and complete application for final storage approval.

(3) Any significant deficiencies (e.g., technical operations, closure plans, cost estimates) that EPA had identified in the application of the transferor, were resolved in the new application by either the transferor or by the transferee.

The new application would also have to include all the elements listed in 40 CFR 761.65(d)(3), including but not limited to, a demonstration that the applicant and its principal and key employees were qualified to engage in the business of commercial storage of PCB waste, the facility had the capacity to handle the PCB waste estimated by the applicant, certification of compliance with the storage facility standards at §761.65(b) and/or (c)(7), a written closure plan, demonstration of financial responsibility for closure, demonstration that operation of the facility would not present an unreasonable risk of injury to health or the environment, and the environmental compliance history of the applicant and its principals and key employees.

Before the transfer of interim status or final approval could occur, EPA would have to review the new application and deem it "complete," i.e., all the required elements were included in the application. The application would also have to correct any significant deficiencies previously identified. Of course, EPA would reserve the right to deny the transfer of the interim approval status or final approval if upon interim review of the new application, EPA determined that the transferee was not qualified or was unable or unwilling to achieve and maintain its operations in compliance with TSCA and the PCB rules. In addition, a determination by the EPA Regional Administrator that the transfer of interim status or final approval could occur would not be determinative of the final decision that would be made regarding the commercial storage application. EPA would also reserve the right to deny any subsequent transfer request respecting a particular facility if EPA believed that such a transfer was undertaken to avoid the requirement of seeking a final commercial storage approval.

The requirements proposed above would have to be met before EPA would recognize the transfer of interim status. For example, Company "X" is interested in acquiring ownership of Company "Y", which has interim status to operate as a commercial storer of PCB waste. If EPA does not recognize the transfer of interim status before Company "X" takes legal title of ownership of the facility from Company "Y", Company "X" may be in violation of the commercial storage regulations because it did not have interim status to operate at the time it took legal title.

To facilitate the transfer of ownership, the Agency also solicits comments on whether a "new" application is entirely necessary. If, for example, the transferee accepted the contents of the old application, the only parts of the application that would have to be amended (excluding any deficiencies that have yet to be corrected) would be the financial assurance for closure, a new list of principles and key employees, and the compliance history of any business with which those individuals had been affiliated in the preceding 5 years. This submission of an "amended" application would save both the transferee and the EPA time and money and ultimately facilitate the transfer process.

H. Modifications to Storage Facilities

Section 761.65(e)(4) discusses when a commercial storage facility must submit a request to EPA for a modification to its storage approval to amend its closure plan. The Agency is proposing a similar requirement for revising the financial assurance for closure when there are modifications to the commercial storage facility, for example, where the facility is enlarged and the maximum inventory of waste increases sufficiently to warrant an increase to the financial assurance mechanism. EPA is proposing to add §761.65(g)(9) to indicate that when a modification to the storage facility occurs that warrants establishing a new financial assurance mechanism or amending the existing financial assurance mechanism, the owner or operator shall have established and activated the new financial assurance mechanism no later than 30 days after the Regional Administrator (or Director, CMD) is notified of the completion of the modification of the facility, but prior to the use of the modified portion of the facility. In addition, the Regional Administrator (or Director, CMD) would have to be notified in writing no later than 7 days of completion of the modification to the facility. EPA is also soliciting comments on the appropriateness of adding those requirements to the existing language at §761.65(f)(3) since this section also addresses modifications (in this case closure) rather than adding a new paragraph (g)(9) to §761.65.

I. Clarification of Which Disposers Must Submit Annual Reports

Section 761.180(b)(3) requires that each owner or operator of a PCB disposal or commercial storage facility shall submit an annual report to the Regional Administrator of the EPA Region in which the facility is located by July 15 of each year, that briefly summarizes the records and annual document log required to be maintained and prepared under paragraphs (b)(1) and (b)(2) of that section. Sections 761.180(b)(1) and (b)(2) are recordkeeping requirements including information obtained from manifests that are generated or received by the facility. If a disposal facility disposed of only its own waste and, therefore, never received or generated a manifest, it would still have to prepare an annual document log as per the requirements at §761.180(b)(2)(iii). However, the annual report requirements of §761.180(b)(3) should not be misinterpreted as not applying to such a facility simply because they do not receive or generate manifests.

It was not the intent of the Agency to exclude disposers of PCB waste as defined at §761.3 who dispose of their own waste from the requirement to submit an annual report. To remedy this discrepancy, EPA is proposing amendments to §761.180(b)(3) that would state that a disposer's obligation to submit an annual report is based on the act of disposing of PCB waste material and not necessarily whether or not manifests were received or

generated at the facility. This should clarify EPA's intent on receiving annual reports from all disposers of PCB waste, including those disposing of their own waste.

J. Financial Assurance Mechanism: Non-Parent Corporate Guarantee

EPA is proposing to reference 40 CFR 264.143(f)(10) of the regulations implementing RCRA (final rule September 16, 1992, 57 FR 42832) to add an additional financial assurance mechanism for closure of PCB commercial storage facilities. This mechanism allows for the corporate guarantor to also be a firm with a "substantial business relationship" (as in RCRA Subtitle C) with the owner or operator of the commercial storage facility. This additional financial mechanism would be added to §761.65(g) by adding it as paragraph (g)(7) and redesignating existing paragraph (g)(7) as paragraph (g)(8).

K. Notification and Manifesting of Samples

1. *General.* The PCB N&M rule requires that generators prepare (§761.207(a)) and transporters sign and date (§761.208(b)(2)) a manifest for each shipment of PCB waste. The rule exempts "laboratory samples" from the manifesting requirements when the samples are, among other things, "being transported to a laboratory for purposes of testing" (§761.65(i)(2)). The Agency's policy is that media containing PCBs at >50 ppm which are being sent to validate PCB disposal methods are not subject to the manifesting requirements of §761.207 and §761.208.

Unlike the requirements promulgated for hazardous wastes under RCRA at 40 CFR 261.4, the final PCB N&M rule did not include an exemption from the manifesting requirements for treatability study samples. While the N&M rule adopted almost verbatim 40 CFR 261.4(d) regarding laboratory samples, it did not incorporate 40 CFR 261.4(e) regarding treatability study samples. Accordingly, at this time, the exemption applies only to PCB samples sent to a laboratory to determine concentration.

Under the existing TSCA requirements, the treatability medium is not an exempt "laboratory sample" for two reasons. First, the medium is not being transported "for the purposes of testing". The preamble to the N&M Rule strongly suggests that "for purposes of testing" means analysis to determine the sample's concentration (e.g., is it ≧50 ppm?). As the preamble to the N&M rule states, samples that are sent to a laboratory to determine the PCB concentration are implicitly authorized for use and not subject to the disposal requirements until the analysis is complete or use in an enforcement case has ended. (See 54 FR 52716, 52719 (Unit III.D.), December 21, 1989.) Treatability studies, on the other hand, are in essence small-scale disposal experiments and not efforts solely to determine PCB concentration. The concentration of treatability media is already known to be greater than 50 ppm. The purpose of testing is not to determine the PCB concentration but to determine whether the disposal method under review works.

In addition, the preamble makes it clear that to be exempt from the requirements of the N&M rule, laboratories must be "independent" from any company whose activities involve PCB waste handling, storage, treatment, and disposal. Where the entities receiving the media containing PCBs are themselves engaged in treatment and disposal activities and are affiliated with companies whose other activities also involve PCBs, they would be unable to satisfy the definition of "laboratory" in §761.3.

2. *Definitions.* In order to promote regulatory uniformity with the exemption for treatability study samples under RCRA and to help promote and facilitate research and development into alternate disposal and treatment technologies for PCB waste, the Agency is proposing a new self-implementing PCB disposal approval at §761.60(j) for research and development for PCB disposal of limited quantities of PCBs, including treatability studies, and to add §761.80(i) to create a class exemption for processors and distributors of limited quantities of media containing PCBs for research and development. This disposal approval is explained in greater detail in unit II.D.3.j. of the preamble and the class exemption is explained in greater detail in Unit III.J. of this preamble. In addition, EPA is proposing to amend §761.3 to add the definition of "Treatability Study" that would essentially mirror the existing definition under RCRA at 40 CFR 260.10. Treatment is a form of disposal under the PCB rules.

L. Clarification of the Term "Facility"

In today's proposed rule, the Agency is soliciting comments on the need to clarify the terms "facility" and "facilities". The term is used in different contexts throughout the regulatory text of 40 CFR part 761. The impetus for the Agency raising this need for a clarification of the term arose after reviewing a section of preamble language in the PCB Notification and Manifesting rule (54 FR 52716). In the preamble on page 52722, column 2, the discussion focusses on the requirement for generators with on-site storage facilities to notify the Agency of their PCB waste handling activities. The first two sentences in the last paragraph read, "In submitting their notifications to EPA, members of this class of generator/storer will submit a notification form for each of their storage areas that is subject to § 761.65. EPA will issue a unique identification number to each notifying storage facility, and this identification number will correspond to the physical location of the facility."

Here the terms "storage area" and "storage facility" are used interchangeably; in the first case to mean a particular building, structure, cell, or unit, and in the second instance, all structures on contiguous land or specified piece of property. As a matter of record, it was not the Agency's intent to require notification for each storage unit on the contiguous piece of property, which would result in multiple, individual identification numbers for that property. The facility, regardless of the number of storage areas or units on the piece of property, need only notify once for that contiguous piece of property. Therefore, in this instance, the term facility means, all contiguous land and structures used for the storage of PCB waste.

There are, however, other sections of the PCB regulations where the term facility means an individual unit or structure; most notably at §761.65(b)(1). Here the regulation states that a facility used for the storage of PCBs and PCB Items shall have an adequate roof, walls, and floor; continuous curbing with a minimum 6 inch high curb; no floor drains or expansions joints, etc.; and shall not be located at a site below the 100–year flood water elevation. It is clear in this instance that the Agency is not referring to a contiguous piece of property but to an individual structure or unit.

In the vast majority of cases in 40 CFR part 761, the term facility refers to the contiguous piece of property including the structures or individual storage or disposal units on that property. There are, however, 10 or so citations in the PCB regulations where the term facility refers only to the individual unit or structure. It is these 10 places in the regulation where EPA is proposing to delete the term facility and insert a term whose definition will best represent the Agency's intent (i.e., an individual unit, structure, or building). The Agency solicits comments on the most appropriate term to convey this

meaning. For purposes of this proposed rule, the term "unit" will be used to indicate this change in the proposed regulatory text.

In addition, the Agency welcomes comments if it has inadvertently omitted a section or sections of the regulations where the term facility should be deleted and the term "unit" inserted or for that matter made a change where one was not appropriate.

V. Confidentiality

All comments will be placed in the public record unless the commenter claims that they contain confidential business information (CBI) and the comments are clearly labeled as containing information claimed as CBI at the time of submission. Because of the need to expedite the review of any CBI claims, each claim must be accompanied by detailed comments substantiating the claim as described in 40 CFR 2.204(e)(4). While a part of the public record, comments claimed as CBI will be treated in accordance with 40 CFR part 2. A sanitized version of all comments subject to CBI claims must be submitted to EPA for the public record by the close of the comment period.

It is the responsibility of the commenter to comply with 40 CFR part 2 so that all materials claimed as confidential may be properly protected. This includes, but is not limited to, clearly indicating on the face of the comment (as well as on any associated correspondence) that information claimed to be CBI is included, or marking "CONFIDENTIAL," "TSCA CBI," or a similar designation on the face of each document or attachment in the comment which contains the claimed CBI. EPA considers the failure to clearly identify the claimed confidential status on the face of the comment or attachment as a waiver of any such claim and will make such information available to the public without further notice to the commentor.

VI. Official Rulemaking Record

In accordance with the requirements of section 19(a)(3) of TSCA, EPA is issuing the following list of documents, which constitutes the record of this proposed rulemaking. The official records of previous PCB rulemakings are incorporated as they exist in the TSCA Public Docket. This record includes basic information considered by the Agency in developing this proposal. A full list of these materials is available for inspection and copying in the TSCA Nonconfidential Information Center from 12 noon to 4 p.m. However, any CBI that is a part of the record for this rulemaking is not available for public review. A public version of the record, from which CBI has been excluded, is available for inspection.

A. Previous Rulemaking Records

1. Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Disposal and Marking Rule," Docket No. OPTS–68005, 43 FR 7150, February 17, 1978.

2. Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions Rule, "44 FR 31514, May 31, 1979.

3. Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Process, Distribution in Commerce, and Use Prohibitions: Use in Electrical Equipment," Docket No. OPTS–62015, 47 FR 37342, August 25, 1982.

4. Official Rulemaking Record from "Toxic Substances Control Act; Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Response to Individual and Class Petitions for Exemptions," Docket No. OPTS–66008A, 49 FR 28154, July 10, 1984.

5. Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions: Exclusions, Exemptions and Use Authorizations," Docket No. OPTS–62032A, 49 FR 28172, July 10, 1984.

6. Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs), Manufacturing, Processing, and Distribution in Commerce Exemptions," Docket No. OPTS–66008F, 53 FR 32326, August 24, 1988.

7. Official Rulemaking Record from "Polychlorinated Biphenyls; Notification and Manifesting for PCB Waste Activities," Docket No. OPTS–62059B, 54 FR 52176, December 21, 1989.

8. Official Rulemaking Record from "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing and Distribution in Commerce Exemptions," Docket No. OPTS–66008G, 55 FR 21023, May 22, 1990.

B. Federal Register Notices

1. USEPA. 42 FR 26564, May 24, 1977, "Polychlorinated Biphenyls (PCBs) Toxic Substances Control, Proposed Rule." OTS 68005.

2. USEPA. 43 FR 7150, February 17, 1978, "Polychlorinated Biphenyls (PCBs); Disposal and Marking: Final Rule." OTS 68005.

3. USEPA. 44 FR 31514, May 31, 1979, "Polychlorinated Biphenyls (PCBs); Manufacturing Processing, Distribution in Commerce, and Use Prohibitions: Final Rule."

4. USEPA. 45 FR 33290, at 33325, May 19, 1980, "Consolidated Permit Regulations: RCRA, Hazardous Waste; SDWA Underground Injection Control; CWA National Pollutant Discharge Elimination System; CWA Section 404 Dredge or Fill Programs; and CAA Prevention of Significant Deterioration: Final Rule."

5. USEPA. 46 FR 22144, April 15, 1981, "Hazardous Substances: Notification of Treatment, Storage and Disposal Facilities: Notice of Availability of Form 8900–1, Interim Interpretative Notice and Policy Statement."

6. USEPA. 47 FR 37342, August 25, 1982, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions: Use in Electrical Equipment: Final Rule." OPTS–62115.

7. USEPA. 49 FR 28172, July 10, 1984, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions: Exclusions, Exemptions, and Use Authorizations: Final Rule." OPTS–62032.

8. USEPA. 49 FR 28154, July 10, 1984, "Toxic Substances Control Act; Polychlorinated Biphenyls (PCBs); Manufacturing, Processing, Distribution in Commerce and Use Prohibitions; Response to Individual and Class Petitions for Exemptions: Final Rule." OPTS–66008A.

9. USEPA. 49 FR 44978, November 13, 1984, "Hazardous Waste Management System; Identification and Listing of Hazardous Waste: Final Rule and Denial of Rulemaking Petition."

10. USEPA. 52 FR 10688, April 2, 1987, "Polychlorinated Biphenyls Spill Cleanup Policy: Final Rule." OPTS–62051.

11. USEPA. 53 FR 32326, August 24, 1988, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing and Distribution in Commerce Exemptions: Proposed Rule." OPTS–66008F.

12. USEPA. 54 FR 22524, May 24, 1989, "Reportable Quantity Adjustment—Radionuclides: Final Rule."

13. USEPA. 54 FR 52176, December 21, 1989, "Polychlorinated Biphenyls; Notification and Manifesting for PCB Waste Activities: Final Rule." OPTS–62059.

14. USEPA. 55 FR 8666, March 8, 1990, "National Oil and Hazardous Substances Pollution Contingency Plan: Final Rule."

15. USEPA. 55 FR 12866, April 6, 1990, "Polychlorinated Biphenyls; Wet

Weight/Dry Weight Clarification: Proposed Rule." OPTS–62082.

16. USEPA. 55 FR 21023, May 22, 1990, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing and Distribution in Commerce Exemptions: Final Rule." OPTS 66008G [sic] OPTS 66008H.

17. USEPA. 55 FR 26204, June 27, 1990, "Polychlorinated Biphenyls (PCBs); Notification and Manifesting for PCB Wastes Activities; Correction to Final Rule." OPTS 62059.

18. USEPA. 55 FR 30798, July 27, 1990, "Corrective Action for Solid Waste Management Units at Hazardous Waste Management Facilities; Proposed Rule."

19. USDOT. 55 FR 52402, December 21, 1990, "Performance-Oriented Packaging Standards; Changes to Classification, Hazard Communication, Packaging and Handling Requirements Based on UN Standards and Agency Initiative: Final Rule."

20. USEPA. 56 FR 9008, March 4, 1991, "PCB State Enhancement Grant Program; Notice of Availability and Review." OPTS–280004.

21. USEPA. 56 FR 26738, June 10, 1991, "Disposal of Polychlorinated Biphenyls; Advanced Notice of Proposed Rulemaking." OPTS–66009.

22. USEPA. 56 FR 26745, June 10, 1991, "Disposal of Polychlorinated Biphenyls; Availability of Draft Guidance." OPTS–66010.

23. USEPA. 56 FR 30200, July 1, 1991, "Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Liability Requirements: Final Rule, Technical Amendment."

24. USEPA. 57 FR 7349, March 2, 1992, "Polychlorinated Biphenyls (PCBs); Manufacturing, Processing and Distribution in Commerce Exemptions and Use Authorization: Proposed Rule." OPTS–66011.

25. USEPA. 57 FR 21450, May 20, 1992, "Hazardous Waste Management System; Identification and Listing of Hazardous Waste: Proposed Rule."

26. USEPA. 57 FR 37194, August 18, 1992, "Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris."

27. USEPA. 57 FR 42832, September 16, 1992, "Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities; Financial Responsibility for Third-Party Liability, Closure, and Post-Closure: Final Rule."

28. Nuclear Regulatory Commission. 40 FR 19439, May 5, 1975, "Radioactive Material in Light-Water-Cooled Nuclear Power Reactor Effluents: Final Rule."

29. USEPA. 57 FR 20602, May 13, 1992, "Hazardous Waste Management System; Notification Concerning the Basel Convention's Potential Implications for Hazardous Waste Exports and Imports; Notice."

C. Reference Documents

1. ASTM. *Standard Test Method for Analysis of Polychlorinated Biphenyls in Insulating Liquids by Gas Chromatography. Standard D-4059–91*, (April 1991):12pp.

2. Chemical Waste Management Inc. In the United States Court of Appeals for the District of Columbia Circuit. *Chemical Waste Management, Inc., Petitioner, v. United States Environmental Protection Agency, Respondent. Petition for Review under Section 19 of TSCA. Case No. 90–1469*, (September 25, 1990):3pp. Submitted by J.B. Molloy, et al. of Piper Marbury, counsel.

3. Chemical Waste Management. U. S. Court of Appeals, District of Columbia Circuit. *Chemical Waste Management, Inc., Petitioner, v. U.S. Environmental Protection Agency, Respondent. Motion for Voluntary Dismissal — Case No. 90–1469*, (March 4, 1991):2pp. Prepared by J.B. Molloy, et al., of Piper Marbury, counsel.

4. Midwest Research Institute. Letter from K. Boggess to J. Smith, Chemical Regulations Branch, EED, OPTS, USEPA, Subject: "PCB surface decontamination experiments using kerosene", EPA Contract No. 68–DO–0137, MRI Project No. 9801–A, Work Assignment No 30, (June 25, 1992):4pp.

5. Pepper, Hamilton Scheetz. Letter from W.J. Walsh, Counsel for Rollins Environmental Services (NJ) Inc., et al. to W.K. Reilly, Administrator, USEPA. Subject: Transmittal of a TSCA section 21 petition regarding PCB disposal provisions, (February 2, 1990):4pp. [OPTS Docket 210025]

6. Pepper, Hamilton Scheetz. *Petition to Initiate a Proceedings for a Clarifying Amendment to 40 CFR 761.60 [under Section 21 of TSCA]*. Submitted to the USEPA by W.J. Walsh, counsel for Rollins Environmental Services (NJ), Inc., et al. (February 2, 1990):40pp. [OPTS Docket 210025]

7. USEPA, OSWER. *Test Methods for Evaluating Solid Waste, Third Edition*. SW–846, (November, 1986): *Method Number 9095 Paint Filter Liquids Test* (4pp.).

8. USEPA, OSWER. *Test Methods for Evaluating Solid Waste, Third Edition*. SW–846, (November, 1986): *Method 8080 Organochlorine Pesticides and PCBs* (27pp.).

9. USEPA, OSWER. *Test Methods for Evaluating Solid Waste, Third Edition*. SW–846, (November, 1986): *Method 3540 Soxhlet Extraction* (7pp.).

10. U.S. Court of Appeals for the District of Columbia Circuit. Petition for Review of a Final Decision of the Environmental Protection Agency. *Rollins Environmental Services (NJ) Inc., Petitioner v. U.S. Environmental Protection Agency, Respondent*, Case No. 90–1508, (July 5, 1991):5pp.

11. USDOE (Energy). *Oak Ridge Incinerator Burn Plans (Material in Storage for Incineration and Estimates of Annual Waste Production) for PCB/Radioactive Waste*. Oak Ridge Operations Office, (February 10, 1992):25pp.

12. USEPA, and USDOE (Energy). *Compliance Agreement Between the United States Department of Energy (DOE) and the United States Environmental Protection Agency (EPA), Toxic Substances Control Act — In Re: DOE Facilities: Paducah, KY, Portsmouth, OH, and Oak Ridge, TN*, (February 20, 1992):23pp.

13. USEPA, OGC. Letter from J.C. Nelson, to F.S. Blake, Swidler Berlin, Chartered, counsel for General Motors Corporation and Chrysler Corporation. Subject: Petition for review of the PCB manifest rule, (December 20, 1990):3pp.

14. USEPA, OGC. Letter from J.C. Nelson to M. Edgar of Piper Marbury, counsel for Chemical Waste Management, Inc. Subject: Petition for review re: PCB Notification and Manifesting Rule; Correction; dated June 27, 1990, (March 1, 1991):2pp.

15. USEPA, OPPTS, EED. Note from D. Hannemann to the File, Subject: PCB Disposal Rule Amendment — Criticality Meeting with DOE, [Energy], (June 5, 1992):2pp.

16. USEPA, OSWER, HSCD. *A Guide on Remedial Actions at Superfund Sites with PCB Contamination, Directive: 9355.4–01*, (August 1990):136pp and fact sheet (9355.4–01FS).

17. USEPA, OSWER, OERR. *Superfund National Results: CERCLIS Characterization Project*. EPA/540/8–91/080, (October 1991):89pp.

18. USEPA, OSWER, OERR. *Superfund National Results: NPL Characterization Project*. EPA/540/8–91/069, (October 1991):109pp.

19. USEPA, Region 5. *In the Matter of: Standard Scrap Metal Company, Respondent — TSCA–V–C–288, Appeal No. 87–4, Final Decision* by R.L. McCallum, Chief Judicial Officer. (August 2, 1990):20pp.

20. USEPA, OPTS. *TSCA Compliance Program Policy No. 6–PCB2, - Distillation, Solvent Extraction, Filtration, and Other Physical Separation Methods for PCBs*, signed by A.E. Conroy, II, Director Compliance Monitoring Staff, Office of Pesticides and Toxic Substances, (August 16, 1983):4pp.

21. USEPA, OPTS. Letter from J.A. Moore, Assistant Administrator, Office of Pesticides and Toxic Substances, to T.K. Allen, Piper and Marbury, counsel for USWAG. Subject: An interpretation of the PCB regulations on the disposal of drained carcasses from mineral oil transformers, (September 9, 1986):4pp.

22. USEPA, OPTS. Letter from L.J. Fisher, Assistant Administrator, Office of Pesticides and Toxic Substances, to W.J. Walsh of Pepper, Hamilton Scheetz and W.H. Hyatt of Pitney, Hardin, Kipp Szuch. Subject: Response to the February 2, 1990 section 21 petition, (June 8, 1990):5pp. [OPTS Docket 210025]

23. USEPA, OPTS. *Interim Guidance On Non-Liquid PCB Disposal Methods to be Used as Alternatives to a 40 CFR 761.75 Chemical Waste Landfill (CWL)*, (July 3, 1990):16pp.

24. USEPA, OPTS, EAD. *Summary of State PCB Management Programs*, (February, 1991):193pp. Prepared under EPA Contract No. 68–D0–0020 by Abt Associates, Inc.

25. USEPA, OPTS, EED. Letter from M.P. Halper to L.J. Ogden, Interstate Natural Gas Association of America. Subject: Responses to letter of March 17, 1988 re: natural gas pipeline removal and retirement, (June 6, 1988):12pp.

26. USEPA, OPTS, EED. Memorandum from K.A. Hammerstrom to D. Keenher, EED. Subject: Exposure to PCBs in recycled pipe, (July 7, 1988):8pp.

27. University of Wisconsin-Madison. Letter via facsimile from Peter Reinhardt to John Smith, Operations Branch, CMD, OPPTS, USEPA. Subject: Research in physical chemistry since 1947 using Aroclors as solvents, (March 22, 1994): 5pp.

28. USEPA, OPPTS, EETD. *Costs of Compliance with the Proposed Amendments to the PCB Regulations* (July 14, 1994); 241pp.

29. USEPA, OPTS, EED. *Wipe Sampling And Double Wash/Rinse Cleanup as Recommended by the Environmental Protection Agency PCB Spill Cleanup Policy*, (June 23, 1987, Revised and Clarified on April 18, 1991):22pp. Prepared by J.H. Smith.

30. USEPA, OPTS, EED. *Summary of Comments Received in Response to the Advanced Notice of Proposed Rulemaking for PCB Disposal by Submitter*, Docket number OPTS 66009, Draft, (March 5, 1992):213pp. Prepared under EPA contract by Versar Inc.,

31. USEPA, OPTS, EED. *Summary of Comments Received in Response to the Advanced Notice of Proposed Rulemaking for PCB Disposal by Topic Area, Draft*. Prepared under EPA contract by Versar Inc., (March 5, 1992):179pp.

32. USEPA, OPTS, and USEPA, OCM. Letter from C.L. Elkins, Director, Office of Toxic Substances, and A.E. Conroy II, Director of the Office of Compliance Monitoring, to State Colleagues. Subject: Use of PCB capacitors in household "white goods", (October 20, 1988):3pp.

33. USEPA, OPTS, and USEPA, OCM. Letter from C.L. Elkins, Director, Office of Toxic Substances and A.E. Conroy, Director, Office of Compliance Monitoring, to H. Cutler, Institute of Scrap Recycling Industries, Inc. Subject: Use of PCB capacitors in household "white good", (October 20, 1988):3pp.

34. USEPA, OPTS, EED, and USEPA, OSW. *Project Summary -PCB, Lead and Cadmium Levels in Shredder Waste Materials: A Pilot Study*. (EPA 560/5–90–008A), (April 1991):14pp.

35. USEPA, Region VIII. Memo from T.C. Pauling, Toxics Section, to Tony Baney, Chief, Chemical Regulation Branch, Subject: Follow Up Documentation for Region VIII Comments on the PCB Disposal Amendments Draft Proposal (May 27, 1992):8pp.

36. USEPA, Response to Comments on the PCB Wet Weight/Dry Weight Clarification Proposed Rule, June 1993.

37. ASTM. Letter from Robert L. Meltzer to David Kling, Acting Director, EAD, OPPT, USEPA. Subject: Use of copyrighted ASTM standards in EPA regulations, (May 21, 1992): 1p.

38. USEPA, OGC. Letter from Thomas W. Gorman, Patent Counsel, to Morris Brooke, General Counsel for ASTM. Subject: Use of ASTM standards in EPA regulations, (November 18, 1992): 2pp.

39. USEPA, OIG. Memorandum from Kenneth A. Konz, Assistant Inspector General for Audit to Linda J. Fisher, Assistant Administrator, OPPTS, USEPA. Subject: Special Report No. E1EPG2–11–6000–2500065, Review of EPA Rule Regulating PCB Transformer Fires, (August 21, 1992): 24pp.

40. Monsanto, Co. Letter from Gary W. Mappes, Chairman, CMA PCB Panel, to Tony Baney, Chemical Regulation Branch, EED, OPTS, USEPA. Subject: SAB report on leachability and ANSI/ANS 16.1 Leachability Test, (May 19, 1993): 1p.

41. Kelly, Stansfield O'Donnell. Letter from Lloyd W. Landreth to Tom Simons, Operations Branch, CMD, OPPTS, USEPA. Subject: Manufacturers' certification of oil-filled equipment, (October 30, 1992): 5pp.

42. Kelly, Stansfield O'Donnell. Letter from Lloyd W. Landreth to Tom Simons, Operations Branch, CMD, OPPTS, USEPA. Subject: Follow-up to letter of October 30, 1992, (November 16, 1992): 2pp.

43. General Electric Co. Letter from Marion P. Herrington, Environmental Compliance Counsel, to Tony Baney, Chemical Regulation Branch, EED, OPTS, USEPA. Subject: Import of PCB waste from U.S. territories to the continental U.S., (April 23, 1992): 3pp.

44. USEPA. Letter from Michael J. Walker, OE, and Michael F. Wood, OCM, to Marion P. Herrington, General Electric Co.. Subject: Response to April 23, 1992 letter, (August 14, 1992): 2pp.

45. USEPA, OPPTS, OPB. *Toxic Characteristic Leaching Procedure (TCLP) for Galbestos Siding Material* (August 16, 1993): 35pp. Prepared under EPA Contract No. 68–DO–0137 by Midwest Research Institute.

46. S.D. Myers, Inc. *Summary of Results: PCB Levels in Light Ballast Compound*, (August 11, 1993): 31pp.

47. Rollins Environmental Services, Inc.. Analytical Protocol and Analytical Results from PCB Ballast Study (September 20, 1993): 112 pp.

48. USEPA. *Draft Strategy for Combustion of Hazardous Waste*, (May, 1993): 14pp.

49. Hazardous Waste Treatment Council. *Petition For Rulemaking to Amend 40 CFR 761.60 [under section 21 of TSCA]*. Submitted to USEPA by Richard C. Fortuna, Executive Director for the Hazardous Waste Treatment Council, Franklin D. Sales, President of Salesco Systems USA, Inc., and Brin McCagg, Vice-President of FulCircle Ballast Recyclers (December 15, 1992). [OPTS Docket NON1]

50. USEPA, OPPTS. Letter from Victor J. Kimm, Acting Assistant Administrator, Office of Pesticides and Toxic Substances, to Richard C. Fortuna, Executive Director for the Hazardous Waste Treatment Council, Franklin D. Sales, President of Salesco Systems USA, Inc., and Brin McCagg, Vice-President of FulCircle Ballast Recyclers. Subject: Response to the December 15, 1992 section 21 petition, (March 17, 1993). [OPTS Docket NON1]

51. Salesco Systems, USA, Inc. Letter from Franklin D. Sales, President of Salesco Systems USA, Inc. to EPA Administrator Carol Browner. Subject: Petition for Rulemaking to Amend 40 CFR 761.60 [withdrawal of name and support for section 21 petition] (October 8, 1993).

52. USEPA, OPPTS. Letter from Lynn R. Goldman, Assistant Administrator [signed by Victor J. Kimm] to Franklin D. Sales, President of Salesco Systems USA, Inc. Subject: Response to the letter of October 8, 1993, (January 4, 1994).

53. USEPA, Green Lights. Lighting Waste Disposal, EPA's Green Lights Program, January 1994.

54. DOE Order. Department of Energy Order No. 5480.5 dated 9–23–86. Subject: Safety of Nuclear Facilities.

55. Legislative History of the Toxic Substances Control Act Together With A Section-by-Section Index, Prepared by the Environment and Natural Resources Policy Division of the Library of Congress for the House Committee on Interstate and Foreign Commerce, December 1976, pages 616–618.

56. U.S. Bureau of Mines, Mine Safety and Health Administration. *Electrical Accidents in Bituminous Coal Mines*, Miners Circular No. 59, May 1959.

57. USEPA, OPTS. Memorandum from John A. Moore, Assistant Administrator for Pesticides and Toxic Substances, to Gary O'Neal, Director, Air Toxics Division, EPA Region X. Subject: Disposal Requirements for PCB Small Capacitors, (March 4, 1985): 8pp.

58. University of Wisconsin-Madison. Letter via facsimile from Peter Reinhardt to John Smith, Operations Branch, CMD, OPPTS, USEPA. Subject: Research in physical chemistry since 1947 using Aroclors as solvents, (March 22, 1994): 5pp.

59. USEPA, OPPTS, EETD. Costs of Compliance with the Proposed Amendments to the PCB Regulations (July 14, 1994); 241pp.

VI. 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 (1) have 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) create serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients

thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, OMB determined that this rule was "significant" because of the substantial cost savings estimated in association with the changes proposed. As such, this rule was submitted to OMB for review and any changes made in response to OMB comments are available for review in the docket.

B. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (15 U.S.C. 8091 et seq. Pub. L. 96–534. September 19, 1980), requires EPA to prepare and make available for comment a regulatory flexibility analysis in connection with rulemaking. The initial regulatory flexibility analysis must describe the impact of the proposed rule on small business entities. If, however, a regulation will not have a significant impact on a substantial number of small entities, no such regulatory impact analysis is required.

The proposed amendments to the PCB regulations will generate a variety of regulatory and deregulatory impacts on the diverse entities and industries affected by PCB handling and disposal requirements. This section examines the compliance costs and cost savings the regulated community will experience as a result of the proposed amendments. It also assesses how the PCB amendments will affect a variety of small businesses that handle and dispose of PCB Items and PCB wastes.

1. *Cost estimation methodology.* This section describes compliance costs and cost savings estimated for each of the proposed revisions to the PCB regulations. The cost estimates use various economic data inputs. In several cases, wage rate estimates were used for estimating the labor costs or cost savings from regulatory changes. The wage rates are derived from an EPA study and represent standard wage rate estimates used in OPPT studies. The hourly wage rates used are:

	Wage rates(hourly)
Managerial	$60.42
Scientific	52.39
Technical/Foreman	43.80
Legal	80.69
Clerical	21.73

Several additional factors were considered in the cost analysis, including:

• Treatment of compliance costs for paragraphs that codify an existing EPA policy (i.e., elements that are presently in effect but are not part of the existing regulation).

• Compliance with the existing and the proposed regulation.

• Treatment of the effect of the proposed amendments on disposal capacity and disposal prices.

• Consideration of the time horizon for compliance costs, given the declining quantities of PCBs in use.

• Cost annualization methods.

Each topic is discussed below.

Treatment of costs for provisions that codify EPA policy. In several instances, an EPA policy has been developed in response to new information received by EPA or concerns about compliance problems, and the proposed rule would codify these policies. Because the existing regulations differ from EPA's policies, two sets of cost estimates were prepared based on two different baselines. The strict language of the existing regulations served as the first baseline, which was used to generate cost estimates for all sections of the proposed regulations. Actual EPA policy or practice was used as the baseline for 29 provisions of the amendments. In cases where the current EPA policy and the existing regulations do not differ, a single cost estimate was prepared and applied in either case.

Compliance with the existing and the proposed regulations. All cost estimates were prepared assuming full compliance with the existing and the proposed regulations, although in reality, many companies are not in full compliance with the existing regulations. This study is designed only to estimate the costs of the proposed regulations; the actions necessary to achieve compliance with the existing regulations are not considered.

Treatment of the effect of the proposed amendments on disposal capacity and disposal prices. The analysis does not reflect possible effects of the proposed amendments on either disposal capacity or disposal costs for PCB wastes. The proposed amendments include several elements that could reduce demand for disposal of PCB wastes in chemical landfills, such as allowing for longer storage of some wastes and for use of alternative disposal technologies. It is reasonable to anticipate that the availability of alternatives to TSCA permitted landfills and incinerators will lower costs for disposal at those facilities. Nevertheless, these market changes were not modeled in this study.

Consideration of future declines in the volume of PCB waste requiring disposal. In future years the amount of PCB waste will decline. Discussions with various industry representatives, however, indicated that this waste stream still would be substantial for a number of years. Disposal of PCB-Contaminated soils from remediation sites, one of the major categories of wastes addressed in the proposed regulations, is likely to continue for several decades.[1] Given that the time horizon for waste disposal remains so long, a declining time horizon for compliance costs or cost savings was not taken into account for this study.

Cost annualization. In several cases, the compliance costs or cost savings would be incurred solely in the first year after regulatory implementation. Examples of such regulations include one-time requirements for the registration of transformers. Since most new elements create recurring annual costs or cost savings, consistency required that the one-time elements be annualized. The one-time items were annualized over 5 years at 3 percent per year (annualization factor of 0.2184). The 5–year time horizon was chosen as most appropriate for the administrative and recordkeeping tasks most numerous among the first-year requirements; a longer annualization schedule would have suggested long-term investments, such as in durable assets and equipment; a shorter term annualization schedule would suggest regulatory requirements that need to be renewed.

2. *Aggregate net cost estimates.* Table 4–1 of the Regulatory Impact Analysis developed for this rulemaking presents the aggregate net cost savings for the PCB regulations under the two baselines. The net cost impact of the proposed amendments, using either current EPA policy or the EPA regulation as the baseline, is a cost savings of over $4 billion per year. This figure was based on cost savings of $4.2 billion to $4.8 billion per year under the alternative baselines, and compliance costs of $11.6 million. As noted in the previous section, these cost savings would likely extend indefinitely into the future. The difference between the two baselines occurs because current EPA policy took into account exceptional compliance difficulties that arose when previously unknown sources of PCB contamination were discovered. A strict interpretation of the existing PCB regulations in these areas

[1] The estimated time horion for disposal of PCB wastes from remediation sites is based on estimates of the time needed for remediating hazardous waste sites in the Superfund program. EPA estimated that at the current rate of cleanup, remediation of the sites on the National Priority List will take 48 more years (U.S. EPA, 1993).

would have generated large compliance costs for various users of PCBs.

The specific areas of additional compliance costs (i.e., incremental to baseline conditions) and cost savings are discussed below.

a. *Areas of additional cost.* The total incremental costs for new compliance requirements in the proposed regulations were estimated to be $11.6 million. This estimate does not include certain cost items that are included in paragraphs that show a net cost savings. The effect of these additional items on the total compliance costs, however, is quite modest. The compliance cost estimate is the same for either baseline since the existing regulatory environment does not influence the cost of new requirements. Table 4–2 of the Regulatory Impact Analysis developed for this rulemaking lists the sections of the proposed regulation that will lead to additional costs.

Six provisions of the proposed regulations describe new recordkeeping or reporting requirements for facilities with PCB equipment or wastes. The two most costly of these requirements are under §761.180(a)(1)(iii) and (iv), which require recordkeeping and the preparation of an inventory of PCB equipment. These two sections would generate estimated annual compliance costs of $3,771,180.

Another major cost increment would be generated by §761.60(b)(6)(ii), the disposal of drained PCB Articles. While the existing policy did not regulate the disposal of these articles, the proposed regulations specify acceptable disposal means. The total additional costs are estimated to be $3.5 million, generated primarily by greater costs for disposing of PCB-Contaminated Transformers. Most transformers now are disposed of via industrial furnace, but certain of these facilities would not meet the furnace standards specified in proposed §761.60(a)(4), and the furnaces no longer would be able to accept this equipment. It is likely that most of these PCB Articles would be incinerated or placed in chemical waste landfills.

Costs of $1.3 million and $1.1 million per year were estimated for §761.40(k) and §761.30(a)(1)(vii), which cover the marking of PCB Large Low-Voltage Capacitors and Transformers and the registration with EPA of PCB Transformers in use, respectively. Many facilities are estimated to require 4 hours or more to locate, mark, and register these items. Similarly, the transformer registration requirement would require electric utilities and a variety of industrial facilities to submit information on their PCB Transformers. While this amendment requires only the submission of information that the firms should have readily available, a large number of facilities would incur some expense to register their PCB Transformers.

Other proposed provisions estimated to generate incremental cost include:

• Section 761.67(a) limits the storage for reuse of PCB Articles to less than 3 years and prevents the indefinite storage of equipment. Incremental costs are estimated to be $0.9 million per year.

• Sections 761.40(d) and (h) extends marking requirements to cover transport vehicles carrying non-liquid PCBs. Incremental annual costs are estimated to be $236,000.

• Section 761.60(b)(4) specifies the amount of time PCB-Contaminated Electrical Equipment must be drained and adds language to indicate appropriate options for the disposal of drained equipment. The added costs are estimated to be $131,400 per year.

b. *Areas of cost savings.* Cost savings of $4.2 billion to $4.8 billion per year are estimated using either existing EPA policy or the existing regulations as the baseline. The areas of estimated cost savings are summarized in Table 4–3 of the Regulatory Impact Analysis developed for this rulemaking.

The provision expected to result in the largest cost savings (estimated at slightly over $4.0 billion per year) is proposed §761.61, which covers the disposal of remediation wastes when the existing EPA regulations are used as the baseline. This section allows an expanded set of disposal options and simplified administrative procedures, where the existing regulation allowed only chemical waste landfilling and incineration. There is, however, uncertainty about the estimate of the remediation rate (i.e., the amount of waste that is remediated annually); the variation in the plausible values of this estimate produces a range for the annual cost savings of $2 billion to $6 billion.

The disposal of non-remediation waste, covered in proposed §761.62, is estimated to generate another large annual cost savings ($150 million per year) compared to either the existing regulations or EPA policy. The proposed rule establishes disposal options other than chemical waste landfills or incineration for non-remediation wastes containing PCBs in concentrations <50 ppm.

Additional substantial cost savings of the PCB amendments were estimated at $500 million per year for proposed §761.30(q), the Continued Use of Pre-TSCA PCBs. The proposed section provides that PCB Items (such as HVAC gaskets, plastic, plasticizers, electric cable, and others) would be authorized for use for the remainder of their useful life, whereas the existing regulations banned the use of these items. The large estimated savings for this section are based on the estimates of the number of buildings with PCB contamination for which continued use is allowed under the regulatory amendments. The number of these locations is not known, however, and thus cost savings can only be roughly approximated.

Another provision that would result in cost savings is proposed §761.60(b)(5), which covers the abandonment and disposal of PCB-Contaminated natural gas pipelines. An annual cost savings of close to $63 million is generated because the proposed regulations would allow considerably greater latitude in dealing with this waste stream than did the existing regulations. Under the existing regulations, all PCB-Contaminated natural gas pipelines that are inaccessible for characterization or that contain PCBs in concentrations >500 ppm require excavation and either incineration or disposal in chemical waste landfills. Based on existing EPA policies, which are similar to the proposed regulations, the annual cost savings is much smaller—$387,310.

Another area of cost savings is estimated for proposed §761.60(b)(6)(iii), which identifies disposal options for nonporous surfaces, including metal ship and submarine hulls and air handling systems contaminated by PCBs at concentrations <100 μg/100 cm^2. The existing regulations require these materials to be disposed of via chemical waste landfill or incineration. The annual cost savings of this provision is estimated to be $37.5 million, using either the existing regulations or EPA policy as the baseline.

A cost savings of $10.6 million per year was estimated for §761.77, Coordinated Approval, using either the existing regulations or EPA policy as the baseline. These proposed regulations would acknowledge permits for PCB facilities (i.e, for land disposal, incineration, research and development, alternative disposal technologies, commercial storage, or site remediation) issued under other State and Federal environmental programs, including RCRA, and where states classify PCBs as hazardous wastes or regulate PCBs in a similar fashion to the TSCA regulations.

Additional proposed provisions estimated to generate significant cost savings include:

• Section 761.65(c)(1)(iv) allows temporary storage of PCB containers with liquid PCBs at concentrations ≧50 ppm, provided that a Spill Prevention

Plan has been prepared. Existing measures allow temporary storage only when concentrations are 50 ppm up to 500 ppm. The estimated annual savings is $3.0 million, using either the existing regulations or EPA policy as the baseline.

• Section 761.65(a) extends the allowable storage period for PCB wastes and allows EPA to grant storage time extensions in cases where the owner has shown due diligence in trying to dispose of wastes. The estimated savings compared to either the existing regulations or EPA policy, is $1.1 million per year.

• Section 761.63 allows the disposal of PCB-containing household wastes at municipal and industrial landfills. Only a small portion of household hazardous wastes contain PCBs; they previously were not addressed in the regulations. The annual savings is estimated to be $840,000.

• Section 761.65(c)(6) allows the use of a wider range of DOT approved containers for storing liquid and non-liquid PCBs, and thereby avoids the need to revise the PCB regulations after each change to the DOT regulations. A cost savings of $565,000 per year was estimated for this provision.

• Section 761.65(c)(6)(i) acknowledges the special characteristics of radioactive waste by allowing unique container designs for such waste and generates an estimated annual cost savings of $132,000, compared to the existing regulations.

Refer to Table 4–3 of the Regulatory Impact Analysis developed for this rulemaking for a list of several additional cost savings estimates related to PCB import, use, storage, and exemption.

3. *Regulatory impact on small businesses.* The PCB amendments would affect a variety of small businesses that handle and dispose of PCB Items and PCB wastes. This section considers the economic impacts on those businesses and addresses the analytical requirements of the Regulatory Flexibility Act (RFA). The RFA requires agencies to explore options for minimizing small business impacts whenever there is a "significant economic impact on a substantial number of small entities." While this discussion will consider the significance of the potential impacts, EPA's internal policy is to consider any impacts on any small entities (U.S. EPA, 1992d).

According to EPA's guidelines, significant impacts are produced if:

• Annual compliance costs increase the costs of production by more than 5 percent;

• Costs of compliance as a percentage of sales are at least 10 percent higher than for large entities;

• Capital costs represent a significant percentage of the total capital available; and

• The regulation is likely to shut down small entities.

a. *Economic impacts on small industrial furnace operations.* The small industrial furnace operators handling PCB-Contaminated transformers would experience negative economic impacts as a result of the proposed amendments. It was estimated that approximately 100 industrial furnace operations specialize in recovery of transformer carcasses. Most of the businesses are small, ranging from owner-operated units with fewer than 10 employees, to larger operations approaching 100 employees. The major asset for these facilities is their furnace which, in the case of Aljon-United furnaces, carries a capital cost of over $100,000.

Through contacts with a selection of operators, their likely response to the PCB amendments was estimated. In general, firms would not be likely to invest in the new furnace equipment that would meet EPA specifications. The new equipment is quite costly and the high temperatures required would make recovery of the metals impossible. It was estimated that, on average, these operations derive approximately 15 percent of their inputs from PCB-Contaminated transformers, based on several contacts with industry personnel. The remainder of their inputs are non-PCB-Contaminated transformers and other electrical equipment. There are no financial statistics available through conventional or other sources of industry data that can provide an overview of the condition of the metal recovery furnace industry.

Given these characteristics of the affected industrial furnace operations, the EPA criteria to determine whether the economic impacts are significant were applied. None of the first three criteria shown could be evaluated, however, because they all are defined by the size of the compliance costs incurred. The industrial furnace operators would not incur direct compliance costs, choosing instead to cease handling of the PCB-Contaminated transformers. The last criterion asks whether the small firms will cease operations. Based on discussions with industry firms, it was estimated that few operations would shut down. As noted, the affected PCB transformers represent approximately 15 percent of the inputs for metal recovery operations. A corresponding 15 percent decline in profits, while representing a hardship, should not cause many plant shutdowns. Most likely there would not be many firms whose inputs, owing to a peculiarity in their sources of supply, contain a much higher portion of PCB-Contaminated transformers than other firms. Nevertheless, some firms might experience sharper profit declines. Also, firms that are currently in poor financial condition could be weakened further as a result of the amendments and might, therefore, now face closure. The extent or likelihood of such closures cannot be estimated, however.

b. *Economic impacts on small demolition contractors.* Section 761.60(b)(2)(ii) prohibits disposal of more than 24 light ballasts as municipal solid wastes. Most waste light ballasts are generated during building demolition operations. Many demolition contractors that handle the disposal of light ballasts, and their customers, would incur increased disposal costs due to these regulations.

At present, most PCB light ballasts are disposed of as municipal solid waste. Demolition contractors, however, would be required to assemble and transport PCB-containing light ballasts for transportation to and disposal at a PCB disposal facility. The aggregate economic impact was estimated for this provision of the regulations at $54 million for disposal of approximately 30 million PCB-containing light ballasts. This translates to an average incremental cost of approximately $1.80 per PCB-containing light ballast, covering transportation and disposal, as derived in the specific cost estimates for this provision.

The size of the incremental cost incurred on a specific demolition job would vary directly with the size of the job. Thus, relatively small demolition jobs (those generating only slightly more than 24 PCB-containing light ballasts, for example, those with 25 to 50 ballasts) would incur incremental disposal costs of $45 to $90 (25 to 50 times $1.80). In contrast, large demolition jobs, with thousands of light ballasts would incur additional disposal costs of several thousands of dollars. Thus, the incremental costs are distributed among demolition jobs according to their size, and the incremental costs would not be likely to be a large percentage increase in the cost of demolition jobs.

Demolition contractors do not vary much in their ability to handle and dispose of PCB-containing light ballasts, so there would not be much variation in the unit costs of compliance among firms. For example, virtually all demolition firms would use commercial

waste facilities to dispose of light ballasts. This consistency of impacts among firms suggests that firms would not be able to compete on their ability to dispose of PCB wastes, and therefore, would all face similar cost increases. In competitive markets, where all firms face similar cost increases, the price of services should increase to cover the increase in costs. Thus, demolition contractors would be likely to pass the incremental disposal costs to their customers, new building or land development companies, and therefore, would be able to mitigate even minor cost impacts.

The EPA criteria on small business impacts were applied to the case of demolition contractors. None of the four criteria are satisfied, however, by the regulatory impacts. Compliance costs are estimated to be less than 5 percent of the costs of production and less than 10 percent of the cost of sales in all but very exceptional circumstances. Essentially no capital cost expenditures would be required of the affected firms. Finally, few operations, if any, would likely fail due to these regulatory impacts.

c. *Economic impacts on other small businesses.* Small businesses in other industries also would be affected by the PCB amendments. These costs were estimated, however, to be widely distributed among small firms, and generally would be distributed in proportion to the level of PCB disposal activities. Also, the aggregate costs of these remaining items is not very large, and therefore, no significant impacts on small businesses are forecast.

Among the businesses potentially affected are a small number of companies that currently have special EPA approvals to decontaminate various types of PCB-Contaminated equipment, including PCB Transformers, components of natural gas pipelines, and others. For these businesses, the proposed amendments might generate additional competition because many more companies would be able to decontaminate equipment without needing to obtain special EPA approval. It was judged, however, that impacts are likely to be modest among such firms. The companies in question are either confident that their clients would not be interested in decontaminating their own equipment (due either to the capital investments required or the relative ease of using outside contractor personnel for these functions) or the PCB-decontamination business represented a modest portion of their current operations.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980. 44 U.S.C. 3501 et seq. authorizes the Director of the Office of Management and Budget (OMB) to review certain information collection requests by Federal Agencies. EPA has determined that the recordkeeping and reporting requirements of this rule constitute a "collection of information" as defined at 44 U.S.C. 3502(4).

The information collection requirements of this proposed 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 EPA (ICR No. 1729), and a copy may be obtained from the Information Policy Branch (2136), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

The public burden for this collection of information is estimated to average anywhere from 140 hours to 1,977 hours per respondent depending on the PCB activities in which the respondent is engaged. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the needed data, and completing and reviewing the collection of information.

Comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to the Chief, Information Policy Branch (2136), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. These comments should also be submitted to the 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 collection requirements contained in this proposal.

Lists of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: November 21, 1994.

Carol M. Browner,
Administrator.

Therefore, 40 CFR chapter I, part 761 is proposed to be amended as follows:

PART 761—[AMENDED]

1. The authority citation for part 761 would continue to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614 and 2616.

2. In §761.1 by revising paragraph (b) and adding a new paragraph (g) to read as follows:

§761.1 Applicability.

* * * * *

(b) This part applies to all persons who manufacture, process, distribute in commerce, use, or dispose of PCBs or PCB Items. Substances that are regulated by this part include, but are not limited to: dielectric fluids; contaminated solvents; oils; waste oils; heat transfer fluids; hydraulic fluids; paints; sludges; slurries; sediments; dredge spoils; soils; materials contaminated as a result of spills; and other chemical substances or combinations of substances, including impurities and byproducts and any byproduct, intermediate, or impurity manufactured at any point in a process. Unless otherwise noted, references to volumes or weights in this part apply to total volume or weight of the material containing or contacting PCBs. Most of the provisions of this part apply to PCBs only if PCBs are present in concentrations above a specified level. For example, subpart D of this part applies generally to materials at concentrations of 50 parts per million (ppm) and above. Also, certain provisions of subpart B of this part apply to PCBs inadvertently generated in manufacturing processes at concentrations specified in the definition of "PCB" under § 761.3. PCB concentrations for non-liquid PCBs under this part shall be determined on a dry weight basis according to the definition at §761.3. For liquid PCBs as defined in §761.3, PCB concentrations shall be determined on a wet weight basis. For samples containing PCBs and equal to or greater than 0.5 percent non-dissolved non-liquid materials, the non-dissolved materials shall be separated and the PCB concentration determined for non-liquid PCBs; the rest of the sample shall be considered to be liquid PCBs. For multiphasic non-liquid/liquid or liquid/liquid mixtures, the phases shall be separated before chemical analysis. Following phase separation, the PCB concentration in each non-liquid phase shall be determined on a dry weight basis and the PCB concentration in each liquid phase shall be determined separately on a wet weight basis. No provision specifying a PCB concentration may be avoided as a result of any dilution, unless otherwise specifically provided.

* * * * *

(g) This part shall not apply to any oil-filled equipment manufactured after July 2, 1979, that has on it a permanent label or mark affixed by the manufacturer of the equipment

indicating that it contains no PCBs or, in the absence of such a mark, is accompanied by documentation from the manufacturer certifying, based on test data, that the oil within the equipment contains no PCBs unless the oil contained in said equipment has been removed from, added to, or otherwise serviced with any PCBs; and that has not been serviced with any PCBs since the equipment was first manufactured.

§761.3 [Amended]

3. In §761.3 by amending the definition of "Qualified incinerator" by changing the references to §761.60(a)(2)(iii)(A) and §761.60(a)(2)(iii)(B) to read "§761.60(a)(2)(ii)(A)" and "§761.60(a)(2)(ii)(B)", respectively.

4. In §761.3 by revising the definitions for "Capacitor," "Commercial storer of PCB waste," "PCB-Contaminated Electrical Equipment," "PCB Item," and "PCB Transformer"; by removing "Emergency situation" and "Small quantities for research and development"; and by adding alphabetically definitions for "Cap," "CERCLA," "DOT," "Dry Surface," "Dry weight basis," "High exposure area," "Household waste," "Industrial furnace," "Liquid PCBs," "Low exposure areas", "Microencapsulation," "Non-liquid PCBs," "Non-porous surface," "NTIS," "Open burning," "PCB-Contaminated," "PCB field screening test," "PCB/fissionable radioactive waste or PCB/radioactive waste," "PCB non-remediation waste," "PCB remediation waste", "Porous surface," "RCRA," "Remediation site or site," "Treatability study," "TSCA," "Wet weight basis," and "Vitrification" to read as follows:

§761.3 Definitions.

* * * * *

Cap means, when referring to remediation activities, a uniform cover of minimum thickness spread over the area where remediation waste was removed.

Capacitor means a device for accumulating and holding a charge of electricity and consists of conducting surfaces separated by a dielectric. A capacitor whose PCB concentration is unknown must be assumed to contain 500 ppm or greater PCBs, unless it is known from label or nameplate information, manufacturer's literature (including documented communications with the manufacturer), or chemical analysis that the capacitor does not contain PCBs at a concentration of 500 ppm or greater. Types of capacitors are as follows:

(1) *Small capacitor* means a capacitor which contains less than 1.36 kg (3 lbs.) of dielectric fluid. The following assumptions may be used if the actual weight of the dielectric fluid is unknown. A capacitor whose total volume is less than 1,639 cubic centimeters (100 cubic inches) may be considered to contain less than 1.36 kgs (3 lbs.) of dielectric fluid and a capacitor whose total volume is more than 3,278 cubic centimeters (200 cubic inches) must be considered to contain more than 1.36 kg (3 lbs.) of dielectric fluid. A capacitor whose volume is between 1,639 and 3,278 cubic centimeters may be considered to contain less than 1.36 kg (3 lbs.) of dielectric fluid if the total weight of the capacitor is less than 4.08 kg (9 lbs.).

(2) *Large high voltage capacitor* means a capacitor which contains 1.36 kg (3 lbs.) or more of dielectric fluid and which operates at 2,000 volts (a.c. or d.c.) or above.

(3) *Large low voltage capacitor* means a capacitor which contains 1.36 kg (3 lbs.) or more of dielectric fluid and which operates below 2,000 volts (a.c. or d.c.).

CERCLA means the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. 9601–9657 et seq.)

* * * * *

Commercial storer of PCB waste means the owner or operator of each facility that is subject to the PCB storage unit standards of §761.65 and who engages in storage activities involving PCB waste generated by others, or PCB waste that was removed while servicing the equipment owned by others and brokered for disposal. The receipt of a fee or any other form of compensation for storage services is not necessary to qualify as a commercial storer of PCB waste. It is sufficient under this definition that the facility stores PCB waste generated by others or the facility removed the PCB waste while servicing equipment owned by others. If a facility's storage of PCB waste at no time exceeds 500 gallons of liquid or 70 cubic feet of non-liquid PCBs, the owner or operator is a commercial storer but is not required to seek EPA approval as a commercial storer of PCB waste. Change in ownership or title of a generator's facility, where the generator is storing PCB waste, does not make the new owner of the facility a commercial storer of PCB waste.

* * * * *

DOT means the United States Department of Transportation.

Dry surface (Where is the definition?)

Dry weight basis means reporting chemical analysis results by excluding the weight of the water in the sample.

* * * * *

High exposure area means a site where PCBs are located and where, during the use of the area, there is a potential exposure from PCBs to humans or animal life. High exposure areas include: residential/commercial areas and non-restricted access areas (as defined in §761.123); and non-public areas of public and private facilities where only authorized employees have routine access.

Household waste means PCB waste that is composed of unwanted or discarded household items that contain PCBs, come from private residences and are commonly found in private households, including individually owned or rented units of a multi-unit construction. Wastes created during renovation and demolition projects are not household wastes except for paint on surfaces. Renovation or demolition projects include, but are not limited to, the conversion of industrial property to residential units or the remodeling of hotels, motels, or multiple rental units.

* * * * *

Industrial Furnace means an industrial furnace, enclosed device as defined in §260.10 of this chapter, used to dispose of PCBs.

* * * * *

Liquid PCBs means a homogenous flowable material containing PCBs and no more than 0.5 percent by weight non-dissolved material.

Low exposure areas mean all areas 0.1 kilometer or greater distant from a residential commercial area (as defined in §761.123) and areas other than "high exposure area" as defined elsewhere in this section.

* * * * *

Microencapsulation means the stabilization of debris containing PCBs with the following reagents such that the leachability of any associated PCB is reduced to specified levels: Portland cement or lime/pozzolans (e.g. fly ash and cement kiln dust).

* * * * *

Non-liquid PCBs means PCBs which contain no liquids which pass through the filter when using the paint filter test method (EPA Method 9095 in "Test Methods for Evaluating Solid Waste" (SW–846)).

* * * * *

Non-porous surface means a smooth, unpainted solid surface that limits penetration of liquid PCBs beyond the immediate surface. Examples are: smooth uncorroded metal; smooth glass,

smooth glazed ceramics; impermeable polished building stone such as marble or granite; and high density plastics that do not absorb organic solvents such as polycarbonates and melamines.

* * * * *

"NTIS" means the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161.

* * * * *

Open burning means the combustion of any PCB regulated for disposal, not approved or otherwise allowed under part 761, subpart D of this part, and without the following:

(1) Control of combustion air to maintain adequate temperature for efficient combustion.

(2) Containment of the combustion reaction in an enclosed device to provide sufficient residence time and mixing for complete combustion.

(3) Control of emission of the gaseous combustion products.

* * * * *

PCB-Contaminated means any PCBs at concentrations of 50 parts per million (ppm) to less than 500 ppm (50 – <500 ppm) PCBs. In the event that no PCB liquids or non-liquids are present on surfaces for measurement, then surfaces with PCB concentrations, measured by a standard wipe test as defined in §761.123, of greater than 10 micrograms per 100 square centimeters to less than 100 micrograms per 100 square centimeters (>10 μg – < 100 μg/100cm^2), are defined as PCB-Contaminated.

PCB-Contaminated Electrical Equipment means any electrical equipment, including but not limited to transformers (including those used in railway locomotives and self-propelled cars), capacitors, circuit breakers, reclosers, voltage regulators, switches (including sectionalizers and motor starters), electromagnets, and cable that contain 50 ppm or greater PCB, but less than 500 ppm PCB in the contaminating fluid or greater than 10 micrograms PCB/100 square centimeters to less than 100 micrograms PCB/100 square centimeters (>10 – <100 μg/100cm^2) as measured by a standard wipe test (as defined in §761.123) of a non-porous surface. This definition includes:

(1) Mineral oil-filled electrical equipment other than circuit breakers, and reclosers. Cable whose PCB concentration is unknown must be assumed to be PCB-Contaminated Electrical Equipment.

(2) Capacitors of unknown PCB concentration are assumed to contain PCBs at 500 ppm or greater.

* * * * *

PCB field screening test means a portable analytical device or kit which measures PCBs. PCB field screening tests usually report less than or greater than a specific numerical PCB concentration. These tests normally build in a safety factor which increases the probability of a false positive report and decreases the probability of a false negative report. PCB field screening tests do not usually provide: an identity record generated by an instrument; a quantitative comparison record from calibration standards; any identification of PCBs; and/or any indication or identification of interferences with the measurement of the PCBs. PCB field screening test technologies include, but may not be limited to, total chlorine colorimetric tests, total chlorine x-ray fluorescence tests, total chlorine microcoulometric tests, and rapid immunoassay tests.

PCB/fissionable radioactive waste or *PCB/radioactive waste* means PCBs regulated for disposal under subpart D of this part that also contain fissionable radioactive material or radioactive material subject to regulation under the Atomic Energy Act of 1954 as amended.

PCB Item means any PCB Article, PCB Article Container, PCB Container, PCB Equipment, or anything that deliberately or unintentionally contains or has as a part of it any PCB or PCBs.

PCB non-remediation waste means non-liquid bulk wastes or debris from the demolition of buildings and other human-created structures (manufactured, coated, or serviced with PCBs), wastes from the shredding of automobiles, household and industrial appliances or other white goods; PCB impregnated electrical, sound deadening, or other types of insulation and gaskets; and all other PCB Items or PCBs for which disposal requirements are not otherwise specified in §761.60, at any concentration where the concentration at the time of designation for disposal was greater than or equal to 50 ppm PCBs. PCB non-remediation waste does not include anything defined as a PCB remediation waste; manufactured or processed PCB products such as mineral oil dielectric fluid removed from electrical equipment; inadvertently generated PCBs in a manufacturing process waste stream; hydraulic fluids; heat transfer fluids; oils removed from household appliances/equipment; bulk paint (batched household or commercial paint); and waste oil. Materials not included in the definition of PCB non-remediation waste are regulated for disposal in subpart D of this part.

PCB remediation waste means, but is not limited to, all environmental media containing PCBs, dredged materials, municipal sewage treatment sludges, commercial or industrial sludge (contaminated as the result of a spill of PCBs) located in or removed from any pollution control device; soil, rags, and other debris generated as a result of a spill cleanup; and site removal, remediation, or corrective action wastes in liquid or non-liquid form, at any PCB concentration. PCB remediation waste includes wastes at any volume or concentration where the original source was ≧500 ppm PCB as of April 18, 1978, or ≧50 ppm PCB as of July 2, 1979, or at any concentration if the source was not authorized for use under this part. All PCBs disposed of prior to April 18, 1978 shall be regulated as a PCB remediation waste under §761.61. Examples of PCB remediation waste include, but are not limited to, gravel, sandy soil, clayey soil, loam soil, other soil types, sediments, commercial or industrial sludge contaminated with PCBs by a spill, aqueous decantate from an industrial sludge, settled sediment fines, aqueous decantate from a sediment, oily soil, porous surfaces, and non-porous surfaces. PCB remediation waste does not include anything defined as a PCB non-remediation waste; manufactured or processed PCB products such as mineral oil dielectric fluid removed from electrical equipment; inadvertently generated PCBs in a manufacturing process wastestream; hydraulic fluids; heat transfer fluids; oils removed from household appliance or equipment; bulk paint (batched household or commercial paint); gasket material; insulation material, adhesives; scrapped automobile shredder metallic and non-metallic material; scrapped household appliance shredder metallic and non-metallic material; plastic items; rubber items; natural gas pipeline, equipment, and appurtenances; processed fluorescent light ballasts with capacitors removed or intact; and manufactured PCB Items (except where a material listed above as an exclusion, is contaminating the environment). Materials not included in the definition of PCB Remediation Waste are regulated for disposal in subpart D of this part.

PCB Transformer means any transformer that contains 500 ppm PCBs or greater. A transformer is a PCB Transformer if: (1) The nameplate indicates that the transformer contains PCB dielectric fluid; (2) the owner or operator has any reason to believe that the transformer contains PCB dielectric fluid; (3) the transformer dielectric fluid has been tested and found to contain PCBs at 500 ppm or greater; (4) the

transformer does not have a nameplate; (5) records do not exist that indicate the type of dielectric fluid; (6) records do not exist that indicate the PCB concentration; or (7) a transformer is an untested mineral oil transformer and reasons exist to believe that the transformer was at any time serviced with fluid containing PCBs at 500 ppm or greater. (See §761.30(a) and (h) for provisions permitting reclassification of electrical equipment containing 500 ppm or greater PCBs to PCB-Contaminated electrical Equipment.)

* * * * *

Porous surface means any surface that allows PCBs to penetrate or pass into itself including but not limited to painted or coated metal; corroded metal; fibrous glass or glass wool; unglazed ceramics; ceramics with a porous glaze; porous building stone such as sandstone, travertine, limestone, or coral rock; low-density plastics such as styrofoam and low-density polyethylene; coated (varnished or painted) or uncoated wood; concrete or cement; plaster; plasterboard; wallboard; rubber; fiberboard; chipboard; asphalt; or tar paper. For purposes of cleaning and disposing of PCB remediation waste, porous surfaces have different requirements than non-porous surfaces.

* * * * *

RCRA means the Resource Conservation and Recovery Act (40 U.S.C. 6901 et seq.)

* * * * *

Remediation site or site means the areal extent of contamination and all suitable areas in very close proximity to the contamination necessary for implementation of a cleanup of PCB remediation waste regardless of whether the site was intended for management of waste.

* * * * *

Treatability study means a study in which PCB waste is subjected to a treatment process to determine:

(1) Whether the waste is amenable to the treatment process.

(2) What pretreatment (if any) is required.

(3) The optimal process conditions needed to achieve the desired treatment.

(4) The efficiency of a treatment process for the specific type of waste (i.e., soil, sludge, liquid, etc.).

(5) The characteristics and volumes of residuals from a particular treatment process. A "treatability study" is not a mechanism to commercially treat or dispose of PCB waste. Treatment is a form of disposal under this part.

* * * * *

TSCA means the Toxic Substances Control Act (15 U.S.C. 2601 et seq.)

* * * * *

Wet weight basis means reporting chemical analysis results by including the weight of all dissolved water in a homogeneous liquid.

* * * * *

Vitrification means to change or to make into glass through heat fusion.

* * * * *

5. In §761.19, the table to paragraph (b), in the second column, by changing the reference to §761.60(a)(3)(iii)(B)(*6*) to read §761.60(a)(3)(ii)(B)(*6*) and by revising the introductory text of paragraph (b) to read as follows:

§761.19 References.

* * * * *

(b) *Incorporation by reference.* The following material is incorporated by reference, and is available for inspection at the Office of the Federal Register, Suite 700, 800 South Capital St., NW., Washington, DC. These incorporations by reference were approved by the Director of the Office of the Federal Register. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. Copies of the incorporated material are available for inspection at the TSCA Nonconfidential Information Center (7407), Rm. B–607, NE Mall, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Copies of the incorporated material may be obtained from the American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, PA 19103.

* * * * *

6. In 761.20, by revising the section heading, paragraphs (b), (c)(2), (c)(3) and (c)(5), and by adding new paragraphs (c)(6) and (c)(7), to read as follows:

§761.20 Prohibitions and Exceptions.

* * * * *

(b)(1) No person may manufacture PCBs for use within the United States or manufacture PCBs for export from the United States without an exemption, except that an exemption is not required for PCBs manufactured in an excluded manufacturing process as defined in §761.3, provided that all applicable conditions of §761.1(f) are met.

(2) No person may import PCBs or PCB Items for purposes of disposal except that:

(i) PCBs at concentrations less than 50 ppm may be imported for disposal.

(ii) PCBs may be imported from United States territories or possessions outside the customs territory of the United States into the customs territory of the United States for disposal.

(iii) PCBs may be imported for disposal pursuant to paragraph (b)(3) of this section where EPA determines that it is in the interests of the United States and will not result in unreasonable risk of injury to health or the environment.

(3) PCBs may be excepted from the prohibition on import for disposal imposed by paragraph (b)(2) of this section at EPA's initiative or in response to a petition submitted in accordance with this paragraph. Any person may file a petition for an exception to the import prohibition. Petitions shall be submitted to the Director, Chemical Management Division (7404), 401 M St., SW, Washington, DC 20460. Petitions must be submitted on an individual basis for each individual subject to the prohibition. Each petition shall contain the following information:

(i) Name, address, and telephone number of petitioner.

(ii) Description of the import for disposal exception requested, including items to be imported and disposal method.

(iii) Current locations of PCBs to be imported and of each proposed disposal site.

(iv) Length of time requested for the exception.

(v) Amount of PCB chemical substance or PCB mixture (by pounds and/or volume) to be imported and disposed of during requested exception period.

(vi) The basis for the petitioner's contention that an exception would be in the interests of the United States and would not result in unreasonable risk of injury to health or the environment. EPA will review and evaluate petitions and may request further information from the petitioner to assess the proposed exception adequately. Any exception granted under this paragraphs shall be subject to the terms and conditions prescribed by the Agency. EPA reserves the right to impose limits on the duration of each exception. EPA will inform the petitioner in writing of its decision. Denial of a petition is a final agency action.

(4) All PCBs at concentrations greater than 50 ppm imported for disposal under paragraphs (b)(2) and (b)(4), and all PCBs subject to §761.60 of this part and returned for disposal under paragraph (b)(3) of this section:

(i) Shall be stored and disposed of in a facility which has a PCB storage or disposal approval issued under TSCA, where the approval has specific conditions concerning the import, storage, or disposal of imported PCBs.

(ii) May be decontaminated under §761.79 provided the imported PCBs are stored in accordance with the provisions of subparts D, J, and K of this part, for the commercial storage of PCB wastes.

(5) No person may export PCBs or PCB Items for purposes of disposal except that:

(i) PCBs at concentrations less than 50 ppm may be exported for disposal.

(ii) EPA may allow the export for disposal of PCBs at concentrations of 50 ppm or greater to countries with which the United States has an international agreement consistent with the international obligations of the United States relating to transboundary movement of PCBs and their disposal. Such exports would be allowed on a case-by-case basis unless EPA has reason to believe that the PCBs in question will not be properly managed, either at EPA's initiative or in response to a petition submitted in accordance with this paragraph. Any person may file a petition. Petitions shall be submitted to the Director, Chemical Management Division (7404), 401 M St., SW, Washington, DC 20460. Petitions must be submitted on an individual basis for each generator or individual requesting authority to export PCBs for disposal. Each petition shall contain the following information:

(A) Name, address, and telephone number of petitioner.

(B) Description of the export for disposal exception requested, including items to be exported and disposal facility.

(C) Current locations of PCBs to be exported and of each proposed disposal site.

(D) Length of time requested for the exception.

(E) Amount of PCB chemical substance or PCB mixture (by pounds and/or volume) to be exported and disposed of during requested exception period.

(F) Documentation of an international agreement between the United States Government and the government of the receiving country concerning export of such waste.

(G) Certification by the government of the receiving country to EPA that it has received accurate and complete information about the waste, consents to receive it, and has adequate disposal facilities to assure proper management.

(H) Identification by the exporter of any liquid PCBs or PCB-containing electrical equipment. EPA will review and evaluate petitions and may request further information from the petitioner to assess the proposed exception adequately. Any exception granted under this subsection shall be subject to the terms and conditions prescribed by the Agency. EPA reserves the right to impose limits on the duration of each exception. EPA will inform the petitioner in writing of its decision. Denial of a petition is a final agency action.

(6) For purposes of this regulation, the following transboundary shipments will not be considered exports and imports:

(i) PCB wastes generated in the United States, transported through another country (and any residuals resulting from cleanup of spills of such wastes in transit), and returned to the United States for disposal.

(ii) PCBs that were procured domestically by the United States Government, taken overseas for use by the United States Government, and that have remained under United States Government control since the time of procurement (including any residuals resulting from cleanup of spills of such wastes during use, storage, or in transit).

(c) * * *

(2)(i) Processing activities which are primarily associated with and facilitate storage or transportation for disposal do not require a TSCA PCB disposal approval.

(ii) Processing activities which are primarily associated with and facilitate treatment or land disposal require a TSCA PCB disposal approval unless they are part of an existing approval or are part of a self-implementing activity such as §761.61(a) and §761.79 or otherwise specifically allowed under subpart D of this part.

(iii) With the exception of provisions in §761.60(a)(2) and (3), in order to meet the intent of §761.1(b), processing, diluting or otherwise blending of waste prior to being introduced into a disposal unit for purposes of meeting a PCB concentration limit shall be included in a TSCA PCB disposal approval or comply with the requirements of §761.79.

(iv) The rate of delivering liquids or non-liquids into a PCB disposal unit shall be part of the conditions of the TSCA PCB disposal approval for the unit when an approval is required.

(v) PCBs or PCB Items at ≧50 ppm may be distributed in commerce for purposes of disposal in accordance with the requirements of this part.

(3)(i) PCBs or PCB Items at concentrations less than 50 ppm may be exported for disposal.

(ii) EPA may allow the export for disposal of PCBs at concentrations of 50 ppm or greater to countries with which the United States has an agreement under international law concerning export of such wastes. Such exports would be allowed on a case-by-case basis at EPA's initiative or in response to a petition submitted in accordance with this paragraph. Any person may file a petition. Petitions shall be submitted to the Director, Chemical Management Division (7404), 401 M St., SW, Washington, DC 20460. Petitions must be submitted on an individual basis for each generator or individual requesting authority to export PCBs for disposal. Each petition shall contain the following information:

(A) Name, address, and telephone number of petitioner.

(B) Description of the export for disposal exception requested, including items to be exported and disposal facility.

(C) Current locations of PCBs to be exported and of each proposed disposal site.

(D) Length of time requested for the exception.

(E) Amount of PCB chemical substance or PCB mixture (by pounds and/or volume) to be exported and disposed of during requested exception period.

(F) Documentation of an agreement in international law between the U.S. Government and the government of the receiving country concerning export of such waste.

(G) Certification by the government of the receiving country to EPA that it has received accurate and complete information about the waste, consents to receive it, and has adequate disposal facilities.

(H) Identification by the exporter of any liquid PCBs or PCB-containing electrical equipment. EPA will review and evaluate petitions and may request further information from the petitioner to assess the proposed exception adequately. Any exception granted under this section shall be subject to the terms and conditions prescribed by the Agency. EPA reserves the right to impose limits on the duration of each exception. EPA will inform the petitioner in writing of its decision. Denial of a petition is a final agency action.

* * * * *

(5) Equipment, structures, or other materials that were contaminated with PCBs because of spills from, or proximity to, a PCB Item >50 ppm, and which are not otherwise authorized for use or distribution in commerce under this part, may be distributed in commerce or used, provided:

(i) These materials were decontaminated in accordance with a PCB approval under this part, applicable decontamination standards

and procedures in §761.61(a) or §761.79, or applicable EPA PCB spill cleanup policies in effect at the time of the decontamination or, if not previously decontaminated, at the time of the distribution in commerce or use, or that now meet a decontamination standard established in §761.79.

(ii) These materials shall not be used or reused in association with food, feed, or drinking water unless otherwise allowed.

(6) Water which contains PCBs and which has been decontaminated to meet or which meets the standards established in §761.79(h) may be distributed in commerce or used, without further restriction, under this part.

(7) Non-porous surfaces, with no free flowing liquids, which have come in contact with PCBs and which are contaminated at a concentration less than 50 ppm, regardless of the original PCB concentration of the fluid, may be distributed in commerce or reused except in association with food, feed or drinking water.

(You said that you were adding paragraph (8), Where is paragraph (8)?)

* * * * *

7. Section 761.30 is amended as follows:

a. Paragraph (a)(1) is amended by removing (a)(1)(iii)(A) through (a)(1)(iii)(C)(*2*)(*i*) and (a)(1)(iii)(D), and by redesignating (a)(1)(iii)(C)(*2*)(*ii*) and (C)(*2*)(*iii*) as (a)(1)(iii)(A) and (B), respectively; by redesignating paragraphs (a)(1)(vii) through (a)(1)(xv) as paragraphs (a)(1)(viii) through (a)(1)(xvi), respectively; by adding new paragraph (a)(1)(vii), by revising newly designated paragraph (a)(1)(xvi) introductory text; and by adding paragraph (a)(3).

b. Paragraph (b) is amended by revising paragraph (b)(1) to read as set forth below; and by removing paragraph (b)(2)(ii) and redesignating paragraphs (b)(2)(iii) through (b)(2)(vii) as (b)(2)(ii) through (b)(2)(vi).

c. By revising paragraphs (c), (d) and (e) and by adding paragraphs (h)(1)(iii), by revising paragraphs (i) and (j), and by adding paragraphs (q), (r) and (s). The revisions and additions read as follows:

§761.30 Authorizations.

(a) * * *

(1) * * *

(vii)(A) No later than (insert the date 90 days after the effective date of the final rule) all owners of PCB Transformers (including PCB Transformers in storage for reuse) must have registered their transformers with the Environmental Protection Agency, Office of Enforcement and Compliance Assurance (2245), 401 M St. SW., Washington, DC 20460. Any PCB Transformer identified or received from another location after (insert the date 90 days after the effective date of the final rule) must be registered in writing, with the Environmental Protection Agency no later than 30 days after identification or receipt (unless a previous written registration can be demonstrated). The registration must include:

(*1*) The location, address and number of PCB Transformers.

(*2*) The kilograms of PCB liquid in each PCB Transformer.

(*3*) The name, address, telephone number, and signature of the owner, operator, or other authorized representative certifying the accuracy of the information submitted.

(B) A record of the registration for each PCB Transformer at each location (e.g., a copy of the registration and the return receipt signed by EPA) must be retained with the records of inspection and maintenance for each PCB Transformer required under §761.30(a)(1)(xii).

(C) The requirements identified in paragraphs (a)(1)(vii)(A) of this section must be complied with to continue the authorization for use or reuse of PCB Transformers under §761.30, pursuant to section 6(e)(2)(B) of TSCA.

(D) All owners or operators of transformers containing PCBs at ≧50 parts per million (ppm) must comply with any State transformer registration requirements.

* * * * *

(xvi) In the event a mineral oil transformer or a voltage regulator, assumed to contain less than 500 ppm of PCBs as provided in §761.3, is tested and found to be contaminated at 500 ppm or greater PCBs, transformers are subject to all the requirements of this paragraph and voltage regulators are subject to paragraphs (a)((1)(vii)(A), (B), (C) amd (D) of this section. Voltage regulators which are marked or otherwise known to contain 500 ppm PCBs or greater are also subject to the provisions of this paragraph. In addition, efforts must be initiated immediately to bring the transformer or the voltage regulator into compliance in accordance with the following schedule:

* * * * *

(3) *State transformer registration requirements.* Any State may require the registration of a transformer containing ≧50 parts per million PCBs.

(b) * * *

(1) *Use restrictions.* After July 1, 1986, use of railroad transformers that contain dielectric fluids with a PCB concentration greater than 1,000 ppm is prohibited.

(c) *Use in and servicing of mining equipment.* After January 1, 1982, PCBs may be used in mining equipment only at a concentration level of less than 50 ppm.

(d) *Use in heat transfer systems.* After July 1, 1984, PCBs may be used in heat transfer systems only at a concentration level of less than 50 ppm. Heat transfer systems that were in operation after July 1, 1984 with a concentration level of less than 50 ppm PCBs may be serviced to maintain a concentration level of less than 50 ppm PCBs. Heat transfer systems may only be serviced with fluids containing less than 50 ppm PCBs.

(e) *Use in hydraulic systems.* After July 1, 1984 PCBs may be used in hydraulic systems only at a concentration level of less than 50 ppm. Hydraulic systems that were in operation after July 1, 1984 with a concentration level of less than 50 ppm PCBs may be serviced to maintain a concentration level of less than 50 ppm PCBs. Hydraulic systems may only be serviced with fluids containing less than 50 ppm PCBs.

* * * * *

(h) * * *

(1) * * *

(iii) Voltage regulators which contain ≧500 ppm PCBs are subject to all provisions of this part which are applicable to PCB Transformers.

* * * * *

(i) *Use in natural gas pipeline systems.* Natural gas pipeline systems include: natural gas pipe, natural gas pipeline appurtenances, and air compressor systems (including compressors, piping, receiver tanks, air lines used in instrumentation, and the instrumentation operated by the air lines). PCBs may be used indefinitely in natural gas pipeline systems as follows.

(1) PCBs may be used in the compressors, appurtenances, and liquids of natural gas pipelines at a concentration level of less than 50 ppm.

(2) PCB-Contaminated natural gas pipeline and appurtenances may be reused in natural gas pipeline systems provided all freeflowing liquids have been removed. These liquids must be disposed of pursuant to §761.60(a)(1) through (a)(3).

(3) Natural gas air compressor systems (air compressor, piping, receiver tanks, and other pressurized large volume tanks) with surface contamination at 100 micrograms PCBs or greater per 100 square centimeters (≧100 μg/100 cm^2) may be reused as natural gas air compressor systems after the equipment has been decontaminated in accordance with this paragraph. All freeflowing

liquids must be drained from the system at existing drain points (such as drain plugs, blowdowns, and drips); all liquids and solvents used during the decontamination process shall be disposed of as ≧500 ppm PCBs pursuant to the requirements at §761.79(a). All carbon filters shall be disposed of as nonliquid PCBs with a concentration ≧50 ppm.

(i) For air compressors, piping, and air lines in the air compressor system: fill these items with clean kerosene (containing less than 2 ppm PCBs) and decontaminate by using either the following procedures:

(A) Allow the kerosene to sit for 8 hours, then drain the kerosene and capture any residual kerosene by circulating the air under positive pressure, first throughout the system, and finally through a carbon filter at all points in the system where air is vented to the atmosphere. The carbon filter shall be of sufficient integrity to withstand three times the venting air pressure through the filter.

(B) Circulate the kerosene through the air compressors, piping, and air lines in the air compressor system until the total volume of liquid circulated (pump rate times the time of pumping) equals ten times the total volume of the particular article being decontaminated, then drain the kerosene. Refill the system with clean kerosene and repeat the circulation and drain process.

(ii) For air receivers and other pressurized large volume tanks, decontaminate the items by using either of the following procedures:

(A) Fill the tanks with clean kerosene (containing less than 2 ppm PCBs) and use the procedures for air compressors, piping, and air lines at either paragraph (i)(3)(i)(A) or (i)(3)(i)(B) of this section.

(B) Rinse the tanks three times, each time with a volume of clean kerosene equal to or greater than 10 percent of the total internal volume of the tank. Each of the first two rinses shall be drained before adding the next successive kerosene rinse solvent. Each rinse shall either:

(*1*) Be sprayed under a pressure of at least 100 psi such that the spray makes at least three passes over the entire internal surface of the tank; or

(*2*) Contact, at atmospheric pressure, each part of the surface area for 1 hour. This may be accomplished by filling the tank, totally closing the tank, and either:

(*i*) Rotating the tank continuously such that all interior surfaces are contacted in a single rotation (calculations used to determine the total time of rotation and number of rotations shall be recorded and retained for a period of 3 years after completion of the decontamination process); or

(*ii*) Placing the tank in a stationary position and waiting 1 hour at a sufficient number and configuration of positions so as to cover the entire interior surface of the tank.

(4) Natural gas air compressor systems may also be decontaminated in accordance with §761.79.

(5) This authorization shall also apply to other pipeline and air compressor systems contaminated with PCBs, with the written consent of the Regional Administrator for the EPA Region in which it is located.

(6) PCB-Contaminated natural gas pipeline, drained of all free flowing liquids, may also be used or distributed in commerce for use in the transport of bulk hydrocarbons, chemicals or petroleum products, as casing to provide secondary containment under transportation systems, as industrial structural material (such as fence posts, sign posts or bridge supports), as temporary flume at construction sites, as equipment skids, as culverts (less than 80 feet in length) in intermittent flow situations, for sewage service with written consent of the Publicly Owned Treatment Works (POTW), for steam service, as irrigation systems (less than 20 inch diameter) of less than 200 miles in length, and in totally enclosed compressed air systems.

(j) *Limited quantities for research and development.* For purposes of this section, permissible research and development (R&D) activities include, but are not limited to: the chemical analysis of PCBs for purposes of determining PCB concentrations; scientific experimentation on: the physical properties of PCBs, and chemical reactions of PCBs (other than the evaluation of the disposal or destruction of PCBs), and the chemical analysis of PCBs; and testing to determine: environmental transport processes, biochemical transport processes, the effects of PCBs on the atmospheric environment, aquatic environments, terrestrial environments, and the health effects of PCBs such as general toxicity, subchronic toxicity, chronic toxicity, specific organ/tissue toxicity, neurotoxicity, genetic toxicity, and metabolic products. However, R&D activities authorized pursuant to this section do not include research or analysis for the development of any PCB product. In addition, R&D activities authorized in this section do not include R&D for disposal, including, but not limited to, demonstrations for PCB disposal approvals, pre-demonstration tests, testing major modifications to approved PCB technologies, treatability studies, the development of new disposal technologies, and research on transformation processes such as biodegradation. R&D for disposal activities are addressed in §761.60(j). The R&D activities conducted under this section are subject to all other applicable Federal, State, and local laws and regulations. PCBs may be used for R&D in limited quantities when originally packaged in hermetically sealed containers of 5 milliliters or less, or as samples of environmental media in containers larger than 5 milliliters containing PCBs that have been packaged pursuant to applicable DOT performance standards, in a manner other than a totally enclosed manner, provided that:

(1) The Regional Administrator for the Region in which the R&D activity will occur is notified in writing at least 30 days prior to the commencement of any R&D activity authorized under this section. Each notification shall identify the person conducting the R&D activity, the location where the PCB R&D activities will be conducted, the quantity of PCBs to be treated, the type of R&D technology to be used, the general physical and chemical properties of the material being treated, and an estimate of the duration of the PCB activity.

(2) No more than 100 grams of pure PCBs is used for R&D activities under this section at a facility annually.

(3) All PCB wastes (e.g., spent laboratory samples, residuals, unused samples, contaminated media/instrumentation, clothing, etc.) are stored in compliance with the storage requirements of §761.65(b).

(4) Manifests are used for all R&D PCB wastes being transported from the R&D facility to a commercial storer and/or a disposal facility. However, no manifests are required if the residuals or unused samples of PCB wastes are returned to the site of generation.

(5) Material limitations for use of PCBs, are set out at paragraph (j)(1) of this section shall not be exceeded without prior approval from the Regional Administrator. Requests to exceed the material limitation for PCBs used in R&D as defined in this section must be submitted in writing to the Regional Administrator for the Region in which the R&D will be conducted for approval. Each request must provide a justification for the additional quantity or concentration needed, as well as specify the quantity or concentration of PCB material needed, and the duration of the activity. Any approval will be in writing and signed by the Regional Administrator. The approval will state

all requirements applicable to the R&D activity.

* * * * *

(q) *Pre-TSCA uses of PCBs.* Non-liquid materials that contain PCBs at any concentration (including, but not limited to, gaskets, plastics, plasticizers, fluorescent light ballast potting material, electrical cable (except oil-filled cable as described in paragraph (m) of this section), dried paints, small rubber parts, roofing and siding materials, insulation, caulking, waterproofing compounds, ceiling tile coatings, and adhesive tape) in use prior to July 2, 1979, are authorized for use and distribution in commerce provided they remain intact and in place in their existing application and location for the remainder of their useful life, subject to the conditions in paragraph (q)(1) of this section. Failure to provide documentary evidence that substantiates the historical use of such PCB materials as required in paragraph (q)(1)(i)(A) of this section may result in the rejection of such claims by the Regional Administrator.

(1) *Use conditions.* (i) The owner or operator of such PCB-containing material shall:

(A) Provide a written notification by [insert date 30 days from effective date of the final rule] or within 30 days of discovery, to the Regional Administrator for the Region in which the material is located, that a pre-TSCA PCB use has been discovered. Each notification shall include the location of the material, a description of the use, an estimate of the amount of material in use (e.g., number, square footage, pounds), PCB concentration, expected useful life of the material, condition of the material (e.g., potential for exposure) and any additional information that may be useful to the Regional Administrator. Documentary evidence that establishes the historical use of such materials shall also be included in the notification.

(B) Post the Mark ML, as defined in §761.45(a), in a prominent location near the PCB-containing material as a warning of the presence and location of PCBs.

(C) Make available to any potentially exposed employee or, upon request, to any other potentially exposed individual, information concerning the identity of the PCBs and any health risk associated therewith.

(ii) The PCB-containing material shall remain intact and in place in its existing application unless it is being removed for disposal.

(iii) Existing uses of such PCB materials exhibiting environmental releases above 0.001 mg/m^3 for a 10-hour workday, 40-hour workweek, or as measured by workplace air monitoring using National Institute of Occupational Safety and Health (NIOSH) Method 5503 sampling at a rate of 1 liter per minute for 480 continuous minutes, or surface levels as measured by a standard wipe test defined in §761.123, of exterior accessible areas in excess of 10 micrograms/100 square centimeters (10 µg/100cm^2) shall be removed or contained.

(iv) Air monitoring activities shall be conducted quarterly for the first year and then annually thereafter, and results recorded until the material is removed from service. Results indicating PCB levels above 0.001 milligram per cubic meter of air (mg/m^3) for a 10-hour workday, 40-hour workweek shall require containment through either a modification in the release controls, encapsulation, or the immediate removal of the PCB material. If encapsulation has been chosen as the containment option, the sampling and air monitoring procedures shall also include an inspection for damage to the encapsulation. Any deterioration of the encapsulation shall be repaired and documented.

(v) Standard wipe sampling (as defined in §761.123) of exterior surfaces shall be conducted quarterly for the first year and then annually thereafter, and the results recorded until the material is removed from service. Results indicating PCB levels above 10 micrograms per 100 square centimeter (10 µg/100cm^2) shall require containment through either a modification in the release controls, encapsulation, or the immediate removal of the PCB material. If encapsulation has been chosen as the containment option, the sampling and air monitoring procedures shall also include an inspection for damage to the encapsulation. Any deterioration of the encapsulation shall be repaired and documented.

(vi) Records of measurements, inspections, and maintenance shall be maintained for review by Agency officials in a central location for a period of 3 years after the PCB material has been removed.

(vii) Within 24 hours of a measurement above the levels specified in paragraphs (q)(1)(iii), (q)(1)(iv), or (q)(1)(v) of this section, the owner or operator of the PCB-Contaminated item shall:

(A) Provide written notice, either by facsimile machine or overnight mail delivery service, to the Regional Administrator for the Region in which the material is located as to the nature and extent of the migration and the steps that will be taken to remove or contain the PCBs and ensure compliance.

(B) Initiate action to remove the PCBs or to contain the PCBs by means of encapsulation (either with an epoxy-based or equivalent paint or a sealant) or with release controls in which a continual release is collected in a closed container and displaces only the air in the container (i.e., leak collection system) to ensure personnel are protected from dermal and inhalation exposures.

(viii) All PCB materials with a concentration of 50 ppm or greater, materials that come in contact with 50 ppm or greater PCBs, including leak collection devices, PCB-containing paint, sealant, or other encapsulation materials, and materials used during decontamination and cleanup procedures shall be handled, stored, and disposed of in accordance with the PCB storage requirements at §761.65 and the disposal requirements at §761.60 or §761.62.

(2) Non-liquid materials that contain PCBs at any concentration, that would meet the definition of household waste at §761.3 when disposed of, are authorized for continued use and are not subject to the requirements of paragraph (q)(1) of this section.

(3) Non-liquid materials, other than those authorized for continued use under paragraph (q)(2) of this section, that contain PCBs at any concentration, but which leach PCBs at less than 50 micrograms/liter as measured by the Toxicity Characteristic Leaching Procedure (TCLP), 40 CFR part 261, Appendix II, Method 1311, are authorized for continued use and are not subject to the use requirements of paragraph (q)(1) except for paragraphs (q)(1)(i)(B) and (q)(1)(i)(C) of this section.

(r) *Use in and servicing of rectifiers.* PCBs at any concentration may be used in rectifiers and may be used for purposes of servicing this electrical equipment (including rebuilding) for the remainder of their useful life, subject to the following conditions:

(1) [Reserved]

(2) *Servicing conditions.* (i) Rectifiers may be serviced (including rebuilding) only with dielectric fluid containing less than 50 ppm PCB.

(ii) [Reserved]

(s) *Use of PCBs in scientific equipment.* PCBs at any concentration may be used in scientific equipment, including but not limited to oscillatory flow birefringence and viscoelasticity instruments, to study the physical properties of polymers subject to the following conditions:

(1) *Use conditions.* (i) The PCBs must be in use in a specific scientific instrument as of [insert date of publication of the final rule].

(ii) A maximum of 100 milliliters is used in a scientific instrument at any one time.

(2) [Reserved]

8. In §761.40, by revising paragraph (a)(5), redesignating paragraphs (b) and (d) as paragraphs (d) and (b), respectively, and by revising newly designated paragraph (d), paragraphs (e) and (h), and adding paragraph (k) to read as follows:

§761.40 Marking requirements.

(a) * * *

(5) PCB Large Low Voltage Capacitors at the time of removal from use (see also paragraph (k) of this section).

* * * * *

(d) As of October 1, 1979, each transport vehicle loaded with PCB containers that contain more than 45 kg (99.4 lbs.) of PCBs at concentrations of 50 ppm or greater or with one or more PCB Transformers shall be marked on each end and each side with mark ML as described in §761.45(a).

(e) As of October 1, 1979, applicable PCB Items described in paragraphs (a)(1), (a)(6), (a)(7), and (a)(8) of this section containing PCBs in concentrations of 50 to 500 ppm shall be marked with mark ML as described in §761.45(a).

* * * * *

(h) All marks required by this subpart must be placed in a position on the exterior of the PCB Items, Storage units, or transport vehicles so that the marks can be easily read by any persons inspecting or servicing the marked PCB Items, Storage units, or transport vehicles.

* * * * *

(k) As of [insert date 180 days after the effective date of the final rule] the following PCB Items shall be marked with mark ML as described in §761.45(a):

(1) All PCB Large Low Voltage Capacitors not marked under paragraph (a) of this section shall be marked individually, or if one or more PCB Large Low Voltage Capacitors are installed in a protected location such as on a power pole, or structure, or behind a fence, then the pole, structure, or fence shall be marked with mark ML, and a record or procedure identifying the PCB Capacitors shall be maintained by the owner or operator at the protected location.

(2) All Equipment not marked under paragraph (a) of this section containing a PCB Transformer or a PCB Large High or Low Voltage Capacitor.

Subpart D [Amended]

9. By amending subpart D by removing the "Note" appearing just after the heading for subpart D.

10. Section 761.60 is amended as follows:

a. By adding introductory language to §761.60.

b. By removing paragraph (a)(2)(ii), redesignating paragraphs (a)(2)(iii) and (a)(2)(iv) as paragraphs (a)(2)(ii) and (a)(2)(iii), respectively.

c. By changing the reference in newly designated paragraph (a)(2)(ii)(C) to paragraph "(a)(2)(iii)(B)(*3*)" to read "(a)(2)(ii)(B)(*3*)".

d. By changing the reference in newly designated paragraph (a)(2)(ii)(D)(*1*) to paragraphs "(a)(2)(A)(*6*) and (*7*)" to read "(a)(2)(ii)(A)(*6*) and (a)(2)(ii)(A)(*7*)".

e. By changing the reference in newly designated paragraph (a)(2)(iii) to paragraph "(a)(2)(iii)" to read "(a)(2)(ii)".

f. By removing paragraph (a)(3)(ii), redesignating paragraphs (a)(3)(iii) and (a)(3)(iv) as paragraphs (a)(3)(ii) and (a)(3)(iii), respectively.

g. By changing the reference in newly designated paragraph (a)(3)(ii)(C) to paragraph "(a)(3)(iii)(B)" to read "(a)(3)(ii)(B)".

h. By changing the reference in newly designated paragraph (a)(3)(ii)(D) to paragraph "(a)(3)(iii)(B)(*3*)" to read "(a)(3)(ii)(B)(*3*)".

i. By changing the reference in newly designated paragraph (a)(3)(ii)(E) to paragraph "(a)(3)(iii)(C)" to read "(a)(3)(ii)(C)".

j. By changing the reference in newly designated paragraph (a)(3)(ii)(E)(*1*) to paragraphs "(a)(3)(iii)(A)(*6*) and (*7*)" to read "(a)(3)(ii)(A)(*6*) and (a)(3)(ii)(A)(*7*)".

k. By changing the reference in newly designated paragraph (a)(3)(ii)(E)(*3*) to paragraph "(a)(3)(iii)(B)(*6*)" to read "(a)(3)(ii)(B)(*6*)".

l. By changing the reference in newly designated paragraph (a)(3)(iii) to "§761.60(a)(2)(iii)" to read "(a)(2)(ii) of this section".

m. By revising paragraph (a)(4).

n. By removing paragraph (a)(5).

o. By removing paragraph (a)(6).

p. In paragraph (b) by adding introductory text just after the italics heading "PCB Articles", and by revising paragraphs (b)(1)(i)(B), (b)(2)(iv) introductory text, (b)(2)(vi), by adding new paragraphs (b)(2)(vii), by revising paragraphs (b)(3) and (b)(4); by redesignating paragraphs (b)(5) and (b)(6) as (b)(6) and (b)(7), respectively; by adding new paragraphs (b)(5) and (b)(6)(iii), and by revising paragraph (b)(6)(ii).

q. In paragraph (c)(3) by removing the term "facility" and substituting the term "unit" in place thereof.

r. By revising paragraph (e).

s. By removing and reserving paragraph (f)(2).

t. By adding paragraphs (g)(1)(iii) and (g)(2)(iii).

u. By revising paragraph (i)(2).

v. By adding paragraph (j).

The revisions and additions read as follows:

§761.60 Disposal requirements.

PCBs disposed of, placed in a land disposal facility, spilled, or otherwise released into the environment prior to April 18, 1978, will be presumed to be disposed of in a manner that does not present a risk of exposure and, therefore, does not require further disposal action unless a Regional Administrator makes a finding that such a disposal prior to April 18, 1978 presents a risk of exposure from PCBs. The Regional Administrator may then require the submission of an application for a risk-based disposal approval under §761.61 or §761.62. Liquid PCBs shall not be processed into non-liquid forms to circumvent the high temperature incineration requirements of paragraph (a) of this section. Open burning of PCBs is prohibited. Combustion of PCBs approved under §761.60(a) or (e), or otherwise allowed under part 761 is not open burning. When storage is desired prior to disposal, PCBs at concentrations of 50 ppm or greater shall be stored in a facility which complies with §761.65. Except as authorized in §761.30 or prohibited in §761.20, PCB waste must be disposed of in accordance with the provisions of this subpart. Any person disposing of PCBs is also responsible for determining and complying with all other applicable Federal, State, or local laws or regulations.

(a) * * *

(4) PCB-Contaminated non-liquids may be disposed of in an industrial furnace.

(i) The industrial furnace must comply with the following operating parameters and conditions:

(A) The operating temperature of the hearth must be at least 1,000° C (centigrade) at the time it is charged with any PCB-Contaminated item.

(B) Each charge containing a PCB-Contaminated item must be into molten metal or a hearth at or above 1,000° C.

(C) Successive charges may not be introduced into the hearth in less than 15 minute intervals.

(D) There shall be no visible particulate emissions from the stack during the disposal of a PCB-Contaminated item (as determined by

Method 9 in 40 CFR part 60, Appendix A).

(E) There shall be no visible fugitive particulate emissions or releases of PCBs from the industrial furnace or the building containing the furnace during the disposal of a PCB-Contaminated item (as determined by Method 9 in 40 CFR part 60, Appendix A).

(F) The industrial furnace must have an operational device which accurately measures directly or indirectly, the temperature in the hearth.

(G) A reading of the temperature in the hearth at the time it is charged with a PCB-Contaminated item must be taken, recorded and retained at the facility for 3 years from the date each charge is introduced.

(H) Industrial furnaces must either have received a final permit under the RCRA (40 CFR part 266, subpart H and 40 CFR 270.66) or be operated under a valid State air emissions permit which includes a standard for PCBs.

(I) Industrial furnaces disposing of PCBs must comply with all applicable provisions of subparts J and K of this part as well as other applicable Federal, State, or local laws and regulations.

(ii) In lieu of the requirement in paragraph (a)(4)(i)(H) of this section, upon written request by the owner or operator of an industrial furnace, the EPA Regional Administrator, for the Region where the furnace is located, may make a finding in writing, based on a site-specific risk assessment, that the industrial furnace does not pose an unreasonable risk of injury to health or the environment because it is operating in compliance with the parameters and conditions listed in paragraphs (a)(4)(i)(A), (B), (C), (D), (E), (F), and (G) of this section even though that industrial furnace does not have a RCRA or State air permit as required by this section. The written request shall include a site-specific risk assessment.

(iii) PCB liquids greater than or equal to 50 ppm may not be disposed of in an industrial furnace unless approved or otherwise allowed, under §761.60.

(b) *PCB Articles.* This paragraph does not authorize disposal if that disposal is otherwise prohibited in §761.20 or elsewhere in this part.

(1) * * *

(i) * * *

(B) In a chemical waste landfill which complies with §761.75; Provided, That the transformer is first drained, for at least 48 continuous hours, of all free flowing liquid, filled with a solvent, allowed to stand for at least 18 continuous hours, and then drained thoroughly. PCB liquids, which include both the dielectric fluid and solvents used as a flush, that are removed from the transformer shall be disposed of in accordance with paragraph (a)(1) of this section. Solvents may include kerosene, xylene, toluene and other solvents in which PCBs are readily soluble. Precautionary measures should be taken, however, that the solvent flushing procedure is conducted in accordance with applicable safety and health standards as required by Federal or State regulations.

* * * * *

(2) * * *

(iv) Any PCB Small Capacitor owned by any person who manufactures or at any time manufactured PCB Capacitors or PCB Equipment and acquired the PCB Capacitor in the course of such manufacturing shall be placed in a Department of Transportation authorized container and disposed of in accordance with either of the following:

* * * * *

(vi) Prior to disposal in a §761.75 chemical waste landfill, all large PCB capacitors, and all small PCB capacitors described in paragraph (b)(2)(iv) of this section, shall be placed in a container meeting DOT packaging specifications. In all cases, interstitial space in the container shall be filled with sufficient absorbent material (such as soil) to absorb any liquid PCBs remaining in the capacitors.

(vii) Any person may dispose of less than 25 intact and non-leaking fluorescent light ballasts containing PCBs within a 1–year time period starting from the date when the first fluorescent light ballast was removed in a facility which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste (excluding thermal treatment units). Disposal of PCBs as municipal or industrial solid waste is subject to the CERCLA reportable quantity requirements at 40 CFR 302.6. The disposal of fluorescent light ballasts as PCB Equipment is subject to the restrictions of paragraph (b)(2)(iv) of this section.

(3) *PCB hydraulic machines.* PCB hydraulic machines containing PCBs at concentrations of 50 ppm or greater, such as die casting machines, may be disposed of in a facility which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste (excluding thermal treatment units) or by salvage in an industrial furnace, as defined in §761.3, operating in compliance with the requirements of paragraph (a)(4) of this section, or a disposal facility approved under this part, provided that the machines are drained of all free-flowing liquid and the liquid is disposed of in accordance with the provisions of paragraph (a) of this section. If the PCB liquid contains 1,000 ppm PCB or greater, then the hydraulic machine must be flushed prior to disposal with a solvent containing less than 50 ppm PCB using transformer solvents listed at paragraph (b)(1)(i)(B) of this section and the solvent must be disposed of in accordance with paragraph (a) of this section.

(4) *PCB-Contaminated Electrical Equipment.* All PCB-Contaminated Electrical Equipment, except capacitors, shall be disposed of by draining all free flowing liquid from the electrical equipment for a period of not less than 48 hours and disposing of the drained liquid in accordance with paragraph (a)(2) or (a)(3) of this section. The drained PCB-Contaminated Electrical Equipment, including liquid remaining after draining in accordance with this paragraph, shall be disposed of in a facility which is permitted, licensed or registered by a State to manage municipal or industrial solid wastes (excluding thermal treatment units), an industrial furnace, as defined in §761.3, operating in compliance with the requirements of §761.60(a)(4), or a disposal facility approved under this part. Capacitors that contain between 50 ppm and less than 500 ppm PCBs shall be disposed of in an approved incinerator that complies with §761.70 or in a chemical waste landfill that complies with §761.75 or by an alternate destruction method approved under paragraph (e) of this section.

(5) *Natural gas pipeline containing PCBs.* This paragraph provides for disposal of natural gas pipeline by: abandonment in place or removal with subsequent action. The PCB concentrations in pipelines shall be determined by measuring condensate collected at existing condensate collection/removal points. When no condensate or free-flowing liquid is present, surface level concentrations shall be measured. Organic and aqueous condensate liquids shall be separated by decantation and the components separately analyzed using EPA Method 8080 of SW–846 which is available from NTIS, or equivalent.

(i) *Abandonment.* Natural gas pipeline containing PCBs may be abandoned in place under one of the following provisions:

(A) Natural gas pipeline containing PCBs at any concentration, with no free flowing liquids and having an inside diameter less than or equal to 4 inches, may be abandoned in the place it was used to transport natural gas if the pipeline is either:

(*1*) Sealed closed at each end and the pipe is included in a public service notification program, such as a "one-call" system under 49 CFR 192.614(a) and (b); or

(*2*) Filled to 50 percent of the volume of the pipe with grout (such as a hardening slurry consisting of cement, bentonite, or clay) or high density polyurethane foam, and each end is sealed in place.

(B) PCB-Contaminated natural gas pipeline of any diameter may be abandoned in the place it was used to transport natural gas if it contains no free flowing liquids and each end is sealed closed.

(C) Natural gas pipeline of any diameter which contains PCBs may be abandoned in the place it was used to transport natural gas if:

(*1*) It contains no free flowing liquids.

(*2*) The interior surface is cleaned using a single wash of diesel fuel with a recovery of 95 percent of the volume introduced into the system for washing and less than 50 ppm PCB in the recovered wash, or the pipeline is filled to 50 percent of its volume with grout (such as a hardening slurry consisting of cement, bentonite, or clay) or high density polyurethane foam.

(*3*) Each end is sealed closed.

(D) A section of natural gas pipeline containing PCBs at any concentration, but containing no free flowing liquids and located under rivers or streams, paved highways, parking lots, sidewalks, permanent buildings not associated with the pipeline; or under the adjoining rights-of-way or in rights-of-way shared with municipal drinking water mains, municipal sewer systems, telephone utilities, or electric utilities, may be abandoned in the place it was used to transport natural gas if the section is filled to 50 percent of the volume of the pipe with grout (such as a hardening slurry-like cement, bentonite, or clay) or high density polyurethane foam (except that only cement shall be used as grout under rivers or streams) and each end is sealed closed.

(ii) *Removal with subsequent action.* PCB containing natural gas pipeline, when no longer in use, shall be removed from service and disposed of under one of the following provisions unless abandoned under paragraph (b)(5)(i) of this section:

(A) The following classifications of natural gas pipeline containing no free flowing liquids may be disposed of in a facility permitted, licensed or registered by a State to manage municipal or industrial solid waste (excluding thermal treatment units); an industrial furnace, as defined in §761.3, and operating in compliance with the requirements of paragraph (a)(4) of this section; or a disposal facility approved under this part:

(*1*) PCB-Contaminated natural gas pipeline where the PCB concentration was determined prior to or during removal.

(*2*) Natural gas pipeline containing PCBs at any concentration and having an inside diameter less than or equal to 4 inches.

(B) Natural gas pipeline containing PCBs at any concentration may be disposed of under one of the following provisions in addition to the disposal options in paragraph (b)(5)(i)(A) of this section:

(*1*) In an incinerator that complies with §761.70.

(*2*) In a chemical waste landfill that complies with §761.75, provided that all free flowing liquid PCBs have been thoroughly drained from the pipe.

(*3*) By an alternate disposal technology approved under paragraph (e) of this section.

(*4*) As a PCB non-remediation waste in compliance with §761.62.

(*5*) Decontaminated in accordance with the standards and procedures of §761.79.

(iii) *Characterization of pipe by PCB concentration in condensate.* (A) All PCB containing liquids removed from a segment of natural gas pipeline must be disposed of in accordance with paragraph (a) of this section based on their PCB concentration at the time of removal from the pipe.

(B) For purposes of demonstrating compliance with paragraphs (b)(5)(i) and (b)(5)(ii) of this section, a segment of natural gas pipeline must be characterized for PCB contamination by analyzing liquids found in the segment, or by standard wipe samples according to Appendix I of this part.

(6) * * *

(ii) PCB-Contaminated Articles must be disposed of by draining all free flowing liquid, for at least 48 continuous hours, from the article, disposing of the liquid in accordance with paragraph (a)(2) or (a)(3) of this section and disposing of the drained PCB-Contaminated Articles in a facility permitted, licensed, or registered by a State to manage municipal or industrial solid waste (excluding thermal treatment units), an industrial furnace as defined in §761.3 operating in compliance with the requirements of paragraph (a)(4) of this section, or a disposal facility approved under this part.

(iii) PCB-Contaminated Articles which are not in contact with liquid PCBs, such as non-porous surfaces including, but not limited to, ship and submarine hulls, air handling systems and other articles which can be characterized by a standard wipe test, as defined in §761.123, may be disposed of in a facility permitted, licensed or registered by a State to manage municipal or industrial solid waste (excluding thermal treatment units), an industrial furnace operating in compliance with the requirements of paragraph (a)(4) of this section, or other disposal facility approved under this part. Anyone with access to, or in direct contact with, surfaces contaminated with PCBs at levels of 10 to less than 100 micrograms PCB/100 square centimeters must be protected from dermal exposure to those surfaces.

* * * * *

(e) Any person who is required to incinerate any PCBs and PCB Items under this subpart and who can demonstrate that an alternative method of destroying PCBs and PCB Items exists and that this alternative method can achieve a level of performance equivalent to §761.70 incinerators or high efficiency boilers as provided in paragraphs (a)(2)(iii) and (a)(3)(iii) of this section, may submit a written request to either the Regional Administrator for the Region in which disposal will take place or the Director, Chemical Management Division for an exemption from the incineration requirements of §761.70 or this paragraph. Requests for approval of alternate methods that will be operated in more than one Region must be submitted to the Director, Chemical Management Division except for research and development involving less than 500 pounds of PCB material (see paragraph (i)(2) of this section). Requests for approval of alternate methods that will be operated in only one Region must be submitted to the appropriate Regional Administrator. The applicant must show that its method of destroying PCBs will not present an unreasonable risk of injury to health or the environment. On the basis of such information and any other available information, the Regional Administrator or the Director, Chemical Management Division may, in his or her discretion, approve the use of the alternate method if he or she finds that the alternate disposal method provides PCB destruction equivalent to disposal in a §761.70 incinerator or a §761.60 high efficiency boiler and will not present an unreasonable risk of injury to health or the environment. Any approval must be stated in writing and may contain such conditions and provisions as the Regional

Administrator or Director, Chemical Management Division deems appropriate. The person to whom such waiver is issued must comply with all limitations contained in such determination. Written approval to use the alternate method of destroying PCBs or PCB Items must be obtained from the appropriate EPA official prior to any use of the method to dispose of PCB waste.

* * * * *

(g) * * *

(1) * * *

(iii) Unless otherwise specified in these rules, the chemical analysis of PCBs shall be conducted using gas chromatography. There are several gas chromatographic methods that may be used depending on the material being analyzed. For that reason, there is no requirement to use a specific gas chromatography procedure. Applicable procedures include, but are not limited to, EPA Method 608, "Organochlorine Pesticides and PCBs" at 40 CFR part 136, Appendix A"; EPA Method 8080, "Organochlorine Pesticides and PCBs" of SW–846, "OSW Test Methods for Evaluating Solid Waste" which is available from NTIS and ASTM Standard D–4059, "Standard Test Method for Analysis of Polychlorinated Biphenyls in Insulating Liquids by Gas Chromatography" which is available from the American Society for Testing and Materials (ASTM, 1916 Race Street, Philadelphia, PA 19103).

(2) * * *

(iii) Unless otherwise specified in these rules, the chemical analysis of PCBs shall be conducted using gas chromatography. There are several gas chromatographic methods that may be used depending on the material being analyzed. For that reason, there is no requirement to use a specific gas chromatography procedure. Applicable procedures include the procedures indicated in paragraph (g)(1)(iii) of this section.

* * * * *

(i) * * *

(2) Except for activity authorized under paragraph (j) of this section, research and development (R&D) for PCB disposal using a total of less than 500 pounds of PCB material (regardless of PCB concentration) will be reviewed and approved by the EPA Regional Administrator for the Region where the R&D will be conducted and R&D for PCB disposal using 500 pounds or more of PCB material (regardless of PCB concentration) will be reviewed and approved by the Director, Chemical Management Division.

* * * * *

(j) *Self-implementing requirements for research and development (R&D) for PCB disposal.* R&D for PCB disposal includes demonstrations for commercial PCB disposal approvals, pre-demonstration tests, tests of major modifications to approved PCB disposal technologies, treatability studies for approved PCB disposal technologies, development of new disposal technologies, and research on environmental transformation processes such as biodegradation. R&D for PCB disposal activities authorized in this section do not include research or analysis for the development of any PCB product or the R&D activities authorized in §761.30(j).

(1) R&D for PCB disposal may be conducted without prior written approval from EPA if the following conditions are met:

(i) A notification is filed and an EPA identification number is obtained pursuant to subpart K of this part.

(ii) The EPA Regional Administrator for the Region in which the R&D for PCB disposal activity will occur is notified in writing at least 30 days prior to the commencement of any R&D for PCB disposal activity conducted under this section. Each written notification shall include the EPA identification number of the site where the R&D for PCB disposal activities will be conducted, the quantity of PCBs to be treated, the type of R&D technology to be used, the general physical and chemical properties of material being treated, and an estimate of the duration of the PCB activity.

(iii) The amount of material containing PCBs treated annually by the facility during R&D for PCB disposal activities does not exceed 500 gallons of liquid or 70 cubic feet of non-liquid PCBs and does not exceed a maximum concentration of 10,000 ppm PCBs.

(iv) No more than 1 kilogram total of pure PCBs per year is disposed of in all R&D for PCB disposal activities at a facility.

(v) Each R&D for PCB disposal activity under this section shall be limited to no more than one calendar year.

(vi) All PCB wastes (treated and untreated PCB materials, testing samples, spent laboratory samples, residuals, untreated samples, contaminated media or instrumentation, clothing, etc.) shall be stored in compliance with the storage requirements of §761.65(b) and shall be disposed of according to concentration of PCBs prior to treatment. Only PCB materials not treated in the R&D for PCB disposal activity may be returned to the site of generation.

(vii) Manifests are used for all R&D PCB wastes being transported from the R&D for PCB disposal facility to an approved PCB storage or disposal facility. However, no manifests are required if the residuals or treated samples are returned to the site of generation.

(viii) All PCB wastes are packaged and shipped pursuant to DOT requirements.

(ix) All facilities that conduct R&D for PCB disposal must comply with all applicable requirements of this part, including the recordkeeping requirements of §761.180, the storage and disposal requirements of subpart D of this part.

(x) Material limitations set out in paragraphs (j)(1)(iii) and (iv) of this section and the time duration limitation set out in paragraph (j)(1)(v) of this section shall not be exceeded without prior written approval from EPA. Requests for approval to exceed the material limitations for PCBs in R&D for PCB disposal activities as defined in this section must be submitted in writing to the Regional Administrator for the Region in which the facility conducting R&D for PCB disposal activities is located. Each request shall specify the quantity or concentration requested or additional time needed for disposal and include a justification for each increase. For extensions to the duration of the R&D for PCB disposal activity, the request shall also include a report on the accomplishments and progress of the previously authorized R&D for PCB disposal activity for which the extension is sought. The Regional Administrator may require the requestor to obtain an R&D approval according to the requirements in paragraphs (e) and (i)(2) of this section, or §§761.70(a) or (b); or the Regional Administrator may grant a waiver in writing for an increase in the volume of PCB material, the maximum concentration of PCBs, the total amount of pure PCBs, or the duration of the R&D activity. Approvals shall be in writing and signed by the Regional Administrator. Approvals will state all requirements applicable to the R&D for PCB disposal activity.

(2) At any time the Regional Administrator for the Region in which an R&D for PCB disposal activity is conducted may make the determination under this section that a R&D PCB disposal approval under paragraphs (e) and (i)(2) of this section, or §§761.70(a) or (b) is required to conduct a specific R&D PCB disposal activity to ensure that any R&D for PCB disposal activity does

not present an unreasonable risk of injury to health or the environment.

* * * * *

11. By adding §§761.61, 761.62, 761.63, and 761.64 to subpart D to read as follows:

§761.61 PCB remediation waste.

PCB remediation waste shall be removed or otherwise disposed of in accordance with one of the options in paragraphs (a) through (c) of this section. Any person disposing of PCBs is also responsible for determining and complying with all other applicable Federal, State, and local laws and regulations.

(a) *Self-implementing site remediation.* Where applicable, the cleanup and disposal of PCB remediation waste may be conducted in accordance with the following requirements without a written approval from EPA.

(1) *Applicability.* The self-implementing remediation provisions do not apply to the following:

(i) Spills which result in direct contamination of:

(A) Surface and ground waters.

(B) Sediments in lakes, ponds, rivers, or streams.

(C) Sewers and sewage treatment systems.

(D) Any private or public drinking water sources or distribution systems.

(E) Grazing lands.

(F) Vegetable gardens.

(G) Areas having human populations (such as residential dwellings, hospitals, schools, nursing homes, playgrounds, parks, and day care centers) and animal populations (such as endangered species habitats, estuaries, wetlands, National Parks, National Wildlife Refuges, and commercial and sport fisheries) which might have a higher sensitivity to the toxic effects of PCBs.

(ii) PCBs which migrated to and contaminated any site described in paragraph (a)(1)(i) of this section prior to completion of the remediation of the site.

(iii) Any site that:

(A) Appears on the Comprehensive Environmental Response, Compensation, and Liability Act's (Superfund) National Priorities List at 40 CFR part 300 Appendix B.

(B) Is currently the subject of a permitting action under Subtitle C of the Resource Conservation and Recovery Act or approval under this part, or cleanup conducted under subpart G of this part.

(C) Is currently the subject of any enforcement action under any statute administered by EPA.

(2) *Notification.* (i) At least 30 days prior to the date for beginning the remediation of a site, the person in charge of the remediation or the owner of the property where the spill is located shall notify, in writing, the appropriate Regional Administrator, the appropriate State environmental protection agency, and the appropriate county or local environmental protection agency where the remediation will be conducted of:

(A) The nature and extent of the contamination, including kinds of materials contaminated.

(B) The procedures used to sample contaminated and adjacent areas; PCB concentrations measured in each sample.

(C) The location and supposed extent of the contaminated area (including maps); and proposed remediation options for contaminated materials. Anyone conducting a remediation activity under this section may obtain a waiver of the 30–day notification requirement. To do so, they must receive a separate waiver in writing, from each of the three agencies they are required to notify under this section. The original written waiver shall be retained as required in paragraph (a)(3) of this section.

(ii) The owner of the property where the PCB remediation site is located and the party responsible for field remediation activities:

(A) Both parties shall sign and submit in writing to the Regional Administrator a certificate stating that they have on file certain documents including all sampling plans, sample collection procedures, sample preparation procedures, extraction procedures, and instrumental/chemical analysis procedures used to assess or characterize the PCB contamination at the remediation site.

(B) Shall use a sampling frequency for the remediation site characterization at least as comprehensive as that required in Appendix II of this part for verifying the completeness of the site remediation. There are no other requirements for site assessment or site characterization.

(C) May use PCB field screening tests as defined in §761.3 for characterization of PCB remediation waste under the following conditions. If both of the following requirements cannot be met, PCB field screening tests shall not be used for purposes of characterization of PCB remediation wastes through self-implementing site remediation (paragraph (a) of this section), and, at a minimum, gas chromatography with an electron capture detector (GC/EC) shall be used for analyzing for the presence and concentration of PCBs.

(*1*) A comparison study, using an appropriate gas chromatography (GC) analytical procedure such as EPA Method 8080 or 8280 to analyze the PCB remediation wastes, shows that there are no materials present in the PCB remediation waste which would interfere with the screening test. (For purposes of this section, interfering with the PCB field screening test means that for the analysis of at least three samples having PCB levels greater than 10 ppm, the PCB concentration reported by the PCB field screening test is no less than 75 percent of the PCB concentration reported GC method for the same sample.)

(*2*) At a minimum, 25 percent of all PCB remediation waste samples taken shall be confirmed by EPA Method 8080 or equivalent. For PCB field screening tests analyzing fewer than 40 PCB remediation waste samples, at least 10 confirmation analyses are required. Confirmation analyses shall be performed on at least one sample from each different type of PCB remediation waste material (for example: soil, sludge, and/or sediment) at each site at a facility, even if this means more than 10 analyses.

(3) *Recordkeeping.* For paragraphs (a)(4) and (5) of this section, recordkeeping is required in accordance with §761.125(c)(5).

(4) *On-site cleanup and disposal of PCB remediation waste.* For purposes of cleaning or decontaminating PCB remediation waste under this section there are two general categories of waste: bulk PCB remediation waste (everything other than non-porous surfaces, such as: soil, sediments, dredged materials, debris, muds, municipal sludge, industrial sludge, and porous surfaces) and non-porous surfaces. Sampling for the verification of the cleanup of the PCB remediation wastes shall be in accordance with Appendix II of this part. Interim sampling during on-going cleanup may use PCB screening tests to determine when to take samples to verify that cleanup is complete. Requirements for the use of the PCB screening tests for this interim sampling are the same as for site characterization in paragraphs (a)(2)(ii)(B) of this section.

(i) *High exposure areas*— (A) *Bulk PCB remediation waste.* The cleanup level for bulk PCB remediation waste in high exposure areas is less than or equal to 1 ppm except as otherwise noted below. Cleanup of bulk PCB remediation waste in high exposure areas shall be accomplished by one or more of the following:

(*1*) Remove and dispose of all bulk PCB remediation wastes at concentrations greater than 1 ppm.

(*2*) Remove all bulk PCB remediation wastes at concentrations greater than 10 ppm and place a clean (less than 1 ppm PCBs) soil cover of a uniform thickness of a minimum of 25 centimeters (10 inches) over the site where PCBs remain in excess of 1 ppm. A cap of other clean non-porous material, such as concrete or asphalt at a minimum uniform thickness of 15 centimeters (6 inches) may be used in place of the clean soil cover.

(*3*) (*i*) Extract PCBs from PCB remediation wastes with a solvent extraction process where: A non-chlorinated solvent is used; the solvent extraction process occurs at ambient temperature; the extraction process is not exothermic; and no external heat is used for the extraction process.

(*ii*) The extraction process shall have secondary containment to prevent any solvent from being released to the underlying or surrounding soils or surface waters.

(*iii*) Solvent disposal, recovery, and/or reuse shall be in accordance with relevant provisions in paragraphs (b)(1) and (c) of this section and other applicable Federal, State, or local laws or regulations.

(*iv*) PCB remediation waste treated using a non-thermal extraction process according to paragraphs (a)(4)(i)(A)(*3*)(*i*) through (*iii*) of this section and left on site shall have residual levels of: Less than or equal to 1 ppm as in paragraph (a)(4)(i)(A)(*1*) of this section. Less than or equal to 10 ppm, and a clean (less than 1 ppm PCBs) soil cover of a minimum uniform thickness of 25 centimeters (10 inches) placed over the site where PCBs remain in excess of 1 ppm. A cap of other clean impervious material, such as concrete or asphalt at a minimum uniform thickness of 15 centimeters (6 inches) may be used in place of the clean soil cover as in paragraph (a)(4)(i)(A)(*2*) of this section.

(*v*) If the treatment process in paragraph (a)(4)(i)(A)(*3*)(*i*) through (a)(4)(i)(A)(*3*)(*iii*) of this section does not meet the measurement-based objectives required in paragraph (a)(4)(i)(A)(*1*) or (a)(4)(i)(A)(*2*) of this section, then the treated material shall be disposed of based on its existing concentration in accordance with the disposal requirements of paragraph (b) or paragraph (c) of this section.

(*4*)(*i*) Bulk PCB remediation waste may be microencapsulated or vitrified on-site. Microencapsulated PCB remediation waste must be homogenous to the point that it has no free liquid component as measured by Method 9095 (Paint Filter Liquids Test) as described in SW–846 "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" which is available from NTIS.

(*ii*) The standard for treatment of PCB remediation wastes where the PCBs have been microencapsulated or vitrified is less than 50 micrograms PCBs per liter as measured by the Toxicity Characteristic Leaching Procedure (TCLP), 40 CFR part 261, Appendix II, Method 1311.

(*iii*) Microencapsulated or vitrified PCB remediation waste not exhibiting the toxicity characteristic (i.e., TCLP concentration less than 50 μg/l PCB) shall be disposed of at an off-site facility according to paragraph (a)(5)(i)(B)(*2*) or (*3*) of this section.

(B) *Non-porous surfaces.* Non-porous surfaces shall be decontaminated in accordance with §761.79.

(ii) *Low exposure areas*—(A) *Bulk PCB remediation waste.* The cleanup level for low exposure areas is less than or equal to 25 ppm unless otherwise specified in this paragraph. Cleanup of bulk PCB remediation waste in low exposure areas shall be accomplished by one or more of the following:

(*1*) Remove and dispose of all materials at concentrations equal to or greater than 25 ppm PCB.

(*2*) Remove and dispose of all materials equal to or greater than 50 ppm PCB if the area is secured by a fence and a sign including the ML.

(*3*) Remove all materials greater than 100 ppm PCB and place a clean (less than 1 ppm PCBs) soil cover of a uniform thickness of a minimum of 25 centimeters (10 inches) over the site where PCBs remain in excess of 25 ppm. A cap of other clean impervious material, including concrete or asphalt at a minimum uniform thickness of 15 centimeters (6 inches) may be used in place of the clean soil cover.

(*4*)(*i*) Bulk PCB remediation waste may be disposed of onsite using a solvent extraction process where: A non-chlorinated solvent is used; the solvent extraction process occurs at ambient temperature; the extraction process is not exothermic; and no external heat is used for the extraction process.

(*ii*) The extraction process shall have secondary containment to prevent any solvent from being released to the underlying or surrounding soils and surface water.

(*iii*) Solvent disposal, recovery, and/or reuse shall be in accordance with relevant provisions in paragraphs (b)(1) and (c) of this section, and other applicable Federal, State, or local laws or regulations.

(*iv*) PCB remediation waste treated using a non-thermal extraction process according to paragraph (a)(4)(ii)(A)(*4*)(*i*) through (a)(4)(ii)(A)(*4*)(*iii*) of this section and left on site shall have residual levels of: Less than or equal to 25 ppm as in paragraph (a)(4)(ii)(A)(*1*) of this section; less than or equal to 50 ppm, and the area shall be secured by a fence, and a sign, including the ML shall be posted, as in paragraph (a)(4)(ii)(A)(*2*) of this section; or to less than or equal to 100 ppm PCB, and a clean (less than 1 ppm PCBs) soil cover of a minimum uniform thickness of 25 centimeters (10 inches) placed over the site where PCBs remain in excess of 25 ppm. A cap of other clean impervious material, such as concrete or asphalt at a minimum uniform thickness of 15 centimeters (6 inches) may be used in place of the clean soil cover as in paragraph (a)(4)(ii)(A)(*3*) of this section.

(*v*) If the treatment process in paragraph (a)(4)(ii)(A)(*4*)(*i*) through (a)(4)(ii)(A)(*4*)(*iii*) of this section does not meet the measurement-based objectives required in paragraphs (a)(4)(ii)(A)(*1*), (a)(4)(ii)(A)(*2*), or (a)(4)(ii)(A)(*3*) of this section, then the treated material shall be disposed of off-site based on its existing concentration according to paragraphs (b)(2) and (c) of this section.

(*5*)(*i*) Bulk PCB remediation waste may be microencapsulated or vitrified on-site. Microencapsulated PCB remediation waste must be homogenous to the point that it has no free liquid component as measured by Method 9095 (Paint Filter Liquids Test) as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" which is available from NTIS.

(*ii*) The standard for treatment of PCB remediation wastes where the PCBs have been microencapsulated or vitrified is less than 50 micrograms PCB per liter as measured by the Toxicity Characteristic Leaching Procedure (TCLP), 40 CFR part 261, Appendix II, Method 1311.

(*iii*) Microencapsulated or vitrified PCB remediation waste not exhibiting the Toxicity Characteristic (i.e., TCLP concentration less than 50 μg/l PCB) shall be disposed of at an off-site facility according to paragraph (a)(5)(i)(B)(*2*) or (*3*) of this section.

(B) *Non-porous surfaces.* Non-porous surfaces shall be decontaminated in accordance with §761.79 or disposed of in a facility with a disposal approval under this part.

(C) *Change in land use for a remediation site.* Where there is an actual or proposed change in use of an area cleaned up under paragraph (a)(4)(ii) of this section, and the exposure of people or animal life in or at that area is expected to increase

resulting in a change in status from a low exposure area to a high exposure area, the owner of the area shall clean up the area in accordance with the high exposure area PCB remediation waste cleanup requirements in paragraph (a)(4)(i) of this section.

(iii) *Cap requirements.* Caps shall comply with the permeability, sieve, liquid limit, and plasticity index parameters in §761.75(b)(1)(ii) through (b)(1)(v). Caps shall be designed and constructed according to §264.310(a) of this chapter. In the case of a concrete or asphalt cap, the cap shall be of sufficient strength to maintain its effectiveness and integrity during the use of the cap surface which is exposed to the environment. A cap shall not be contaminated at a level ≧1 ppm PCB per Aroclor® (or equivalent) or per congener. Caps shall be visually inspected monthly for breaches such as leaks, cracks, breaks, and faults. Repairs shall begin within 48 hours of discovery for any breaches which would impair the integrity of the cap.

(iv) *Deed restrictions for caps and fences.* When a remedial activity, under this section, includes the use of a fence or a cap, the fence or cap must be maintained by the owner of the site, in perpetuity.

(A) Within 30 days of completion of a remediation activity under this section, a notice of the existence of the fence or cap and the requirement to maintain the fence or cap under paragraph (a) of this section shall be placed on the deed for the property by the owner of the site. Upon request by EPA, a copy of any notice required by this paragraph shall be sent to the EPA Regional Administrator, within 60 days of completion of a remedial activity under this section.

(B) The owner of a site being remediated under this section may remove a fence or cap after conducting additional remediation activities and achieving cleanup levels, specified in this section, which do not require a cap or fence.

(C) The notice on the deed shall be removed from the deed no earlier than 30 days after achieving the cleanup levels specified in this section which do not require a fence or cap.

(v) Wastes generated from the cleanup of PCB remediation waste shall be disposed or may be reused as follows:

(A) Non-liquid cleaning materials and personal protective equipment waste shall be disposed of in accordance with paragraph (a)(5)(ii) of this section.

(B) Cleaning solvents, abrasives, and equipment may be reused for the same purpose and shall be disposed of according to §761.79(a)(1).

(vi) Written notice, including the quantity to be shipped and highest concentration of PCBs (using extraction Method 3540 in SW–846 and using the extraction solvent toluene/methanol (option 5.4.1.1) then followed by chemical analysis using Method 8080 in SW–846, which is available from NTIS), must be provided at least 15 days in advance of shipment from the generator, to any facility receiving PCB non-remediation waste pursuant to paragraphs (a)(4)(i)(A)(*4*)(*iii*) and (a)(4)(ii)(A)(*5*)(*iii*) of this section.

(5) *Off-site disposal of PCB remediation waste.* PCB remediation waste may be disposed of either at the site which is being remediated (on-site) or at another site (off-site) as otherwise allowed under §761.60 through §761.62. Destruction and containment of PCB remediation waste may be accomplished outside of this self-implementing site remediation provision (paragraph (a) of this section) so long as the destruction and containment has been approved according to paragraph (b) or (c) of this section.

(i) *Bulk, non-liquid material.* Bulk, non-liquid PCB remediation waste shall be disposed of off-site according to its existing concentration as follows:

(A) PCB remediation wastes containing water which can be separated or removed, such as sediments, dredged materials, muds, municipal sludges, and industrial sludges, shall be dewatered onsite and the water filtered to remove PCBs. Non-liquid filter materials must be disposed of as non-liquid PCBs according to their existing concentration or based on an assumed concentration greater than 500 ppm PCBs. Removed water shall be discharged to a facility operating under a Federal or State permit to accept water at a specified concentration of PCBs or to discharge PCBs in treated water. The dewatered PCB materials shall be disposed of according to paragraph (a)(5)(i)(B) of this section.

(B) Non-liquid PCBs shall be disposed of as follows based on its existing concentration:

(*1*) PCB remediation wastes with a PCB concentration of less than 50 ppm may be disposed of in any facility permitted, licensed, or registered by a State as a municipal or industrial solid waste landfill, a RCRA Subtitle C Landfill or a disposal facility approved under this part.

(*2*) PCB remediation wastes with a PCB concentration of less than 500 ppm may be disposed of in a RCRA Subtitle C landfill or a disposal facility approved under this part.

(*3*) PCB remediation wastes with a PCB concentration of 500 ppm and greater may be treated using the solvent extraction process described in paragraph (a)(4)(i)(A)(*3*)(*i*) through (a)(4)(i)(A)(*3*)(*iii*) of this section to less than 50 ppm and then disposed of based on the post-treatment PCB concentration according to paragraph (a)(5)(i)(A)(*2*)(*i*), or treated to less than 500 ppm and disposed of according to paragraph (a)(5)(i)(A)(*2*)(*ii*) of this section. If the treatment process does not reduce the PCB levels in the bulk PCB remediation waste to less than 500 ppm, then the treated bulk PCB remediation waste shall be disposed of off-site based on its existing concentration according to paragraph (b)(1) or (c) of this section and other Federal, State or local laws or regulations.

(C) Written notice, including the quantity to be shipped and highest concentration of PCBs (using extraction Method 3540 in SW–846, which is available from NTIS), must be provided at least 15 days in advance of shipment from the generator, to any off-site facility receiving bulk non-liquid PCB non-remediation waste.

(ii) *Other non-liquid materials.* Other non-liquid materials such as rags, gloves, booties, other disposable personal protective equipment, and similar materials resulting from site remediation activities, shall be disposed of off-site according to paragraph (a)(5)(i)(B)(*1*) of this section.

(6) *Duty to comply.* Any person conducting a remedial action under paragraph (a) of this section must fully comply with each requirement and limitation of paragraph (a) or any addition to paragraph (a) subsequently approved under paragraph (c) of this section.

(b) *Performance-based disposal.* (1) Liquid PCB remediation waste shall be disposed of according to §761.60(a)(1), (a)(2) or (a)(3) or §761.60(e) as applicable.

(2) Non-liquid PCB remediation waste shall be disposed of in a high temperature incinerator approved according to the requirements of §761.70(b), or, according to an alternate destruction method approved according to the requirements of §761.60(e), or a chemical waste landfill approved according to the requirements §761.75.

(c) *Risk-based disposal approval.* Applications for cleanup and disposal of PCB remediation waste in a manner other than prescribed in paragraph (a) or (b) of this section must be made in writing to the Regional Administrator in the Region in which the PCB remediation wastes are located. Applications for the addition of a process, procedure, or technology to paragraph (a) of this section must be

made in writing, to the Director, Chemical Management Division. Each application must contain information that, based on technical, environmental, and other considerations, indicates that the proposed cleanup levels, storage and disposal methods will not pose an unreasonable risk of injury to health and the environment. The EPA may request other information that it believes to be necessary for an evaluation of the proposed site remediation or waste management method(s) including assessment of site conditions; general risk posed by the process, procedure or technology; and analysis of the proposed alternative. In approving a disposal method for PCB remediation wastes, EPA may consider:

(1) The risk factors associated with the waste.

(2) The risk factors associated with the proposed waste management option such as the safety, reliability, and effectiveness (including the potential for concentration and volume reduction, waste minimization, long- and short-term effectiveness, permanence, technical feasibility, and availability) of the proposed waste management options.

(3) Other applicable Agency guidelines, criteria, and regulations to ensure that any treatment residues or discharges of remediation wastes that contain PCBs and other contaminants are adequately controlled to protect the environment. The EPA may also specify and approve access or use restrictions and other monitoring, institutional controls or notice requirements when PCB remediation wastes or PCB Items remain at the site.

(d) *Other requirements.* Other requirements of a risk-based disposal approval that must be followed are:

(1) The person to whom such approval is issued must comply with all conditions and limitations contained in the approval.

(2) Any approval by the EPA shall be in writing; it shall contain EPA's findings, the reason for the approval, the approval conditions, and may contain any appropriate limitations on the approved cleanup and method(s) for disposal of PCB remediation waste.

(3) Any approval by EPA for the addition of a process, procedure, or technology to paragraph (a) of this section shall be in writing, and may contain specific conditions and limitations as the EPA deems appropriate to protect health and the environment.

(e) Remediation activities conducted under paragraph (c) of this section shall not commence prior to written approval by EPA.

§761.62 Disposal of PCB non-remediation waste.

Any person disposing of PCBs is also responsible for determining and complying with all other applicable Federal, State, or local laws or regulations. PCB non-remediation waste shall be disposed of:

(a) *Performance-based disposal.* (1) In an incinerator which complies with §761.70.

(2) In a chemical waste landfill which complies with §761.75.

(b) *Leachability-based disposal.* (1) In a facility permitted, licensed, or registered by a State as a municipal or industrial solid waste landfill if the concentration of PCBs in a representative sample of the PCB non-remediation waste is less than 50 micrograms per liter as measured by the Toxicity Characteristic Leaching Procedure (TCLP), 40 CFR part 261, Appendix II, Method 1311. The representative sample shall be collected according to the procedures in Appendix III of this part.

(2) PCB non-remediation waste shall be sampled in accordance with the procedures specified in Appendix III of this part. Alternate sampling plans and procedures shall be used only after being approved in writing by EPA as part of a disposal application under paragraph (c) of this section.

(3) Written notice, including the quantity to be shipped and highest concentration of PCBs (using extraction Method 3540 in SW–846 and using the extraction solvent toluene/methanol (option 5.4.1.1) and followed by chemical analysis using Method 8080 in SW–846, available from NTIS), must be provided at least 15 days in advance of shipment from the generator, to any facility receiving PCB nonremediation waste pursuant to paragraph (b)(1) of this section.

(4) The applicable recordkeeping provisions of §761.180 must be adhered to with regard to all sampling and analysis of PCBs under this section.

(c) *Risk-based disposal approval.* (1) Upon written application, PCB non-remediation waste shall be disposed of using a disposal method or at a location approved by the Regional Administrator for the Region in which the disposal will occur. Applications for disposal of PCB non-remediation waste in a manner other than prescribed in paragraph (a) or (b) of this section must be made in writing to the Regional Administrator. The application must contain information that, based on technical, environmental, or waste-specific characteristics or considerations, indicates that the proposed storage and disposal methods or location will not pose an unreasonable risk of injury to health or the environment. The Regional Administrator may request other information that he or she believes to be necessary for an evaluation of the alternate disposal method. In approving a disposal method or location for non-remediation wastes, the Regional Administrator may consider:

(i) The ability of the proposed method or location of disposal to destroy PCBs or isolate PCBs from the environment.

(ii) The environmental sensitivity of the proposed disposal site for any proposed land disposal of treated or untreated PCB non-remediation wastes.

(iii) Other applicable Agency guidelines, criteria, and regulations to ensure that the wastes are adequately controlled to protect the environment.

(2) Any risk-based disposal approval by the Regional Administrator shall be in writing, may contain any appropriate limitations on the approved method or location for disposal, and may impose PCB source identification and other requirements to control the level and variability of contamination in the waste stream.

(3) The person to whom such risk-based disposal approval is issued must comply with all conditions and limitations contained in the approval.

§761.63 Household waste disposal.

Household waste as defined at §761.3 may be disposed of in a facility permitted, licensed, or registered by a State to manage municipal or industrial solid waste or in an industrial furnace as defined in §761.3 and operated in compliance with the requirements of §761.60(a)(4).

§761.64 Disposal of wastes generated as a result of the chemical analysis of PCBs.

This section provides disposal requirements for wastes generated at a chemical analysis laboratory during the process of the analysis of samples containing PCBs. For determining the presence of PCBs in samples, chemical analysis includes: sample preparation, sample extraction, extract cleanup, extract concentration, addition of PCB standards, and instrumental analysis. These wastes may be regulated for disposal under other applicable Federal, State, and local laws or regulations.

(a) Portions of samples extracted for purposes of determining the presence of PCBs or concentration of PCBs are unregulated for purposes of PCB disposal.

(b) Aqueous rinse solvents may be filtered through charcoal filters, the filters disposed of as non-liquid PCBs according to §761.62, and the filtered water disposed of according to §761.79(a) and (h).

(c) Non-liquid wastes which do not exceed a volume of 54 cubic feet or a weight of 1,000 kg per year are regulated for disposal according to §761.61(a)(5)(i)(B)(*1*). Additional quantities of this waste may be decontaminated according to §761.79 or disposed of without decontamination according to the highest PCB concentration in the original sample materials.

(d) Organic solvents used for the extraction of PCBs during chemical analysis may be distilled and reused in chemical analysis laboratories without prior approval, and subject to the following procedures, conditions, and limitations:

(1) The distillation shall be conducted in the analytical laboratory or an adjacent room.

(2) The maximum distillation rate is 4 liters per hour.

(3) The maximum volume of all solvents containing PCBs in storage at any one time for distillation under this section is 100 liters.

(4) The final PCB concentration of each batch of distilled solvent, not to exceed 10 liters in volume, does not exceed the level set in §§761.79(a) through (h).

(5) PCBs separated from these waste solvents (usually in the form of still bottoms) are regulated for disposal according to §§761.60(a)(1) through (a)(3).

(6) The distillation apparatus may be reused indefinitely in the laboratory under this section without decontamination.

(7) If the distillation unit is removed from service as a distillation apparatus under this section, is dismantled, or is not used for a period of 90 days, then the distillation unit shall be decontaminated in accordance with the standards and procedures in §761.79. All decontamination wastes including contaminated solvents, still bottoms, and decontamination solid wastes shall be disposed of in accordance with the applicable procedures and standards in §§761.79, 761.60(a)(1) through (a)(3), and 761.62, respectively.

(e) Sulfuric acid and elemental mercury used in the cleanup of sample extracts and containing less than 2 ppm PCBs is not regulated for disposal under TSCA.

12. In §761.65 by revising paragraphs (a), (b) introductory text, (b)(1)(ii), (b)(1)(iv), and by adding paragraph (b)(2); by revising paragraph (c)(1)(iv), by removing and reserving paragraph (c)(2), by removing the term "facilities" and substituting the term "units" in paragraph (c)(4), by revising paragraphs (c)(5), (c)(6), (c)(7) introductory text, and (c)(8); by removing the term "facility" and substituting the term "unit" in paragraph (d)(2)(iii), by redesignating paragraph (g)(7) as (g)(8) and by adding new paragraphs (g)(7) and (g)(9); by redesignating paragraph (j) as paragraph (k) and adding a new paragraph (j), to read as follows:

§761.65 Storage for Disposal.

* * * * *

(a)(1) *Storage limitations.* Any PCBs or PCB Items stored for disposal after January 1, 1983, shall be removed from storage and disposed of as required by subpart D of this part within 1 year from the date of removal from service for disposal.

(2) *One-year extension.* Any persons storing PCB waste that is subject to the 1–year time limit for storage and disposal in paragraph (a)(1) of this section may provide written notification to the Regional Administrator for the Region in which the PCB waste is stored that they have been unsuccessful in their continuing attempts to dispose of or secure disposal for their waste within the 1–year time limit. Upon receipt of the notice by the Regional Administrator, the time for disposal is automatically extended by action of this section for 1 additional year (2 years total) if the following conditions are met:

(i) The notification is received by the Regional Administrator at least 30 days before the expiration of the initial 1–year time limit and it identifies the storer, the types, volumes, and location of the waste and the reasons for failure to meet the initial 1–year time limit.

(ii) A written record documenting all continuing attempts to secure disposal is maintained until the waste is disposed of.

(iii) The written record required by paragraph (a)(2)(ii) of this section is available for inspection or submission if requested, by the Agency.

(iv) Continuing attempts to secure disposal must have been initiated within 30 days of the time the waste is first subject to the 1–year time limit requirement (i.e., the date of removal from service for disposal). A claim that disposal costs are prohibitive or failure to initiate and continue attempts to secure disposal throughout the total time the waste is in storage shall automatically disqualify the notifier from receiving an automatic extension under this section.

(3) *Additional extensions.* Upon written request, the Regional Administrator for the Region in which the wastes are stored may grant at any time, additional extensions beyond the One-year extension authorized in paragraph (a)(2) of this section. At the time of the request, the requestor must supply specific justification for the additional extension and indicate what measures the requestor is taking to secure disposal of the waste or indicate why disposal could not be conducted during the period of the prior extension. The Regional Administrator may require, as condition to granting any extension under this section, specific actions including, but not limited to, marking, inspection, recordkeeping, or financial assurance to ensure that the waste does not pose an unreasonable risk of injury to health or the environment.

(4) *Storage at an approved facility.* Extensions under paragraph (a)(1) of this section, may be granted as a condition of any TSCA PCB Disposal approval, by the Regional Administrator for the Region in which the PCBs or PCB Items are to be stored or the Director, Chemical Management Division (CMD), as appropriate, if the Regional Administrator or Director, CMD determines that there is a demonstrated need or justification for such extension and that no unreasonable risk of injury to health or the environment will result. Criteria for extending the 1–year time limit for storage and disposal include, but are not limited to, lack of disposal capacity, the absence of a treatment technology, or insufficient time to complete the treatment/destruction process and a demonstration that relevant treatment or disposal options are being pursued. In granting such extensions, the Regional Administrator or the Director, CMD may require the submission of any information the Regional Administrator or the Director, CMD believes is necessary for an evaluation of the requested extension and periodic progress reports that demonstrate that appropriate treatment or disposal options are being pursued.

(b) Except as provided in paragraphs (b)(2), (c)(1), and (c)(7) of this section, after July 1, 1978, owners or operators of any facilities used for the storage of PCBs and PCB Items designated for disposal shall comply with the following storage unit requirements:

(1) * * *

(ii) An adequate floor that has continuous curbing with a minimum 6 inch high curb. The floor and curbing must provide a containment volume equal to at least two times the internal volume of the largest PCB Article or PCB Container or 25 percent of the total internal volume of all PCB Articles or PCB Containers stored therein, whichever is greater. PCB/fissionable radioactive wastes are not required to have a minimum 6 inch high curbing.

However, the floor and curbing must still provide a containment volume equal to at least two times the internal volume of the largest PCB Container or 25 percent of the total internal volume of all PCB Containers stored therein, whichever is greater.

* * * * *

(iv) Floors and curbing constructed of Portland cement, concrete, or continuous smooth and non-porous materials such as steel to prevent or minimize penetration of PCBs.

* * * * *

(2) PCBs and PCB Items designated for disposal may be stored in a hazardous waste container management unit:

(i) Permitted by EPA under section 3004 of RCRA; or

(ii) Permitted by a State authorized under section 3006 of RCRA to manage hazardous waste in containers; or

(iii) In a unit approved or otherwise regulated by a State under a law regulating PCBs similar to TSCA.

(c)(1) * * *

(iv) PCB containers containing liquid PCBs at concentrations of 50 ppm or greater, provided a Spill Prevention, Control and Countermeasure Plan has been prepared for the temporary storage area in accordance with 40 CFR part 112 and the liquid waste is in Department of Transportation (DOT) specification containers or stationary bulk storage tanks (excluding rolling stock such as, but not limited to, tanker trucks).

(2) [Reserved]

* * * * *

(5) All PCB Items in storage shall be checked for leaks at least once every 30 days. Any leaking PCB Items and their contents shall be transferred immediately to properly marked nonleaking containers. Any spilled or leaked materials shall be immediately cleaned up and the materials and residues containing PCBs shall be disposed of in accordance with §761.61(b). Records of inspections, maintenance, cleanup and disposal must be maintained in accordance with §761.180(a) and (b).

(6) Except as provided in paragraph (c)(6)(i) of this section, any container used for the storage of liquid or non-liquid PCBs shall be in accordance with the requirements set forth in the Department of Transportation Hazardous Materials Regulations (HMR) at 49 CFR parts 171–180. PCBs not subject to the HMR (i.e., PCB wastes at concentrations of 20 ppm or less than 1 pound of PCBs regardless of concentration) must be packaged in accordance with 49 CFR 173.203 (for liquids) or 173.213 (for non-liquids). For purposes of describing PCBs not subject to DOT's HMR on a manifest, one may use the term "Non-DOT Regulated PCBs".

(i) Containers other than those meeting DOT performance standards may be used for storage of PCB/fissionable radioactive waste provided the following requirements are met:

(A) Containers used for storage of liquid PCB/fissionable radioactive wastes must be non-leaking.

(B) Containers used for storage of non-liquid PCB/fissionable radioactive wastes may need to be designed to prevent the buildup of liquids if such containers are stored in an area which meets the containment requirements of paragraph (b)(1)(ii) of this section and all other applicable State or Federal radiation protection regulations or requirements.

(C) Containers used to store both liquid and non-liquid PCB/fissionable radioactive wastes must be designed to meet Nuclear Criticality Safety requirements specified in the ANSI Standard No. 8.1, American National Standard for Nuclear Criticality Safety in Operations with Fissile Materials Outside Reactors (American National Standard Institutes, 11 W. 42nd St., New York, New York 10036). Acceptable container materials currently include polyethylene and stainless steel provided that the container material is chemically compatible with the wastes being stored. Other containers may be used to store both liquid and non-liquid PCB/fissionable radioactive wastes if the users are able to demonstrate, to the appropriate Regional Administrator and/or the Nuclear Regulatory Commission, that the use of such containers is protective of health and the environment as well as public health and safety.

(ii) [Reserved]

(7) Stationary storage containers for liquid PCBs can be larger than the containers specified in paragraph (c)(6) of this section provided that:

* * * * *

(8) PCB Items shall be dated on the item when they are removed from service for disposal. The storage shall be managed so that the PCB Items can be located by the date they were removed from service for disposal. Storage containers provided in paragraph (c)(7) of this section, shall have a record that includes for each batch of PCBs the quantity of the batch and date the batch was added to the container. The record shall also include the date, quantity, and disposition of any batch of PCBs removed from the container. (See also record retention requirements at § 761.180.)

* * * * *

(g) * * *

(7) The "non-corporate parent guarantee" as specified in §264.143(f)(10) of this chapter.

* * * * *

(9) When a modification, such as an increase in storage capacity, to a commercial storage facility occurs that warrants establishing a new financial assurance mechanism or amending an existing financial assurance mechanism, the new or revised financial assurance mechanism must be established and activated no later than 30 days after the Regional Administrator (or Director, Chemical Management Division (CMD)) is notified of the completion of the modification to the facility, but prior to use of the modified portion of the facility. The Regional Administrator (or Director, CMD) must be notified in writing no later than 7 days from the completion of the modification to the facility.

* * * * *

(j) *Changes in ownership or operational control of a commercial storage facility.* The date of transfer of interim status or final approval shall be the date the Regional Administrator (or Director, Chemical Management Division) provides written notice of such transfer. The Agency will recognize the transfer of interim status or final approval for commercial storage facilities if all the following conditions are met:

(1) The transferee demonstrates it has established, by the date of transfer, financial assurance for closure pursuant to paragraph (g) of this section using a mechanism effective as of the date of final approval so that there will be no lapse in financial assurance for the transferred facility.

(2) The transferee submits a new and complete application for final storage approval including all the elements listed in paragraph (d) of this section.

(3) The transferor or transferee resolves any deficiencies (e.g., technical operations, closure plans, cost estimates, etc.) the Agency has identified in the application of the transferor.

* * * * *

13. Section 761.67 is added to subpart D to read as follows:

§761.67 Storage for reuse.

(a) Any PCB Article may be stored for reuse in an area which is not designed, constructed and operated in compliance with §761.65(b), for no more than 3 years from the date it was originally

removed from use (i.e., service) or 3 years from [insert the effective date of the final rule], whichever is later, subject to the following conditions:

(1) All requirements applicable to the PCB Article stored for reuse are followed.

(2) The PCB Article is labelled and records maintained, starting at the time the PCB Article is removed from use or [insert the effective date of the final rule]. The label and records must indicate:

(i) The date the PCB Article was removed from use or[insert the effective date of the final rule] if the date it was removed from service is not known.

(ii) The projected location and the future use of the Article.

(iii) If applicable, the date the Article is scheduled for repair or servicing.

(b) Any PCB Article may be stored for reuse in an area that does not comply with §761.65(b) for a period longer than 3 years, provided that the owner or operator of the Article has requested and received written approval from the Regional Administrator for the Region in which the Article is located. Requests for extensions must be submitted to the Regional Administrator at least 6 months prior to the expiration of the storage for reuse period and shall include a justification, on an item-by-item basis, for the desired extension. The Regional Administrator is authorized to attach any conditions to such approval as deemed necessary to protect health or the environment. The PCB Articles to be stored for reuse shall be subject to the other applicable provisions of this part, including the record retention requirements at §761.180(a).

14. In §761.75 by removing the term "facility" and substituting the term "unit" in paragraphs (b)(7)(i), (ii) and (iii) and by revising paragraph (b)(8)(ii) to read as follows:

§761.75 Chemical waste landfills.

* * * * *

(b) * * *

(8) * * *

(ii) An operation plan shall be developed and submitted to the Regional Administrator for approval as required in paragraph (c) of this section. This plan shall include detailed explanations of the procedures to be used for recordkeeping, surface water handling procedures, excavation and backfilling, waste segregation burial coordinates, vehicle and equipment movement, use of roadways, leachate collection systems, sampling and monitoring procedures, monitoring wells, environmental emergency contingency plans, and security measures to protect against vandalism and unauthorized waste placements. EPA guidelines entitled "Thermal Processing and Land Disposal of Solid Waste" (39 FR 29337, Aug. 14, 1974, available from the U.S. Government Printing Office, Washington, DC 20401) are a useful reference in preparation of this plan.

* * * * *

15. By adding §761.77 to subpart D to read as follows:

§761.77 Coordinated approval.

(a) *General requirements.* Notwithstanding any other provision of this part, the EPA Regional Administrator for the Region in which a PCB disposal or PCB commercial storage facility described in paragraphs (b) through (g) of this section is located may issue a TSCA PCB Coordinated Approval to the persons described in those paragraphs if the conditions listed in this section are met. A TSCA PCB Coordinated Approval will designate the persons who own and who are authorized to operate the facilities described in paragraphs (b) through (g) of this section and will apply only to such persons. All requirements, conditions, and limitations of any other permit or waste management document described in those paragraphs are deemed to be conditions of the TSCA PCB Coordinated Approval whose violation is a prohibited act under section 15 of TSCA.

(1) Persons seeking a TSCA PCB Coordinated Approval shall submit a request for approval by certified mail, return receipt requested, to the Regional Administrator for the Region in which the activity will take place. Persons seeking a TSCA PCB Coordinated Approval for a new PCB activity shall submit the request for approval at the same time they seek a permit, approval, or other action for a PCB waste management activity under any other Federal or State authority.

(i) The request for approval shall include a copy of the letter from EPA announcing or confirming the EPA ID Number issued to the facility for conducting PCB activities; the name, organization, and telephone number of the individual who is the point of contact for the non-TSCA Federal, State, or local permitting authority; a description of the waste management activities to be conducted if a permit or other relevent waste management document has not been issued; a copy of the relevant permit or waste management document specified in paragraphs (b) through (g) of this section; and a certification that the person who owns or operates the facility is aware of and will adhere to the TSCA PCB reporting and recordkeeping requirements at subparts J and K of this part. When a permit or other waste management document has been issued for the PCB waste activity, a final copy of the non-TSCA document that will be used during the PCB activity, including all requirements, conditions, and limitations, shall be submitted to the Regional Administrator. This requirement may be waived, in writing, by the Regional Administrator.

(ii) The Regional Administrator shall confirm receipt of the request for approval.

(iii) The Regional Administrator shall review the request for approval for completeness, for compliance with the requirements of paragraphs (b) through (g), and to ensure that the PCB activity for which approval is requested will not present an unreasonable risk of injury to health or the environment. The Regional Administrator shall either:

(A) Issue a written notice of deficiency explaining why the request for approval is deficient. In addition, the Regional Administrator shall either:

(*1*) Request additional information, or

(*2*) Deny the request for approval and require the person who owns or operates the PCB facility to submit an application for a TSCA PCB approval;

(B) Issue a notice of TSCA PCB Coordinated Approval acknowledging the non-TSCA approval meets the regulatory requirements under TSCA as written; or

(C) Issue a notice of TSCA PCB Coordinated Approval that includes additional conditions that are necessary to implement other sections of part 761 or that address the Regional Administrator's concerns associated with potential risks of injury to health or the environment.

(2) If the Regional Administrator determines that conditions of the approval are not met, the Regional Administrator may issue a notice of deficiency, revoke the TSCA PCB Coordinated Approval, or require the person to whom the TSCA PCB Coordinated Approval was issued to submit an application for a TSCA PCB approval. Such a determination could be based on, but would not necessarily limited to the following:

(i) Compliance with paragraphs (b) through (g) of this section.

(ii) Operation of the approved process in a manner which may result in an unreasonable risk of injury to health or the environment.

(iii) Failure to comply with, expiration of, or revocation of the non-TSCA approval or of the program under

which the nonTSCA approval was issued.

(iv) For CERCLA actions, completion of requirements conducted pursuant to a Record of Decision (ROD) or enforcement decision document or failure of the owner or operator to comply with conditions of the ROD.

(3) The Regional Administrator shall cease to recognize the non-TSCA approval as being the equivalent of a TSCA PCB approval after a TSCA PCB approval has been issued for the facility.

(b) *Land disposal facilities.* The person who owns or operates a land disposal facility, that accepts PCB wastes and requires an approval under subpart D of this part, shall have a TSCA PCB Coordinated Approval if the person:

(1)(i) Has a permit issued by EPA or an authorized State Director under the Solid Waste Disposal Act as amended by the Hazardous and Solid Waste Amendments of 1984, section 3005(a) and 40 CFR parts 270 and 271, and is in compliance with all permit conditions based on the requirements of 40 CFR part 264, subpart N; or

(ii) Has a permit issued by a State Director pursuant to a State PCB disposal program no less stringent than the TSCA requirements found in this part;

(2) Complies with the conditions of that permit.

(3) Complies with the chemical waste landfill requirements at §761.75(b).

(4) Complies with the reporting and recordkeeping requirements in subparts J and K of this part.

(c) *Incinerator.* The person who owns and operates facilities used to incinerate PCB wastes may operate the facility under a TSCA PCB Coordinated Approval if the person:

(1)(i) Has a permit issued by EPA or an authorized State Director under the Solid Waste Disposal Act as amended by the Hazardous and Solid Waste Amendments of 1984, section 3005(a) and 40 CFR parts 270 and 271, and is in compliance with the requirements at subpart O of 40 CFR 264.340 et seq.; or

(ii) Has a permit issued by a State Director pursuant to a State PCB disposal program no less stringent than the requirements in this part.

(2) Complies with the conditions of that permit.

(3) Complies with the incineration requirements at §761.70(a)(1) through (9), (b)(1) and (2) and (c).

(4) Complies with the reporting and recordkeeping requirements in subparts J and K of this part.

(d) *Research and development.* Persons conducting research and development (R&D) into PCB disposal methods (regardless of PCB concentration), may conduct R&D under a TSCA PCB Coordinated Approval if the person:

(1)(i) Has a permit issued by EPA or an authorized State Director under the Solid Waste Disposal Act as amended by the Hazardous and Solid Waste Amendments of 1984, section 3005(a) and 40 CFR parts 270 and 271, and is in compliance with all permit conditions based on the requirements of 40 CFR parts 264 and 270.65, (or)

(ii) Has a permit issued by a State Director pursuant to a State PCB disposal program no less stringent than the requirements in this part.

(2) Complies with the conditions of that permit.

(3) Complies with the reporting and recordkeeping requirements in subparts J and K of this part.

(e) *Alternate disposal technologies.* Any person operating an alternative disposal method that provides PCB destruction equivalent to disposal in a §761.70 incinerator or a §761.60 high efficiency boiler and will not present an unreasonable risk of injury to health or the environment may operate under a TSCA PCB Coordinated Approval if the person:

(1) Has a permit issued by a State Director pursuant to a State PCB disposal program no less stringent than the requirements in this part.

(2) Complies with the conditions of that permit.

(3) Complies with the reporting and recordkeeping requirements in subparts J and K of this part.

(f) *Commercial storage facility.* The person who owns and operates commercial storage facilities used to store PCB wastes and is required to have an approval under subpart D of this part, shall have a TSCA PCB Coordinated Approval if the person:

(1)(i) Has a permit issued by the EPA or an authorized State Director under the Solid Waste Disposal Act as amended by the Hazardous and Solid Waste Amendments of 1984, section 3005(a) and 40 CFR parts 270 and 271, and is in compliance with all permit conditions based on the requirements at 40 CFR part 264, subparts J, K and L, or

(ii) Has a permit issued by a State Director pursuant to a State PCB disposal program no less stringent than the requirements in this part.

(2) Complies with the conditions of that permit.

(3) Complies with the storage requirements of §§761.65(a), (c), (d)(2).

(4) Complies with the reporting and recordkeeping requirements in subparts J and K of this part.

(g) *Site remediation.* Any person conducting a cleanup of PCB remediation waste may conduct the cleanup under a TSCA PCB Coordinated Approval if the person:

(1)(i) Has a permit issued by EPA or an authorized State Director under the Solid Waste Disposal Act as amended by the Hazardous and Solid Waste Amendments of 1984, section 3005(a) and 40 CFR parts 270 and 271, and is in compliance with all permit conditions based on the requirements of 40 CFR part 264 et seq.,

(ii) Has a permit issued by a State Director pursuant to a State PCB disposal program, or

(iii) Is conducting a remedial action under CERCLA as amended, pursuant to a signed record of decision, consent order or decree.

(2) Complies with the conditions of that permit, record of decision, consent order or decree.

(3) Complies with the reporting and recordkeeping requirements in subparts J and K of this part.

16. In §761.79 by adding an introductory paragraph, redesignating paragraphs (a) and (b) as (b) and (c), respectively, adding new paragraphs (a), (d), (e), (f), (g), and (h) to read as follows:

§761.79 Decontamination.

Solvents and other decontamination materials shall meet all use, safety, health, and disposal standards as required by applicable Federal, State, and local laws and regulations. Compliance with the standards and procedures for decontamination in this section does not provide relief or protection from any other applicable Federal, State, or local laws and regulations.

(a) The purpose of this section is to establish for this part, regulatory levels and self-implementing or standardized decontamination levels and procedures for removing PCBs from equipment, structures, non-porous surfaces, liquids or other materials to allow for reuse. Any person conducting a decontamination activity under this section becomes a new generator of a PCB waste.

(1) For purposes of decontamination under this section, the solubility of PCBs in any solvent used must be 5 percent or more by weight. The solvent may be reused for decontamination until it contains 50 ppm PCBs. All hydrocarbon solvent used or reused for decontamination under this section that contains <50 ppm PCB may be burned and marketed in accordance with the requirements for waste oil as promulgated in §761.20(e) or decontaminated pursuant to this

section. All chlorinated solvent at any concentration or other solvents ≧50 ppm PCB used for decontamination under this section shall be disposed of as a PCB in accordance with §761.60(a) or decontaminated pursuant to this section. All other liquid or non-liquid PCBs resulting from decontamination under this section and not otherwise regulated for disposal shall be disposed of in accordance with the provisions of §761.60(a)(1) through (a)(3) or §761.61(a)(5)(i)(B), respectively, or decontaminated pursuant to this section.

(2) All equipment, structures, surfaces, liquids, or other materials decontaminated in accordance with the procedures and standards of this section may be distributed in commerce or used in accordance with the provisions of §761.20(c)(5) or (6).

(3) A written record must be established and maintained for a period of 3 years from the date of any decontamination under this section. The record must show sampling locations and analytical results and must be retained at the site of the decontamination or a copy of the record must be made available to EPA in a timely manner, if requested. This recordkeeping requirement does not apply when sampling is not required under this section.

(4) For purposes of decontamination under this section, filtering, soaking, wiping, stripping of insulation, chopping, scraping or the use of abrasives to remove or separate PCBs from contaminated surfaces or liquids does not require a disposal approval under subpart D of this part.

(5) Any person conducting decontamination activities under this section shall take measures to ensure that no solvent, dust or particulate emissions containing PCBs are released to the environment from the decontamination area. Workers shall wear or use protective clothing or equipment to protect against direct dermal contact or inhalation of PCBs or materials containing PCBs.

* * * * *

(d) The decontamination standard for non-porous surfaces is less than or equal to 10 micrograms PCB/100 square centimeters (≦10 μg/100cm²) as measured by a standard wipe test (§761.123).

(e) Any non-porous surface in contact with free flowing mineral oil dielectric fluid (MODEF) at levels equal to or less than 10,000 ppm PCBs (≦ 10,000 ppm PCB) may be decontaminated as follows:

(1) Drain the free flowing MODEF and allow the residual surfaces to drain for an additional 15 hours.

(2) Dispose of drained MODEF according to §761.60.

(3) Submerge and soak the contaminated or potentially contaminated surfaces in sufficient clean (containing less than 2 ppm PCBs (<2 ppm PCBs)) kerosene such that there is a minimum of 800 milliliters (ml) of kerosene for each 100 square centimeters (cm²) of contaminated or potentially contaminated surface for at least 15 hours at room temperature (20° C or greater).

(4) Drain the kerosene from the surfaces.

(5) Dispose of the drained kerosene in accordance with paragraph (a)(1) of this section.

(6) Confirmatory sampling is not required, but any person using this section to claim that a surface is decontaminated must be able to substantiate that claim with records, photographs, video recordings, or other forms of documentation.

(f) Any non-porous surface in contact with free flowing MODEF containing greater than 10,000 ppm PCB (>10,000 ppm PCB) in MODEF or askarel PCB (up to 70 percent PCB in a mixture of trichlorobenzenes and tetrachlorobenzenes) may be decontaminated as follows:

(1) Drain the free flowing MODEF or askarel and allow the residual surfaces to drain for an additional 15 hours.

(2) Dispose of drained MODEF or askarel according to §761.60.

(3) Submerge and soak the contaminated or potentially contaminated surfaces in sufficient clean kerosene (containing <2 ppm PCBs) such that there is a minimum of 800 ml of kerosene for each 100 cm² of contaminated or potentially contaminated surface for at least 15 hours at room temperature (20° C or greater).

(4) Drain the kerosene from the surfaces.

(5) Dispose of the drained kerosene in accordance with paragraph (a)(1) of this section.

(6) Submerge and soak the surfaces previously submerged, soaked, and drained pursuant to paragraph (f)(3) of this section in sufficient clean kerosene such that there is a minimum of 800 ml of kerosene for each 100 cm² of surface for at least 15 hours at 20° C.

(7) Drain the kerosene from the surfaces.

(8) Dispose of the drained kerosene in accordance with paragraph (a) of this section.

(9) Confirmatory sampling is not required, but anyone using this section to claim that a surface is decontaminated must be able to substantiate that claim.

(g) The decontamination standard for water containing PCBs is less than or equal to 0.5 micrograms per liter (i.e., approximately ≦0.5 parts per billion (ppb)) PCBs.

(h) The decontamination standard for organic liquids containing PCBs, except for PCB remediation wastes, is less than 2 milligrams per liter (i.e., approximately <2 parts per million (ppm)) PCBs.

17. In §761.80, by adding paragraph (e); by revising paragraphs (g); by adding paragraph (i); by revising paragraphs (n) and (o); and by adding paragraph (p) to read as follows:

§761.80 Manufacturing, processing, and distribution in commerce exemptions.

* * * * *

(e) The Administrator grants a class exemption to all research and development (R&D) facilities for a period of 1 year to manufacture PCBs, provided such manufacturing activities do not exceed 454 grams (or 1 lb) of PCBs and the manufactured PCBs are used solely in a facility's own research for the development of PCB disposal technologies, provided the following conditions are met:

(1) A petition for an exemption from the PCB prohibition on manufacturing PCBs must be received by EPA by [insert date 60 days from the effective date of the final rule] or 60 days prior to engaging in these activities.

(2) The Regional Administrator must be notified in writing 30 days prior to the commencement of any R&D activity authorized under this section. This notification requirement shall be waived if the EPA has issued a TSCA PCB R&D Approval pursuant to §§761.60(e) and (i)(2), and §§761.70(a) or (b) that contains a provision regarding the manufacture of PCBs.

(3) Requests for renewal must be filed pursuant to 40 CFR 750.11. EPA will deem any properly filed request for the renewal of the exemption by any member of the class as a renewal request for the entire class.

* * * * *

(g) The Administrator grants a class exemption to all processors and distributors (including distribution for purposes of export) of limited quantities of PCBs used for R&D in accordance with §761.30(j) provided that the following conditions are met:

(1) All processors and distributors must maintain records of their PCB activities for a period of 3 years after ceasing processing and distribution operations. The records must include the sources of the PCBs, the person to

whom the PCBs were shipped, and the amounts of PCBs received, processed, and distributed in commerce annually.

(2) The quantity of PCBs processed or distributed annually must not exceed 100 grams (.22 lb). Any person or company which expects to process or distribute in commerce more than 100 grams (.22 lb) of PCBs in 1 year must request approval from the Director, Chemical Management Division to exceed the limitation established by this provision and must identify the sites of PCB activities and the quantity of PCBs to be processed or distributed in commerce.

(3) The PCBs are packaged in one or more hermetically sealed containers of a volume of no more than 5.0 milliliters each.

(4) The PCBs are used only for purposes of scientific experimentation or analysis, or chemical research on, or analysis of PCBs, but not for research or analysis for the development of a PCB product.

* * * * *

(i) The Administrator grants a class exemption to all processors and distributors of limited quantities of media containing PCBs for research and development, provided the following conditions are met:

(1) Notification in the form of a petition for an exemption from the PCB prohibitions on processing and distributing PCBs in commerce must be received by EPA by [insert date 60 days from the effective date of the final rule] or 60 days prior to engaging in these activities.

(2) The quantity of PCBs processed or distributed annually in contaminated media must not exceed 100 grams by total weight of pure PCBs.

(3) For a period of 3 years after ceasing processing and distribution operations, all processors and distributors must maintain records of their PCB activities that include: the sources of the PCBs, the persons to whom the PCBs were shipped, and the amounts of PCBs received, processed, and distributed in commerce annually.

(4) All PCB materials must be distributed in DOT-authorized packaging.

(5) All treated and untreated regulated material and material coming into contact with regulated material must be disposed of in an approved PCB disposal facility according to subpart D of this part.

* * * * *

(n) The 1–year exemption granted to petitioners in paragraphs (a) through (c)(1), (d), (f), and (m)(1) through (m)(6) of this section shall be renewed automatically as long as there is no increase in the amount of PCBs to be processed and distributed, imported (manufactured), or exported, nor any change in the manner of processing and distributing, importing (manufacturing), or exporting of PCBs. If there is such a change, a new exemption petition must be submitted to EPA and it will be addressed through rulemaking. In such a case, the activities granted under the existing exemption may continue until the new petition is addressed by rulemaking, but must conform to the terms of the existing exemption approved by EPA. The 1–year exemption granted to petitioners in paragraphs (c)(2), (e), (h) and (m)(7) of this section may be extended pursuant to §750.11(e) or §750.31(e).

(o) The 1–year class exemption granted to all processors and distributors of PCBs in limited quantities for use as standards in chemical analysis in paragraph (g) of this section shall be renewed automatically. The Director, Chemical Management Division may grant approval, without further rulemaking, to any processor and distributor in paragraph (g) of this section, to increase the quantities of PCBs that are processed or distributed in commerce pursuant to paragraph (g)(2) of this section.

(p) The 1–year class exemption granted to all processors of limited quantities of media containing PCBs for research and development in paragraph (i) of this section shall be renewed pursuant to §750.31(e)(1). EPA will deem any properly filed request for the renewal of the exemption by any member of the class as a renewal request from the entire class. The Director, Chemical Management Division may grant approval, without further rulemaking, to any processor and distributor in paragraph (i) of this section, to increase the amount of PCBs processed or distributed under this exemption.

§ 761.125 [Amended]

18. In §761.125, by amending paragraph (a)(1) introductory text to revise the phrase "under the National Contingency Plan all spills involving 10 pounds or more" to read "under the National Contingency Plan all spills involving 1 pound or more".

§ 761.180 [Amended]

19. By amending §761.180 as follows:

a. By changing the references in paragraph (e)(1) to "§761.60(a)(2)(iii)(A)(*8*) and §761.60(a)(3)(iii)(A)(*8*)" to read "§761.60(a)(2)(ii)(A)(*8*)" and "§761.60(a)(3)(ii)(A)(*8*)", respectively.

b. By changing the references in paragraph (e)(2) to "§761.(a)(2)(iii)(A)(*7*) and §761.60(a)(3)(iii)(A)(*7*)" to read "§761.60(a)(2)(ii)(A)(*7*)" and "§761.60(a)(3)(ii)(A)(*7*)", respectively.

c. By changing the reference in paragraph (e)(3) to "§761.60(a)(3)(iii)(B)(*6*)" to read "§761.60(a)(3)(ii)(B)(*6*)".

20. Section 761.180 is further amended by adding paragraphs (a)(1)(iii), (a)(1)(iv), (a)(2)(ix) and paragraphs (b)(1)(iii) and (b)(1)(iv), and by revising paragraph (b)(3) introductory text to read as follows:

§761.180 Records and Monitoring.

* * * * *

(a) * * *

(1) * * *

(iii) Records of inspections and cleanups performed in accordance with § 761.65(c)(5).

(iv) A current recorded inventory of PCBs and PCB Items in storage for disposal must be maintained on site at the storage unit and must be made available for inspection upon request by authorized representatives of EPA.

(2) * * *

(ix) Whenever a PCB Item, excluding small capacitors, with a concentration of 50 ppm or greater is distributed in commerce for reuse pursuant to §761.20(c)(1), the name, address, and telephone number of the person to whom the item was transferred, date of transfer, and the serial number of the item or the internal identification number, if a serial number is not available, must be recorded in the annual document log. The serial number or internal identification number shall be permanently marked on the equipment.

(b) * * *

(1) * * *

(iii) Records of inspections and cleanups performed in accordance with § 761.65(c)(5).

(iv) A recorded inventory of PCBs and PCB Items currently in storage for disposal must be maintained on site at the unit, and must be made available for inspection, upon request by authorized representatives of EPA.

* * * * *

(3) The owner or operator of a PCB disposal facility (including an owner or operator who disposes of its own waste and does not receive or generate manifests) or a commercial storage facility shall submit an annual report, that briefly summarizes the records and annual document log required to be maintained and prepared under paragraphs (b)(1) and (b)(2) of this section to the Regional Administrator of the Region in which the facility is

located by July 15 of each year, beginning with July 15, 1991. The first annual report submitted on July 15, 1991, shall be for the period starting February 5, 1990, and ending December 31, 1990. The annual report shall contain no confidential business information. The annual report shall consist of the information listed in paragraphs (b)(3)(i) through (b)(3)(vi) of this section.

* * * * *

21. In §761.205, by adding paragraph (f) to read as follows:

§761.205 Notification of PCB waste activity (EPA Form 7710–53).

* * * * *

(f) When a facility has previously notified EPA of its PCB waste handling activities using EPA Form 7710–53 and those activities change, the facility must resubmit EPA Form 7710–53 to reflect those changes no later than 5 working days from when a change is made. Examples of when a PCB waste handler must renotify the Agency include, but are not limited to the following: the company stops handling PCB waste; the company changes location of the facility; or the company had notified solely as a commercial storer of PCB waste and now wishes to engage in another PCB waste activity (e.g., transporting PCB waste).

22. In §761.207, by revising paragraph (j) to read as follows:

§761.207 The manifest — general requirements.

* * * * *

(j) The requirements of this section apply only to PCB wastes as defined in § 761.3. This includes PCB wastes with PCB concentrations below 50 ppm where the PCB concentration below 50 ppm was the result of dilution; these PCB wastes are required under § 761.1(b) to be managed as if they contained PCB concentrations of 50 ppm and above. An example of such a PCB waste is spill cleanup material containing less than 50 ppm PCBs when the spill involved material containing PCBs at a concentration of 50 ppm or greater. However, there is no manifest requirement for material currently below 50 ppm which derives from pre-April 18, 1978, spills of any concentration, pre-July 2, 1979, spills of less than 500 ppm PCBs, or materials decontaminated in accordance §761.20(c)(5) of this part.

23. In §761.215, by revising the introductory text of paragraphs (b), (c), and (d) as follows:

§761.215 Exception Reporting.

* * * * *

(b) A generator or other persons subject to the manifesting requirements of PCB waste shall submit an Exception Report to the Regional Administrator for the Region in which the generator is located if the generator has not received a copy of the manifest with the hand written signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter. The exception report shall be submitted to EPA no later than 30 days from the date on which the generator should have received the manifest. The Exception Report shall include the following:

* * * * *

(c) A disposer of PCB waste shall submit a One-year Exception Report to the Regional Administrator for the Region in which the disposal facility is located no later than 30 days from the date the following occurs:

* * * * *

(d) The generator of PCB waste who manifests PCBs or PCB Items to a disposer of PCB waste shall submit a One-year Exception Report to the Regional Administrator for the Region in which the generator is located no later than 30 days from the date the following occurs:

* * * * *

24. By adding Appendices I, II and III to the end of part 761 to read as follows:

APPENDIX I. — Sample Site Selection, Sampling, and Analysis of Standard PCB Wipe Samples Taken for Purposes of Determining a PCB Concentration for Abandonment and Disposal of Natural Gas Pipeline

1.0 *Applicability and Scope*

1.1 These procedures apply to the selection of wipe sampling sites for natural gas pipe to be abandoned in place or disposed of off-site according to §761.60(b)(5).

1.2 Pipe or pipe segments always refers to natural gas pipe or segments of natural gas pipe.

1.3 Wipe sampling shall only be done when there are no free flowing liquids present.

2.0 *Definition of Standard Wipe Sample*

2.1 A standard wipe test is defined in §761.123. A standard wipe sample is generated for chemical analysis using the standard wipe test. The minimum surface area to be sampled shall be 100 square centimeters.

2.2 Guidance for wipe sampling appears in the document entitled "Wipe Sampling and Double Wash/Rinse Cleanup as Recommended by the Environmental Protection Agency PCB Spill Cleanup Policy," available from the TSCA Assistance Information Service, Enviromental Protection Agency, 401 M St., SW., Washington, DC 20460.

3.0 *Sample Site Selection*

3.1 There are three site selection parameters: position around the circumference of a selected pipe segment or pipe, position along the length of a selected pipe segment or pipe, and selection of a pipe segment from a length of pipe or population (group) of pipe segments.

3.2 Position around the circumference of a pipe segment or pipe.

3.2.1 When pipe or a pipe segment is accessed for sampling, the pipe shall be marked to identify the location of the bottom of the pipe or pipe segment when the natural gas pipeline was in service.

3.2.2 The inside center of the bottom of a pipe or pipe segment shall be sampled. The sample shall be centered on the bottom of the pipe, that is, the sample shall encompass an equal area on both sides of the middle of the bottom of the pipe for the entire length of the sample.

3.3 Position along the length of the pipe or pipe segment

3.3.1 The sample shall be taken 15 centimeters (6 inches) inside the end of a pipe or pipe segment at the bottom of the pipe or pipe segment as determined in procedure 3.2 of this appendix.

3.3.2 If the sample site location selected in procedure 3.3.1 of this appendix is a porous surface (for example, there is significant corrosion so as to shred the wipe material), then the sample site shall be moved inward (away from the end of the pipe or pipe segment) until there is no such porous surface.

3.3.3 There are three options in the event that there is no non-porous surface accessible by procedure 3.3.1 or 3.3.2 of this appendix.

3.3.3.1 The sample for that pipe or pipe segment shall only be taken at one end and a written notation documented in the sampling and analysis records as to why only one sample was taken.

3.3.3.2 Select another pipe segment using the random selection procedure in 3.4.2 of this appendix, or

3.3.3.3 In the event that there is no other pipe or pipeline in the population to be sampled and both ends of a pipe have porous surfaces at all possible sample collection sites, then the pipe segment or pipe shall be assumed to contain greater than 50 but less than 500 ppm PCBs.

3.4 Selection of a pipe segment from a length of pipe or population (group) of pipe segments.

3.4.1 For purposes of wipe sampling pipe segments, the segments shall not exceed 12.1 meters (40 feet) in length. In the event that a segment is longer than 12.1 meters in length, the segment shall be cut so that all resulting segments are 12.1 meters or less in length.

3.4.2 Pipe segments removed from the ground for disposal shall be sampled at each end.

3.4.2.1 When a length of pipe having seven or fewer segments is removed for purposes of disposal, samples shall be taken at each end of each segment removed.

3.4.2.2 When a length of pipe having multiple contiguous segments less than 3 miles in total length is removed for purposes of disposal, samples shall be taken at each end of the first and last segments removed

and each end of five randomly chosen segments in between. A total of seven segments shall be sampled.

3.4.2.3 When a length of pipe having multiple contiguous segments more than 3 miles in total length is removed for purposes of disposal, samples shall be taken at each end of the first segment and each end of each segment that is one-half mile distant from the segment previously sampled. A minimum of seven segments shall be sampled.

3.4.3 Sampling of Pipe to Be Abandoned in Place

3.4.3.1 Procedures in §761.60(b)(5)(iii)(B) shall be followed first to assure the absence of free flowing liquids.

3.4.3.2 Both ends of all pipe to be abandoned in place are to be sampled, samples shall be taken at each end of each pipe.

3.4.3.3 For abandonment of pipe exceeding 50 miles but less than 100 miles in length, an additional sample at the midpoint shall be taken. Sampling the midpoint sample may be taken by removing all covering soil and cutting the pipe to gain access to the sampling location in lieu of removing a segment of pipe.

3.4.3.4 For abandonment of pipe exceeding 100 miles in length, both ends and a point every 50 miles from the downstream (of the direction of the former gas flow) shall be sampled. Internal samples may be collected by removing any covering soil and cutting the pipe to gain access to the sampling location in lieu of removing segments of pipe.

4.0 *Chemical Analysis*

4.1 Sample Extraction and Chemical Analysis Procedures. Section 761.60(g) provides guidance on chemical analysis procedures. Extraction and cleanup of the extract shall be in accordance with applicable extraction and cleanup procedures for the analysis of PCB soil samples in SW–846, "Test Methods for Evaluating Solid Waste," which is available from either the National Technical Information Service (NTIS, U.S. Department of Commerce, 5285 Port Royal Rd, Springfield, VA 22161, telephone: (703) 487–4650) or the U.S. Government Printing Office (U.S. GPO, 710 No. Capitol St., NW., Washington, DC 20401, telephone: (202) 783–3238).

4.2 Reporting the PCB Concentrations in Samples. All sample concentrations shall be reported on the basis of micrograms of PCBs per 100 square centimeter of surface sampled.

5.0 *Determining the Regulatory Status of Sampled Pipe*

5.1 For purposes of disposal:

5.1.1 The analytical results of both samples from each segment sampled shall be averaged to determine the level of contamination in that segment. This average will be referred to as an averaged sample result.

5.1.2 If the averaged sample result, from any segment sampled from a removal population is greater than 10 micrograms PCB/100 square centimeters then that segment is considered contaminated with PCBs.

5.1.3 From a multiple contiguous segment removal project, all unsampled segments in the removal project are presumed contaminated with PCBs at the same PCB concentration as was found in the segment having the highest averaged sample PCB concentration.

5.2 For purposes of abandonment:

5.2.1 The entire pipe to be abandoned shall be presumed to have the same concentration as the highest measured average sample result.

APPENDIX II — Sampling to Verify Completion of Self-Implementing Disposal of PCB Remediation Waste.

1.0 *Application and Scope*

1.0 The following is required when sampling to verify completion of the cleanup for self-implementing disposal of PCB remediation waste.

2.0 *Minimum Number of Samples*

2.0 Regardless of the amount of each type of PCB remediation waste present at a PCB remediation site, a minimum of samples shall be taken.

2.1 For each type of PCB remediation waste present at the remediation site and at each separate site within a facility, a minimum of three samples shall be taken.

2.2 For each sample, the PCB concentration shall be measured, recorded and kept on file.

2.3 This is an example of a minimum number of samples calculation at a PCB remediation waste location.

There are three distinct, sites at the location: a loading dock, a transformer storage lot, and a disposal pit. The minimum number of samples appears after each type of waste for each site. The PCB remediation wastes present at the loading dock are concrete (3), and clay soil (3). The PCB remediation wastes present at the transformer storage lot are oily soil (3), clay soil (3), and gravel (3). The PCB remediation wastes present at the disposal pit are sandy soil (3), clay soil (3), oily soil (3), industrial sludge (3), sludge aqueous decantate (3) and gravel (3). For purposes of the self-implementing cleanup and disposal of these PCB remediation wastes, the minimum total number of samples needed to verify cleanup at this entire site as described is procedure 3.0 of this appendix.

3.0 *Materials to be Sampled at a Site*

3.0 Samples shall be collected of bulk materials and on the surface of all areas which contacted PCBs or PCB materials and which were removed for purposes of disposal during the remediation.

4.0 *Determination of Sample Collection Locations*

4.0 Once remediation is assumed to be complete, the following procedure shall be used.

4.1 Sample collection locations shall be based on a hexagonal grid system similar to the one employed in the document "Field Manual for Grid Sampling of PCB Spill Sites to Verify Cleanup" (EPA-560/5–86–017), except that the interval between adjacent sampling points shall be 1 meter. Copies of the grid sampling manual may be obtained from the TSCA Hotline by calling (202) 554–1404.

4.2 There is no upper limit to the number of samples required or allowed.

4.3 In the event that a site is sufficiently small or oddly configured that a hexagonal grid with the grid interval of one meter will not place the minimum of three sampling points in the site, then sampling coordinates shall be selected based on the following random sampling scheme.

4.3.1 There shall be no sample compositing for this kind of small site and oddly configured sites.

4.3.2 Designate the length and width of the area as the two axes of a two-dimensional Cartesian coordinate grid system.

4.3.3 The grid system is to be oriented so that its origin is nearest to the lower left corner of the area to be sampled. When this Cartesian system is oriented this way, the entire area falls into the first (upper right or positive on both axes) quadrant of the grid.

4.3.4 Measure the length of each axis (length and width) in centimeters (or inches).

4.3.5 Select an eligible set of two coordinates in centimeters (or inches) from a random number table or random number generator for each of the minimum of three samples to be taken. Eligible means that the point defined by the selected coordinates falls in the area cleaned up.

4.3.6 A third coordinate is not necessary. Samples shall be taken on the surface of the location left after cleanup has been completed.

5.0 *Collection of Samples*

5.0 Sample collection procedures differ for surfaces and bulk PCB remediation wastes.

5.1 Flat non-porous surfaces shall be wipe sampled at the selected grid point. Individual surface samples shall be no smaller than 100 square centimeters.

5.2 Sampling of Bulk PCB Remediation Wastes

5.2.1 At each sampling grid point, core samples shall be collected from at least one and no more than four different locations surrounding each grid point.

5.2.2 Each core sample around the grid point shall be no closer than 10 centimeters (4 inches) and no farther than forty centimeters (16 inches) from the grid point.

5.2.2.1 If more than one core sample is taken at a grid point, all of these samples shall be composited (see procedure 6.0 of this appendix) and mixed thoroughly into a single sample representing the grid point.

5.2.2.2 Core sampling for bulk PCB remediation waste having particle size diameter of less than or equal to one centimeter.

5.2.2.2.1 Each sample shall be collected using a 2.5 centimeter (1 inch) or 2 centimeter diameter core sampler.

5.2.2.2.2 Each core sample shall be taken to a depth of 2.5 centimeters below the surface

5.2.2.3 Core sampling for bulk PCB remediation waste having particle size diameter of greater than one centimeter.

5.2.2.3.1 Each core sample shall be taken by a core having a diameter no less than two and a half times the diameter of the average particle in the material.

5.2.2.3.2 The depth of the core sample shall be two and a half times the estimated average diameter of the particles in the waste.

5.3 Sampling of Porous Surfaces

5.3.1 Porous surfaces such as asphalt, wood, and concrete, shall be core sampled as for bulk PCB remediation waste having a

particle size diameter of less than one centimeter (see procedure 5.2.2.2 of this appendix).

6.0 *Compositing Samples*

6.1 When compositing, all individual samples added to compose a composite sample shall be the same weight.

6.2 All chemical analyses for PCBs in composite samples shall be by means of a gas chromatography with electron capture detector (GC/EC) method such as EPA SW–846 Method 8080.

6.3 Compositing bulk PCB remediation waste samples from more than one grid point. Bulk PCB remediation waste samples from one grid may be composited so long as the PCB concentration of interest (the clean/not clean level) is divided by the number of samples in the composite. The resulting quotient shall be called the "composite action level." The composite action level eliminates the possibility that any one sample in the composite is above the PCB concentration of interest.

6.3.1 If the concentration from the analysis of the composite exceeds the "composite action level," then it shall be assumed that at least one sample in the composite exceeds the PCB concentration of interest.

6.3.1.1 For example, for bulk PCB remediation waste samples, if the concentration of interest is 50 ppm and then ten samples are composited and analyzed, then the "composite action level" is 5 ppm. If the chemical analysis results indicates less than 5 ppm, there are no samples having a concentration greater than 50 ppm (the PCB concentration of interest). If the chemical analysis is 5 ppm or greater then there may be at least one sample in the composite having a concentration exceeding the concentration of interest and further sampling and or compositing is necessary to demonstrate that no sample exceeds the concentration of interest.

6.3.2 If the concentration from the analysis of the composite is less than the "composite action level," then it shall be assumed that none of the individual samples in the composite exceeds the PCB concentration of interest.

6.4 Compositing wipe samples from non-porous samples from more than one grid point. When accounting for dilution from compositing wipe samples, it is not necessary to use samples wiped from the same total surface area so long as the "composite action level" (see procedure 6.1 of this appendix) assumes the smallest surface area from any of the wipe samples composited. This difference from bulk remediation waste sample compositing is the result of the PCB amount reported being a weight rather than a concentration.

6.4.1 For example, if the PCB concentration of interest is $\geqq 10\ \mu g/100\ cm^2$ and the sample gauze from three wipe samples each of an area of $200\ cm^2$ are composited with one sample of $100\ cm^2$. If the report for this composite showed greater than 10 µg, it shall be assumed that at least one of the wipe samples exceeded the PCB concentration of interest because the smallest area in the samples composited was $100\ cm^2$.

7.0 *Reporting the PCB Concentrations in Samples*

All sample concentrations are to be reported on the basis of micrograms of PCBs per gram of dry bulk PCB remediation waste (and porous surfaces) and on a micrograms of PCBs per 100 square centimeter basis for non-porous surfaces.

8.0 *Decisions Based on Sample Concentration Resulting from this Sampling Scheme*

8.1 If, for the sampled type of waste at a designated site, any grid point sample PCB concentration exceeds the concentration of interest or the PCB concentration of a composite sample exceeds the composite action level, then the type of waste at the site has not been successfully cleaned up and, for purposes of self-implementing disposal, further cleanup is required.

8.2 In the event that further cleanup is required in paragraph 8.0 of this appendix, all of the type of waste at a particular site at a facility (or any portion of the site) may be recleaned.

8.3 Following the recleaning, the procedure to verify the completeness of the cleanup shall be reinitiated (starting at paragraph 4.0 of this appendix) to determine whether the requirements have been met. This "reverification" shall include that the verification sampling grid be reoriented and all of the type of waste at a particular site at the facility shall be resampled as required in paragraph 4.0–7.0 above. Cleaning a portion of the site and sampling only the portion which was recleaned does not comply with these self-implementing PCB remediation waste cleanup requirements.

For example, assume that random samples were collected to verify a site remediation under §761.61(a) and one of the samples of seven taken in a grid sampling plot had a concentration above the PCB concentration of concern. The site represented by the seven grid samples may be recleaned only in the area surrounding that one sample. However, following recleaning, the entire site must be resampled using a new set of seven grid samples, collected from a reoriented grid, to verify that the cleanup resulted in no PCBs in any of the seven grid samples above the PCB concentration of concern. This sampling procedure does not allow only resampling the areas which were recleaned. Nor does this sampling procedure allow using the arithmetic mean or any other statistical evaluation of the results from several samples to arrive at an overall "average" site concentration.

APPENDIX III. — Sampling Non-Liquid, Non-Metal Non-Remediation Waste Generated by Processing Materials Containing Recyclable Metals

1.0 *Defining and Characterizing a Single Feed Source Population*

1.1 A single feed source includes, but is not limited to automobiles, a mixture of a fixed ratio of automobiles plus white goods, white goods, and wire cable from a single source such as a ship.

1.2 Once a population of processed PCB non-remediation waste from a single feed source is characterized it is not necessary to recharacterize PCB non-remediation waste from that feed source so long as there are no changes in the feed source which are expected to change the PCB content in that feed source.

2.0 *Accumulate the Population to Be Sampled*

2.1 Accumulate all PCB non-remediation waste generated from a single source in one location in a container, a pile or piles.

2.2 When all PCB non-remediation waste from a single source cannot be processed in a day, all source PCB non-remediation waste for one day of full-time, full-scale processing shall be accumulated in a discrete, container, several containers, or identifiable pile (or piles).

3.0 *Number of Samples and Size of Samples and Sub-Samples*

3.1 To characterize a population of non-liquid PCB non-remediation waste accumulated in a pile or piles, it is necessary to collect seven approximately 100 milliliter (just less than 0.5 cup or approximately 100 grams) subsamples. These seven sub-samples shall be composited into one sample in a covered wide-mouth one liter (one quart) jar.

3.2 Pieces of PCB non-remediation waste larger than half of the sub-sample size (approximately 50 milliliters, 50 grams, or 0.25 cup) shall be excluded from a sub-sample.

4.0 *Sample Site Selection and Sub-Sample/Sample Collection*

4.1 Selection of the Piles from which Sub-Samples Will Be Collected

4.1.1 If the processed PCB non-remediation waste from a single source consists of more than one pile or container, each pile or container shall be assigned an integer number and then seven random integer numbers shall be generated to select piles (from which sub-samples shall be collected) from the population of all piles. It is possible that this random selection procedure will result in selecting the same pile number more than once, even if seven or more piles are present.

4.1.2 If only one pile or container is present, all seven samples shall be taken from the same pile.

4.2 Collecting Sub-Samples from Flattened Piles or Containers

If possible, spread the pile(s) out to a uniform thickness of approximately 1 foot (or 30 centimeters [cm]) into a rectangular or a circular shape.

4.2.1 For a circular shape flattened pile or cylindrical container:

4.2.1.1 Use the procedures in the PCB Spill Cleanup manual (a triangular/hexagonal grid system) to select the seven surface points for each composite sample for each flattened pile or container.

4.2.1.2 Measure the depth of the pile at each sampling point in inches or centimeters. Randomly select a number of inches or centimeters down from the surface using a random number generator. Then collect a 50 gram sample at the selected depth.

4.2.1.3 Composite the seven 50 gram samples collected from the seven sampling locations into a single sample for analysis.

4.2.2 For a rectangular shape flattened pile or boxshaped container there are two options a random coordinate option (procedure 4.2.2.1 of this appendix) and a grid option (procedure 4.2.2.2 of this appendix):

4.2.2.1 Designate the length, width, and depth of the flattened pile or container as three axes of a three dimensional Cartesian coordinate grid system.

4.2.2.1.1 Measure the length of each axis (length, width, and depth) in centimeters (or inches). Using a random number generator, select an eligible set of three coordinates in centimeters (or inches) for each of seven sub-samples to be taken.

4.2.2.1.2 Collect each sub-sample at the location selected and composite the sub-samples into a single sample for analysis.

4.2.2.2 Use the grid sampling procedure in the Field Manual which is part of the "Sampling Guidance for Scrap Metal Shredders." Briefly described, this procedure divides the length and width of a flattened pile into three equal segments, intersection of the length segments with the width segments results in a 3 × 3 grid or nine cells. The length and width shall be chosen to be perpendicular. Samples shall be collected at the center of each cell on the surface.

4.3 Collecting Sub-samples from Unflattened Piles

If the pile is too large to be spread on the site to a uniform thickness of 1 foot or 30 centimeters, or there are too many piles to spread out in the working area, the following procedure can be used to sample the piles. This procedure assumes that the shape of the piles is roughly conical; that is, having a circular base with PCB non-remediation waste stacked up uniformly to a peak which is roughly a point centered above the center of the circular base. For each sub-sample, three sample site coordinates will be selected.

4.3.1 Setting Up the Sample Site Selection System

4.3.1.1 Use a rod, dowel, stake, or broom handle as a marker.

4.3.1.1.1 Nail or otherwise fasten to the top of the marker a piece of string or cord of sufficient length and strength to reach from the top of the marker to the farthest peripheral edge of the pile.

4.3.1.1.2 Pound or push the marker into the top center (apex) of the pile downward toward the center of the base at least 30 centimeters or one foot until the marker is rigidly standing on its own, even when the cord is pulled tight to the bottom of the pile. The marker shall protrude from the top of the pile sufficiently to allow easy movement around the pile with the tightened string. A side view of a pile with a marker and string is illustrated below.

4.3.2 Select the first coordinate as follows:

4.3.2.1 Use a random number to generate a number between 0 and 360. The number generated is the number of degrees from magnetic north.

4.3.2.2 In a pile containing a lot of ferrous metal, the ferrous metal may have sufficient magnetism to deflect the compass needle. Confirm the magnetic north direction at a location distant from a pile of metal before assuming that the compass is not effected by local magnetism. In the event that the compass needle is deflected by the material to be sampled, this sampling procedure shall not be used and the material to be sampled shall then be flattened. Once the material is flattened, the sampling procedures in procedure 4.2 of this Appendix shall be used.

4.3.2.3 Use a magnetic compass to determine this direction on the pile as follows:

4.3.2.3.1 Pull the cord to the bottom of the pile.

4.3.2.3.2 Orient the compass so that the needle is pointing to magnetic north (At this point it may be helpful to sketch a picture of the top view of the pile oriented to magnetic north and draw a line from the center of the pile outward in the direction of the selected coordinate. (This drawing can be used to locate the approximate coordinate in the next step and may be used to document the sampling location.).

4.3.2.3.3 With the cord slightly slack, hold the cord and walk around the outside edge of the pile to be sampled until the approximate coordinate is reached.

4.3.2.3.4 Tighten the cord and place the compass directly under the tightened cord at the bottom edge of the pile.

4.3.2.3.5 Move around the outside of the pile with the cord laying over the center of the compass and with the needle pointing to magnetic north and stop when the cord lies over the selected coordinate direction on the compass.

4.3.2.4 Mark this first coordinate by tying the cord to a peg or placing it under a heavy weight.

4.3.2.5 An illustration of the orientation of a magnetic compass and the cord with respect to a pile appears below

4.3.3 Select the second coordinate as follows:

4.3.3.1 Once the first coordinate has been fixed, along the first coordinate (the cord), measure the distance in centimeters (or inches) from the bottom edge of the pile to the point where the marker meets the top of the pile.

4.3.3.2 Select a random number between 0 and the total number of centimeters (inches) measured in paragraph 4.3.3.1 of this appendix.

4.3.3.3 Proceed up the cord, from the bottom of the pile to the top, the selected number of centimeters (inches).

4.3.3.4 Pound or push a marker rod, dowel or broom handle down into the pile until the marker is secure to mark the second coordinate point.

4.3.4 Select the third (final) coordinate as follows:

4.3.4.1 Measure or estimate the vertical distance in centimeters (or inches) from the surface of the pile at the second coordinate marker to the bottom of the pile or ground level. This distance will be referred to as "vertical distance."

4.3.4.2 Select a random number between 0 and the total number of centimeters (inches) of vertical distance.

4.3.4.3 Dig a hole straight down into the pile the selected number of centimeters (inches) from the surface of the pile. The hole shall be of sufficient distance from the second coordinate marker so as to allow the marker to remain in place.

4.3.4.4 Slowly dig over to expose the second coordinate marker and collect the sub-sample on any side of this marker at the depth selected in paragraph 4.3.4.2 of this appendix.

4.3.4.5 In the event that the measurement or estimate of the distance to the bottom of the pile or the ground level was too large and the selected depth is below the bottom of the pile, reselect a random number as indicated in paragraph 4.3.4.2 of this appendix using the vertical distance determined by digging as indicated in paragraph 4.3.4.3 of this appendix.

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40 CFR Part 761

[OPPTS–66019; FRL–4904–5]

RIN 2070–AB20

Polychlorinated Biphenyls; Manufacturing, Processing, and Distribution in Commerce; Proposed Decisions on Exemption Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Rule.

SUMMARY: Section 6(e) of the Toxic Substances Control Act (TSCA) bans the manufacture, processing, distribution in commerce, and the use of PCBs unless the PCBs are totally enclosed. Section 6(e) gives EPA authority, however, to allow these activities if the Administrator finds that they will not present an unreasonable risk of injury to health and the environment. This proposed rule addresses 19 individual petitions under TSCA section 6(e)(3)(B) for exemptions from the prohibition against the manufacture, processing, and distribution in commerce of polychlorinated biphenyls (PCBs). In this proposed rule EPA proposes to deny eight petitions and to grant seven petitions; four petitions were withdrawn by the petitioners.

DATES: Written main comments on this proposed rule must be received by February 6, 1995. If requested in writing by December 20, 1994, an informal hearing will be held in Washington, DC on a date to be announced later.

ADDRESSES: Comments should reference docket #OPPTS-66019 and should be sent to TSCA Nonconfidential Information Center, EPA/Office of Pollution Prevention and Toxics, Room B-607, Northeast Mall, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E–543B, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551, FAX: (202)554–5603 (document requests only).

SUPPLEMENTARY INFORMATION: Section 6(e) of the Toxic Substances Control Act (TSCA) bans the manufacture,

processing, distribution in commerce, and the use of PCBs unless the PCBs are totally enclosed. Section 6(e) gives EPA authority, however, to authorize these PCB activities if the Administrator finds that they will not present an unreasonable risk of injury to health or the environment. TSCA provides that EPA may set terms and conditions, including recordkeeping and reporting requirements, for granting an exemption.

I. Background

A. Statutory Authority

Section 6(e) of TSCA, 15 U.S.C. 2605(e), generally prohibits the manufacture of PCBs after January 1, 1979, the processing and distribution in commerce of PCBs after July 1, 1979, and the use of PCBs after October 11, 1977, unless otherwise permitted. While section 6(e)(2)(A) of TSCA bans the use of PCBs in any manner other than a totally enclosed manner, section 6(e)(2)(B) provides that the Administrator may by rule authorize the use of PCBs if such use will not present an unreasonable risk of injury to health or the environment. Section 6(e)(3)(A) of TSCA prohibits the manufacture, processing, and distribution in commerce of PCBs except for the distribution in commerce of PCBs that were sold for purposes other than resale before July 1, 1979. Section 6(e)(3)(B) provides that any person may petition the Administrator for an exemption from the prohibition on the manufacture, processing, and distribution in commerce of PCBs. The Administrator may by rule grant an exemption if the Administrator finds that:

(i) an unreasonable risk of injury to health or the environment would not result, and (ii) good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for such polychlorinated biphenyl. (15 U.S.C. 2605(e)(3)(B)(i)–(ii)).

The Administrator may set terms and conditions for an exemption and may grant an exemption for not more than 1 year.

Section 6(e)(1) also authorizes EPA to regulate the disposal of PCBs consistent with the provisions in section 6(e)(2) and (3). EPA has issued a regulation that authorizes the import for disposal of PCBs with concentrations below 50 ppm. PCBs with greater concentrations, currently may only be imported for disposal pursuant to an exemption granted by EPA based upon the criteria discussed above.

B. Regulatory Authority

EPA's Interim Procedural Rules for manufacturing, processing, and distribution in commerce exemptions describes the required content for the manufacturing, processing, and distribution in commerce exemption petitions and the procedures EPA follows in rulemaking on exemption petitions. Those rules are codified at 40 CFR 750.10 through 750.41. These rules were amended effective April 11, 1994, by notice in the **Federal Register** (59 FR 16991). EPA's Procedural Rule for rulemaking under section 6 of TSCA, which governs use authorizations for PCBs, is found at 40 CFR 750.1 through 750.9.

C. History of this Rulemaking

EPA received for consideration 18 new exemption petitions and 1 renewal petition under TSCA section 6(e)(3)(B) which are the subject of this proposed rule. The requests for exemption are as follows:

1. S.D. Myers submitted four individual petitions seeking approvals to import PCB Transformers from Canada for disposal, to import PCB Capacitors from Canada for metal recovery and disposal, to import PCB fluids from Canada for disposal, and to import PCB containing light ballasts from Canada for disposal.

2. Electrical Apparatus Service Association (EASA) submitted a petition seeking to renew their approval to process and distribute in commerce for reuse non-porous component parts from PCB-Contaminated Transformers that have been double washed/rinsed.

3. MTM Research Chemicals, Inc. submitted a petition seeking approval to export PCBs that had been shipped illegally to the United States and also to import four PCBs (less than 500 grams per chemical) to be distributed in commerce for use in microscopy (this petition was withdrawn by the petitioner).

4. Sigma-Aldrich Corporation submitted a petition seeking approval to process and distribute in commerce for export small quantities of PCBs for research and development.

5. Millipore Corporation in conjunction with Immunosystems Inc. submitted two petitions, one petition seeking approval to process and distribute in commerce for export small quantities of PCBs for research and development and the other petition seeking approval to process and distribute in commerce small quantities of PCBs for research and development, characterized as the development of a PCB product (the second petition was withdrawn by the petitioner).

6. Triangle Labs submitted a petition seeking approval to import small quantities of PCBs in water, soil and air matrices for purposes of analysis (this petition was withdrawn by the petitioner).

7. General Electric submitted a petition seeking approval to manufacture small quantities of PCBs for use on-site in EPA-authorized research activities.

8. Edwin Kraemer submitted a petition seeking approval to process and distribute in commerce products made from PCB-contaminated fluff.

9. Jaco Analytical Laboratory submitted a petition seeking approval to import transformer oil samples for testing.

10. ENSR submitted a petition seeking approval to use carbon drums to filter PCBs from silicone-filled transformers and to transfer these drums between customers as in-service equipment (this petition was withdrawn by the petitioner).

11. Chemsyn Science Laboratories submitted a petition seeking approval to manufacture and import PCBs for export and domestic use for the production of analytical standards.

12. Dangerous Goods Consultants submitted a petition seeking approval to import laboratory samples from Canada for treatability.

13. Supelco, Inc. submitted a petition seeking to manufacture small quantities of PCBs for research and development.

14. National Institute of Standards and Technology submitted a petition seeking to export small quantities of PCBs for research and development.

15. ERTHCO Environmental Service, Inc. submitted a petition seeking to import transformer oil samples for analysis.

II. Findings Necessary to Grant Petitions

A. Unreasonable Risk Finding

Before granting an exemption petition, section 6(e)(3)(B)(i) of TSCA requires the Administrator to find that granting an exemption would not result in an unreasonable risk of injury to health or the environment in the United States. Consistent with the principle that persons seeking an exemption from a legislative prohibition bear the burden of demonstrating eligibility for that exemption, EPA has interpreted this provision to require a petitioner to demonstrate that the proposed activity would not pose an unreasonable risk.

To determine whether a risk is unreasonable, EPA balances the probability that harm will occur to health or the environment against the

benefits to society from granting or denying each petition. (See generally, 15 U.S.C. 2605(c)(1).) Specifically, EPA considers the following factors:

1. *Effects of PCBs on human health and the environment.* In deciding whether to grant an exemption, EPA considers the magnitude of exposure and the effects of PCBs on humans and the environment.

a. *Health effects.* EPA has determined that PCBs are toxic and persistent. PCBs can enter the body through the lungs, gastrointestinal tract, and skin, can circulate throughout the body, and can be stored in the fatty tissue.

b. *Environmental effects.* Certain PCB congeners are among the most stable chemicals known, which decompose very slowly once they are released in the environment. PCBs are absorbed and stored in the fatty tissue of higher organisms as they bioaccumulate up the food chain through invertebrates, fish, and mammals. This ultimately results in human exposure through consumption of PCB-containing food sources.

c. *Risks.* Toxicity and exposure are the two basic components of risk. Based on animal data, EPA concluded that in addition to chloracne, PCBs may cause developmental toxicity, reproductive effects, and oncogenicity in humans. EPA also concluded that PCBs present a hazard to the environment.

A lengthy discussion of these factors is provided in the preamble to the August 24, 1988 proposed exemption rule (53 FR 32327).

2. *Benefits and costs.* The benefits to society of granting an exemption vary, depending on the activity for which the exemption is requested. The reasonably ascertainable costs of denying an exemption vary, depending on the individual petition. EPA has taken benefits and costs into consideration when evaluating each exemption petition.

B. Good Faith Efforts Finding

Section 6(e)(3)(B)(ii) of TSCA also requires the Administrator to find that "good faith efforts have been made to develop a chemical substance which does not present an unreasonable risk of injury to health or the environment and which may be substituted for [PCBs]." Based upon general legal principles allocating the burden of proof to the person seeking to qualify for an exemption, EPA has interpreted this provision to require that a petitioner has the burden of demonstrating that it has made the requisite good faith efforts. EPA considers several factors in determining whether good faith efforts have been made. For each petition, EPA considers the kind of exemption the petitioner is requesting and whether the petitioner expended time and effort to develop or search for a substitute. In each case, the burden is on the petitioner to show specifically what they did to substitute non-PCB material for PCBs or to show why it was not feasible to substitute non-PCBs for PCBs. To satisfy this finding for requests for an exemption to import PCBs, a petitioner must show why such activity must occur in the United States and what steps will be taken to eliminate the need to import PCBs in the future.

III. Explanation of Class Exemption for Research and Development

Distinct from its authority to exempt PCBs from the ban on manufacturing, processing, and distribution in commerce, EPA may also authorize the use of PCBs. EPA authorized, indefinitely, the use of PCBs in small quantities for research and development in the Use Authorization Rule, 40 CFR 761.30(j), published in the **Federal Register** of July 10, 1984 (49 FR 28154). "Small quantities for research and development" is defined at 40 CFR 761.3 as "any quantity of PCBs (1) that is originally packaged in one or more hermetically sealed containers of a volume of no more than 5.0 milliliters, and (2) that is used only for purposes of scientific experimentation or analysis, or chemical research on, or analysis of PCBs, but not for research or analysis for the development of a PCB product."

The processing and distribution in commerce of PCBs in small quantities for use in research and development is allowed under a class exemption in the PCB Exemptions Rule, 40 CFR 761.80(g), published in the **Federal Register** of August 8, 1986 (51 FR 28556). This rule eliminated the need for each person who wishes to process and distribute small quantities of PCBs in commerce for research and development to file an individual exemption petition. EPA placed the following terms and conditions on the class exemption: That all processors and distributors maintain records of their PCB activities for a period of 5 years; and that any person or company that expects to distribute in commerce 100 grams (0.22 lb.) or more of PCBs for research and development within a 1-year period must report to EPA and identify the sites of PCB activities and the quantities of PCBs to be distributed in commerce. The processor or distributor could process and distribute PCBs in commerce and, provided it gives proper prior notification to EPA, increase the amounts of PCBs that are processed and distributed in commerce, until EPA takes action to issue a final rule that changes (e.g., terminates) the applicability of the exemption at §761.80(g) to the processor or distributor.

In granting a class exemption, EPA retains the authority to terminate the class exemption, or to exclude any distributor from the class exemption, upon determining the activities allowed in the class exemption will pose an unreasonable risk of injury to health or the environment. Any changes in the disposition of the class exemption, or the status of individuals within the class exemption, will be accomplished through notice and comment rulemaking and members of the class will be allowed to continue activities until a final rule is promulgated.

IV. Disposition of Pending Exemption Petitions

A. Import

EPA received eight exemption petitions to import PCBs. Two of these petitions were withdrawn by the petitioners.

1. *S.D.Myers, Inc. (Myers).* EPA has received a total of four petitions from S.D. Myers, Inc. of Talmadge, Ohio, to import large volumes of PCB waste from Canada for disposal. The first petition was received by EPA on May 15, 1991, the second and third were both received on September 9, 1992, and the fourth was received on October 27, 1993.

a. *Current petitions.* Myers processes PCBs for disposal. It has received approval from EPA to: disassemble, decontaminate, and recycle capacitors, to operate a mobile PCB disposal process, and it has received interim approval to commercially store PCBs.

The petition received on May 15, 1991 (Petition 1) is to import drained PCB Transformers from Canada for purposes of disposal at Myers' facility in Talmadge, Ohio. The petition requests a 5-year exemption, without a limit on quantity. Petition 1 cites data that 21,000 PCB Transformers are in storage for disposal in Canada, and that an additional 10,000 PCB Transformers are still in service, but could be imported for disposal. Myers estimates that if all 31,000 transformers were imported into the United States, approximately 1.8 million pounds of PCBs in those transformers would enter the United States. Once at Myers' facility, the transformers would be disposed of in accordance with Myers' permit from EPA Region V. The transformers would be disassembled, metallic portions would be decontaminated and subsequently smelted for metal recovery, and residual PCBs and porous

materials would be shipped off site to a TSCA-permitted incinerator.

Myers' second petition, received on September 9, 1992, (Petition 2) is to import intact, non-leaking PCB Capacitors from Canada for disposal. The capacitors would be disposed of by Myers through a disassembly, decontamination, and materials recycling process similar to its transformer process. Myers is permitted by EPA Region V to process capacitors for disposal. Petition 2 requests a 5–year exemption, with no limit on quantity. Myers states that there are 18.6 million pounds of PCB capacitors in Canada, and estimates that 13 million pounds of PCB waste requiring incineration would be generated by the processing of these capacitors at its facility.

The third petition, also received on September 9, 1992, (Petition 3) is a request to import askarel PCB liquids (500 ppm and over) from Canada to the United States for purposes of disposal. The petition cites data that 40 million pounds of high-concentration fluid is present in Canada. Myers would transport the PCBs to a TSCA-approved incinerator for disposal. The PCBs would not be disposed of at Myers' Talmadge, Ohio, facility, but some might be stored there before being incinerated elsewhere. Myers is a permitted PCB transporter and has interim approval as a commercial storer of PCBs. Petition 3 also requests a 5–year period with no limit on quantity.

Myers' fourth petition, received by EPA on October 27, 1993, (Petition 4) is to import intact, non-leaking PCB-containing fluorescent light ballasts from Canada for disposal. The ballasts would be taken to Myers' facility, where they would be processed to recover reclaimable metals, and the contaminated materials remaining would be shipped off site to a TSCA-approved incinerator. EPA Region V has permitted Myers' ballast disposal method. Myers is requesting an exemption for a 5–year period, and estimates that 60 million pounds of PCB containing light ballasts are present in Canada [Canadian Government data from 1991 actually estimates that there are 60 million units present in Canada, which have a total weight of 220 million pounds (see "Canadian PCB Summary: A Summary of National PCB Inventory" January, 1991)]. Myers provides estimates that indicate about 20 percent of the ballast weight would consist of unrecoverable PCB waste [44 million pounds] requiring incineration.

In all four petitions, Myers asserts that since EPA has permitted their disposal processes based on the fact that these processes do not pose an unreasonable risk of injury to health or the environment, this finding should be applied to any PCB waste imported from Canada for purposes of disposal. Petition 3, which does not involve in-house disposal activities but only transportation and storage, cites the overall safety record and safety procedures of the company as grounds for a no unreasonable risk finding, and specifically asserts that Myers' PCB tank truck fleet "has not had an accident or spill when moving PCBs."

In terms of benefits, Myers estimates in Petition 1 that by importing all of Canada's PCB transformers, it would generate $180 million in service fees, and an additional $20 million in scrap metal sales. Petitions 2, 3 and 4 are estimated to generate revenues of $46 million, $30 million, and $45 million, respectively. Myers estimates that Petition 3 would earn a profit of $20 million for Myers and the incinerators (the other petitions do not provide profit estimates). In addition, Petitions 2 and 4 state that each would create an additional 20 jobs. Other benefits mentioned in the petitions include speeding the removal of PCBs from North America and a lowering of disposal costs for companies in Canada.

In response to the good faith efforts criteria of TSCA section 6(e)(3)(B)(ii) have been met, Myers maintains in all four petitions that this criteria is not applicable to his petitions. Petition 1 does, however, go on to state that Myers has investigated the possibility of destroying these wastes in Canada, but concluded that it would not be politically or economically feasible to do so.

b. *Proposed decision on petitions.* EPA proposes to deny all four petitions from S.D. Myers. EPA has determined that the petitioner has failed to establish that there is no unreasonable risk as required in TSCA section 6(e)(3)(B). The petitioner has not demonstrated how the benefits accruing from granting these petitions would outweigh the risks inherent in the importation of PCB waste as proposed by petitioner. In addition, EPA believes that the petitioner has failed to demonstrate that it has made a good faith efforts to investigate and develop alternatives to import.

EPA has already made a general determination that the import of PCBs into the United States and the distribution in commerce of PCBs present an unreasonable risk of injury to human health and the environment [See 40 CFR 761.20 and 44 FR 31514, May 31, 1979]. EPA has also stated that "[i]t is the clear intent of TSCA to minimize the addition of PCBs to the environment of the United States." Id. Moreover, while EPA believes that there is always some risk inherent in the import of any quantity of PCBs, the large quantities that Myers would import significantly increases the risk.

All four of Myers' petitions would involve the importation, transportation, and disposal of very large quantities of PCB waste. Taken together, they would account for most of Canada's PCB fluids at concentrations over 500 ppm, as well as all of its PCB Transformers, PCB Capacitors and PCB-containing fluorescent light ballasts. Myers indicates in the four petitions that over a 5 year period it wishes to import a total of approximately 300 million pounds of PCB waste for disposal. Based on the data supplied in the petitions and supplemental information (see note to docket "Calculations"), EPA calculates that the four petitions could involve the importation of up to 457 million pounds of PCB waste into the United States, for disposal either at Myers' Talmadge, Ohio facility, or, in the case of Petition 3, at an unspecified TSCA-approved incinerator.

Prior to disposal, Myers would transport large quantities of PCB waste through the United States either to the Ohio site or to an incinerator. Subsequent to Myers' disposal activity in Ohio, an additional 60 to 90 million pounds of concentrated PCB waste (not counting any additional solvents and process waste that Myers would generate) would have to be transported from Ohio to a TSCA-approved incinerator. Currently, the closest available incinerator is located in Coffeyville, Kansas (Aptus, Inc.). In information supplemental to the petitions, Myers estimates that an average truckload for such waste would weigh 40,000 pounds. Using this estimate, EPA calculates that 7,500 to 11,750 truckloads of waste would be shipped to Talmadge, and an additional 1,500 to 2,250 truckloads would be shipped from Talmadge for incineration.

Myers has failed to demonstrate that the proposed activity would not pose a risk to health and environment in the United States. The introduction and disposal of large volumes of PCBs would pose some risk of exposure, even if the PCBs are disposed of in an EPA-permitted facility such as Myers' Ohio facility or other TSCA-approved incinerator. In addition, the large volumes of PCBs that would be transported to various facilities in different parts of the United States pose a potential risk of spills or other exposure to PCBs despite the past safety record of the transporting company.

Myers also has failed to submit adequate information with respect to the benefits of the proposed activity. Myers states that one of the benefits would be additional revenues for the company. With the exception of Petition 3, however, Myers has provided revenue information only with respect to gross revenues. Gross revenue estimates tend to overinflate the actual financial benefit to the petitioner. To properly evaluate the financial impacts, EPA needs additional information regarding any costs that might offset projected gross revenues.

In addition, Myers has failed to substantiate its claim that the United States would benefit by the removal of PCBs that are stored in Canada and the elimination of possible risk of crossborder contamination. EPA acknowledges that there is a possibility that some PCBs stored in Canada could pose some risk to health or environment in the United States. Myers, however, has not presented factual information to demonstrate why PCBs stored in Canada pose such a risk or to show the extent of the risk to health and environment in the United States.

The Canadian government regulates the storage and disposal of PCBs in that country which should provide adequate protection against releases or spills that could threaten the United States. Moreover, Canada possesses a domestic disposal facility, and is in the process of expanding its PCB disposal resources (Memo from Bryan to Greenwood, June 25, 1991). The government also has some mobile disposal facilities. Id. Some of these facilities may be available to dispose of the PCBs that Myers proposes to import into the United States.

Myers also states that lowered disposal costs for Canadian companies constitute an additional benefit of the proposed activities. Under TSCA, however, EPA does not consider benefits that may occur accrue to foreign businesses, just as it does not consider risks that do not threaten domestic health or the environment.

EPA is proposing to deny Myers' petitions because Myers has failed to demonstrate that the risks of the proposed activity are reasonable when weighed against the benefits, particularly in view of the limited information available to substantiate the alleged benefits.

Myers contends that the proposed disposal activities do not pose an unreasonable risk by noting that the facilities that would dispose of the PCBs are permitted by EPA pursuant to 40 CFR 761.60(e). Section 761.60(e) authorizes EPA to issue a permit if the method of destroying PCBs will not present an unreasonable risk of injury to health or the environment. Under this provision, EPA weighs the risk of the disposal methodology against the benefits to the health and environment in the United States. The fact that EPA has determined that the benefits outweigh the risks when the activity involves the disposal of domestic PCBs that are already present in the United States, however, does not demonstrate that the benefits outweigh the risks when the activity involves disposing of foreign PCBs that would be introduced into this country. The introduction of additional PCBs that would otherwise not be in the United States adds an additional factor to the risk/benefit equation.

EPA further finds grounds to deny the petitions based on the good faith efforts criteria of TSCA section 6(e)(3)(B)(ii). Petition 1 maintains that this criteria is "not really applicable," in that Myers only wishes to import PCBs for disposal, and not for use in commerce; however, the petition does go on to discuss other disposal options. The subsequent three petitions simply state that the good faith efforts criteria does not apply, and provide no discussion of alternatives. While, strictly speaking, section 6(e)(3)(B)(ii) refers to finding substitute chemicals, EPA believes that under this section it must generally consider the issues of the availability of alternatives, and the overall necessity for granting an exemption. The alternative to importation of Canadian PCB waste into the United States for destruction is to destroy those wastes in Canada itself. Myers maintains in Petition 1 that it has investigated the possibility of setting up a facility in Canada to recycle/destroy PCB Transformers, and it concluded that it would be uneconomical and politically difficult to establish a facility in Canada. However, Myers fails to demonstrate that establishing a facility in Canada is not feasible; rather, Myers only forwards arguments as to why doing so is less expedient and less profitable for Myers than importing the waste to its existing facility in the United States. Myers does not provide any evidence that it made substantial good faith efforts to pursue such an option before it petitioned the Agency for this exemption. More importantly, Canada already possess a domestic disposal facility, and is in the process of expanding its PCB disposal resources. There are no technological barriers to the effective destruction of PCBs in Canada that would necessitate their shipment to the United States for safe disposal. Myers has not demonstrated the necessity for the PCBs in question to be imported to the United States for disposal, and accordingly EPA finds that all four petitions have failed to meet the good faith efforts criteria.

Although Myers has not submitted adequate information to allow the Agency to make the requisite findings for these four specific exemptions to import Canadian PCBs for disposal, EPA is considering whether to amend existing PCB disposal rules to modify the general restriction on the import of PCBs with 50 ppm or greater for disposal. EPA believes that opening the border to allow import for disposal may have far-reaching consequences and that it is preferable to raise the issue of the transboundry movement of PCB waste generally in the proposed disposal rules rather than to examine it in isolation in the context of individual company's petitions for exemption. In the proposed disposal rules, EPA is requesting comment on the circumstances under which the United States border should be opened to the transboundry shipments of PCBs for disposal. The proposal, if finalized, would retain the general prohibitions on import of PCB wastes at concentrations of 50 ppm or greater, with certain exceptions described in more detail in the preamble to the proposed disposal rule.

2. *Gene Rideout Dangerous Goods Consultants, Inc. (DGC).* On December 27, 1993, Dangerous Goods submitted an exemption petition to import laboratory samples from Canada for treatability studies. DGC is a consulting firm which is based in Ontario, Canada, and which also is incorporated in the state of New Jersey.

a. *Current petition.* The petitioner requests to import PCB waste samples, primarily soil samples, not to exceed 5 kilograms total weight. DGC estimates that samples would be shipped no more than once a week. Assuming weekly shipments of 5 kilograms each, approximately 260 kilograms of soil and other media would be imported annually. If granted an exemption, DGC expresses an intent to renew their exemption for up to 5 years. Treatability analysis would be conducted at unidentified client laboratories in the United States (DGC is a consulting firm and does not operate its own laboratory facilities). The petitioner claims that PCBs in the waste samples would normally be destroyed during treatment and analysis, but if any remained, the residuals could be returned to Canada if EPA so stipulates. According to DGC, the capability to treat/analyze such PCB waste samples does not exist in Canada at this time, but at least one U.S. laboratory possesses such technology

DGC believes that such capability should be developed in Canada within 4 or 5 years time. DGC does not claim any economic losses to the United States would result from a petition denial, but it maintains that without this exemption, PCB-contaminated soil in Canada will remain untreated until Canada develops this laboratory technology domestically.

b. *Proposed decision on petition.* EPA proposes to deny this exemption petition. EPA has determined that, in general, the import (manufacture) of PCBs into the United States and the distribution in commerce of PCBs present an unreasonable risk of injury to health and the environment [See 40 CFR 761.20 and 44 FR 31514, May 31, 1979]. EPA has also stated that "[i]t is the clear intent of TSCA to minimize the addition of PCBs to the environment of the United States." Id. DGC has not demonstrated what benefits would accrue to the United States through the granting of its petition, and how those benefits would outweigh the risk inherent in importation of PCB wastes. Accordingly, EPA cannot make the finding that granting this petition will not present an unreasonable risk of injury to health or the environment.

In addition, EPA finds that the petitioner has failed to satisfy the good faith efforts criterion, i.e., DGC has not demonstrated that there is no viable alternative to importing these samples into the United States. According to the Canadian Association for Environmental Analytical Laboratories, there are laboratories within Canada capable of conducting PCB analysis. The petition does not provide any details on the unidentified U.S. laboratory's techniques, why the Canadian laboratories are unable to provide such analysis, or why developing such technologies would take Canadian laboratories so long. Further, the petition fails to justify how the shipment of individual laboratory samples to the United States will expedite the cleanup of PCB-contaminated sites in Canada: cleanup of these sites will not occur until the Canadians develop their own domestic ability to apply such technologies *in situ* on a large commercial scale. EPA notes that the primary reason it closed the border in 1980 was to encourage foreign countries to develop their own capacity for properly handling and disposing of PCB waste. [See 45 FR 29115, May 1, 1980]. The Agency believes that granting this petition might actually hinder Canadian efforts to develop a domestic treatment capability.

3. *Jaco Analytical Laboratory, Inc. (Jaco).* On June 14, 1993, Jaco (formerly National Chem Lab) submitted an exemption petition to import oil samples from transformers from Canadian utilities to test for PCBs, and to return (export) to the Canadian utilities any unused samples that test positive for PCBs following their analysis. On May 13 1994, Jaco amended its petition and notified EPA that National Chem Lab has been acquired by Jaco.

a. *Current petition.* The sample sizes would be 2.5 milliliters per sample of oil. These samples would then be analyzed for PCB content. Following their analysis, waste oil 499 ppm or less would be recycled in a high efficiency boiler at Big Stone Utility; and waste oil 500 ppm or greater would be sent to Aptus for incineration. Jaco estimates that based on a submittal rate of 50,000 samples per year, the total volume of PCBs to be imported would be 6 gallons. Jaco maintains that historical laboratory data indicates that less than 5 percent of the samples are in the PCB classification (over 50 ppm). In addition, Jaco estimates that their volume of waste oil greater than 499 ppm would only increase by 3 gallons annually.

During analysis, Jaco states that the 1 microliter injected into the Gas Chromatograph (GC) is destroyed in the destructive detector and the residual oil from this process contains no PCBs since the extraction process removes the PCBs from the oil. Further, the 9.4 milliliters of 2,2,4-trimethylpentane that is used in the extraction process and remaining after the GC sample is run, is separated from the acid and reclaimed in a distillation process for reuse. This recycling of the solvent used in the extraction eliminates the need for solvent disposal.

Jaco states that the economic consequences of denial would be greater for the Canadian utilities. In their petition, Jaco indicates that Canadian utilities currently pay $100.00 per sample, while Jaco's cost is $15.00 per sample. Jaco maintains that denial of their petition would limit the growth of Jaco (4 additional jobs) and the number of non-farm jobs available in Eastern Washington State.

b. *Proposed decision on petition.* EPA proposes to deny this exemption petition. EPA has determined that the petitioner has failed to establish that there is no unreasonable risk as required in TSCA section 6(e)(3)(B). The petitioner has not demonstrated how the benefits accruing from granting these petitions would outweigh the risks inherent in importation of PCB waste.

EPA has determined that the import (manufacture) of PCBs into the United States and the distribution in commerce of PCBs present an unreasonable risk of injury to health and the environment (See 40 CFR 761.20 and 44 FR 31514 and 31537, May 31, 1979). EPA has also stated that "[i]t is the clear intent of TSCA to minimize the addition of PCBs to the environment of the United States." Id. In 1980, EPA issued a policy that encouraged foreign countries to develop their own capacity for properly handling and disposing of PCB waste. (See 45 FR 29115, May 1, 1980).

Further, EPA has determined that the petitioner has not met the good faith efforts criterion. Although no non-PCB substitutes can be used for the analysis of PCBs, the petitioner has not demonstrated or provided any convincing rationale as to why there is a necessity for the PCBs to be imported into the United States, solely for the purpose of analysis. According to the Canadian Association for Environmental Analytical Laboratories (CAEL), there are analytical laboratories within Canada for conducting PCB analysis (See CAEL lists of accredited and certified labs - January, 1994). EPA does not want to encourage the expansion of PCB products or PCB services for companies when there are feasible alternatives already in place.

4. *ERTHCO Environmental Service, Inc. (ERTHCO).* On March 4, 1994, ERTHCO submitted an exemption petition requesting to import from the Philippines samples of oil for PCB analysis.

a. *Current petition.* The petitioner states that the oil samples from transformers and other electrical equipment would be in vials of 5 milliliter or less. These samples would be collected from clients of their Manila Branch Office and submitted through the Rancho Cordova/Sacramento Office to Analytical Associates Inc. located at 4011 Power Inn Road, Suite G, Sacramento, CA, 95826.

The petitioner states that the analytical evaluations (e.g., dielectric breakdown voltage, acid number, dissipation factor, etc.) of these samples is in an effort to assist power utilities in understanding the inner performance of their electrical equipment. The petitioner expects that a maximum of 3 liters of fluid (250 ml or 50 samples less than 5 milliliters), with a PCB concentration range from 0 to 100 percent, would be imported in 1 year.

The petitioner states that PCB release prevention measures would be implemented for their shipments. In addition, the petitioner would require all contracting laboratories to handle the samples in an environmentally sound manner, throughout the process and up to final disposal.

The petitioner states that the no unreasonable risk criteria would be met because no handling of the PCBs would take place outside of an experienced laboratory. Transportation of the samples would be according to International Air Transportation Authority (IATA) guidelines. In quantifying the economic consequences if their petition were denied, the petitioner states that there is major economic benefit to be realized, but an accurate estimate of the economic impact cannot be given at this time. Moreover, the petitioner believes that it may be liable if this activity is not allowed because the petitioner's operation in the Philippines would not be able to properly determine risks to personnel safety and the environment.

b. *Proposed decision on petition.* EPA proposes to deny ERTHCO's exemption petition. EPA has determined that the petitioner has failed to establish that there is no unreasonable risk as required in TSCA section 6(e)(3)(B). The petitioner has not demonstrated how the benefits accruing from granting these petitions would outweigh the risks inherent in importation of PCB waste.

EPA has determined that the import (manufacture) of PCBs into the United States and the distribution in commerce of PCBs present an unreasonable risk of injury to health and the environment (See 40 CFR 761.20 and 44 FR 31514 and 31537, May 31, 1979). EPA has also stated that "[i]t is the clear intent of TSCA to minimize the addition of PCBs to the environment of the United States." Id. In 1980, EPA issued a policy that encouraged foreign countries to develop their own capacity for properly handling and disposing of PCB waste. (See 45 FR 29115, May 1, 1980).

Further, EPA has determined that the petitioner has not met the good faith efforts criterion. Although no non-PCB substitutes can be used for the analysis of PCBs, the petitioner has not demonstrated or provided any convincing rationale as to why there is a necessity for the PCBs to be imported into the United States, solely for the purpose of analysis. EPA does not want to encourage the expansion of PCB products or PCB services in the United States when there are feasible alternatives already in place.

C. Export

EPA received four petitions to export PCBs. One of these petitions was withdrawn by the petitioner.

1. *Sigma-Aldrich Corporation (Sigma-Aldrich).* On May 6, 1992, Sigma-Aldrich submitted an exemption petition to export small quantities of PCBs for research and development to the international monitoring community for use in the identification and quantification of environmental contaminants. On May 24, 1994, Sigma-Aldrich submitted an amendment to its petition.

a. *Current petition.* Sigma-Aldrich states that they obtain PCBs for environmental monitoring purposes from companies already exempted by EPA. These PCBs are analyzed for quality control by highly trained chemists using gas chromatography and then prepared as analytical reference standards.

The PCB standards are prepared in concentrations not exceeding 1,000 micrograms per milliliter in organic solvent. The standards will be packaged in volumes of 1 milliliter in flame sealed amber glass ampules. The ampules will be packaged using die-cut cardboard inserts that hold the ampules securely in place inside a rigid cardboard box which will be overpacked in a box that has been tested, certified and labelled according to Department of Transportation (DOT) specifications. Sigma-Aldrich also states that all shipping will be done in observance of all domestic and foreign transportation requirements. The processing of these standards will be performed at the Sigma-Aldrich facility at 3500 DeKalb Street, St. Louis, Missouri. The maximum total volume of PCB solution will not exceed 5 liters and the maximum total PCB volume contained in the solution will not exceed 5 milliliters. Sigma-Aldrich estimates that the total amount of PCBs to be exported in 1 year will not exceed 100 grams or 0.220 pounds.

According to Sigma-Aldrich the analytical work will generate a wastestream that contains a maximum of 2.5 milligrams of PCBs, while the processing wastestream will not exceed 5.0 milligrams of PCBs. Sigma-Aldrich states that these wastestreams will be handled in accordance with 40 CFR part 761, subpart K. In its petition, Sigma-Aldrich also states that through customer screening they will ensure proper handling of the materials by qualified personnel. Sigma-Aldrich estimates that denial of this petition will result in a loss in revenue of $60,000 per year.

In a letter dated March 24, 1994, Sigma-Aldrich amended their petition to include an exemption to export small quantities of Carbon 14-labelled PCBs for sale to foreign customers for use in the performance of metabolic and environmental fate studies. Sigma-Aldrich synthesizes Carbon 14-labeled PCBs in small quantities for metabolism and environmental research according to their existing exemption. Sigma-Aldrich's existing exemption for manufacturing PCBs for these products is in the name of Pathfinder Laboratory which is now the Radiochemicals Department of Sigma Chemical Company (part of Sigma-Aldrich Corporation).

The petitioner states that these Carbon-14 PCBs are analyzed by highly trained chemists using high pressure liquid chromatography in a quality control laboratory. Packaging for these items consists of flame-sealed glass ampules containing less than 0.5 milliliters of solvent. The primary container is overpacked using packing material and a second box that is DOT specified and labeled. The petitioner also states that if the petition is granted, applicable foreign requirements for air, land and water transportation will be followed. In addition, the wastestream that is produced during the synthesis and analysis will be absorbed on silica gel and solidified in concrete prior to storage in compliance with Nuclear Regulatory Commission requirements. The activity for this petition will be conducted at 11542 Fort Mims Drive, St. Louis, Missouri.

The petitioner maintains that the total number of ampules to be distributed in a year will not exceed 500, at less than 5 milligrams of PCBs per ampule. The petitioner also states that through a customer screening procedure, the PCBs would be handled by qualified personnel and should not present a risk of injury to health or the environment. The petitioner estimates that denial of this petition would result in a loss of up to $100,000 per year in sales from foreign distributors.

b. *Proposed decision on petition.* EPA proposes to grant the Sigma-Aldrich an exemption for 1 year to export small quantities of PCBs for research and development under §761.80(c). The Agency generally treats petitions for exemption to export PCBs more stringently than petitions to distribute PCBs within the United States. This is because once the PCBs cross beyond our borders, the United States loses its ability to monitor the handling and distribution activities, to inspect the receiving facilities for any regulatory violations, or to protect health or the environment from releases of those PCBs that might lead to additional PCB contamination in this country. However, EPA believes that those concerns are mitigated in the export of PCBs in small quantities for research and development particularly given the viscosity, quantity, marking, and packaging of the PCBs, as well as the careful handling of the PCBs by trained personnel as

described in the petition and amendment. Since there are no substitutes for PCB analytical samples, the good faith efforts finding has been met.

Sigma-Aldrich would be prohibited from exporting PCBs in excess of the amounts and quantities specified in its petition (i.e., less than 100 grams/year - Petition 1 and less than 2.5 grams/year - Amendment), and would be required to petition EPA and obtain an exemption prior to an increase in the quantity or a change in the manner of handling PCBs under the Sigma-Aldrich exemption. EPA would consider any such change as a new exemption petition and address the request by rulemaking. If Sigma-Aldrich were to wish to continue its export activities beyond the 1–year timeframe under the EPA approved exemption, a certified letter, pursuant to the amended Interim Procedural Rules, would have to be submitted to EPA at least 6 months prior to the expiration of the exemption.

2. *Millipore Corporation and ImmunoSystems, Inc.* On May 6, 1992, Millipore Corporation and ImmunoSystems, Inc. requested an exemption to process and distribute in commerce for export small quantities of PCBs for research and development.

a. *Current petition.* The petitioners seek to process and distribute for export small quantities of PCBs for research and development. Specifically, the petitioners seek to export their product, the EnviroGard® PCB Test Kit to 42 of their international distribution subsidiaries. The petitioners state that the EnviroGard® PCB Test Kit is an immunoassay-based test kit for the analysis of PCBs in soils, water, oil and other liquids. The petitioner currently processes and distributes in commerce small quantities of PCBs under the class exemption at 40 CFR 761.80(g).

The components of the kits which contain PCBs (Aroclor 1248) are EnviroGard® PCB Positive Calibrators at 7 ppm, 10 ppm and 45 ppm in methanol. The EnviroGard® PCB Test Kit is an analytical test kit that is used by trained professional chemists and engineers who are involved in the remediation of PCBs.

The petitioners predict that 250 to 500 kits will be sold overseas per year. Based on these numbers each kit would contain 6.7 micrograms of Aroclor 1248 in 0.3 milliliters of methanol, yielding a total of 0.0017 to 0.00335 grams of Aroclor 1248 in 75 to 150 milliliters of methanol exported in a year. The petitioners state that the kits will expand existing conventional technologies such as gas chromatography and mass spectroscopy by offering a safe, reliable, economic, and expedient way of screening negative samples from positive samples. Positive samples are later confirmed with conventional techniques and are disposed of in accordance with applicable regulations.

There are no substitutes available which can be used to accurately determine the presence of PCBs, since known concentrations of PCBs must be used in the calibrators that contain known concentrations of PCBs. The petitioners estimate that the cost of denial of this petition could cause a loss in revenue amounting to $0.25 million the first year and $2 to 4 million in 5 years.

b. *Proposed decision on petition.* EPA proposes to grant Millipore Corporation and ImmunoSystems, Inc. an exemption for 1 year to export small quantities of PCB for research and development under §761.80(c). As stated above, EPA generally treats petitions for exemption to export PCBs more stringently than petitions to distribute PCBs within the United States. This is because once the PCBs cross beyond our borders, the United States loses its ability to monitor the handling and the distribution activities, to inspect the receiving facilities for any regulatory violations, or to protect health or the environment from releases of those PCBs that might lead to additional PCB contamination in this country. However, EPA believes that those concerns are mitigated in the export of PCBs in small quantities for research and development particularly given the viscosity and quantity of the PCBs involved, as well as the careful handling of the PCBs by trained personnel as described in the petition. Further, since no PCB substitutes exist that can be used to determine the presence of PCBs, the good faith efforts criterion has been met.

The petitioners would be prohibited from exporting PCBs in excess of the amounts and quantities specified in their exemption petition, and would be required to petition EPA to obtain an exemption prior to an increase in the quantity or a change in the manner of handling PCBs under the Millipore/ ImmunoSystems exemption. EPA would consider any such change as a new exemption petition and address the request by rulemaking. If the petitioners were to wish to continue its export activities beyond the 1–year timeframe under the EPA approved exemption, a certified letter, pursuant to the amended Interim Procedural Rules, would have to be submitted at least 6 months prior to the expiration of the exemption.

3. *National Institute of Standards and Technology (NIST).* On July 1, 1991, NIST submitted an exemption petition to export small quantities of PCBs for research and development to the international monitoring community for use in the identification and quantification of environmental contaminants.

a. *Current petition.* NIST currently offers for sale Standard Reference Materials (SRMs) that were produced and/or characterized with financial support from U.S. Government Agencies, including EPA. These SRMs were used for environmental monitoring and research. The petitioner states that these SRMs in the form of Aroclor mixtures and as individual isomers, both neat and in solution are distributed in sealed 2 milliliter ampules pursuant to the class exemption at 40 CFR 761.80(g).

NIST states that the PCBs they analyze are obtained from commercial sources. Once received, these PCBs are analyzed by their Organic Analytical Division and/or the Gas and Particulate Science Division. The petitioner maintains that the material is handled by professional scientists and technicians. Once the analysis is complete, the petitioner states that the liquids are packaged in hermetically sealed ampules and the sediment is contained in amber bottles by trained staff following proper safety precautions. The materials are packaged using the NIST logo which indicates the presence of PCBs. The petitioner states that the PCB materials received for SRM development are analyzed for their content only, no residual material is produced. Each SRM is accompanied by a certificate that provides the results of the characterization and indicates the intended use of the material. In addition, the petitioner states that because of their congressional mandate to serve as the nation's physical laboratory and the legal ramifications of a certified NIST SRM, other governments, industry and others seek out NIST for its SRMs.

The petitioner states that estimating the economic consequences of denying their petition is difficult to quantify. However, when monitoring the import of goods and produce containing PCBs residues, the petitioner believes an inaccurate PCB analysis could cost human lives and billions of dollars in produce.

b. *Proposed decision on petition.* EPA proposes to grant the NIST's petition. The Agency generally treats petitions for exemption to export PCBs more stringently than petitions to distribute PCBs within the United States. This is because once the PCBs cross beyond our borders, the United States loses its

ability to monitor the handling and distribution activities, to inspect the receiving facilities for any regulatory violations, or to protect health or the environment from releases of those PCBs that might lead to additional PCB contamination in this country. However, EPA believes that those concerns are mitigated in the export of PCBs in small quantities for research and development particularly given the viscosity, quantity, and packaging of the PCBs, as well as the careful handling of the PCBs by trained personnel as described in the petition. Since there are no substitutes for PCB analytical samples, the good faith efforts finding has been met.

NIST would be prohibited from exporting PCBs in excess of the amounts and quantities specified in its petition (i.e., less than 500 grams/year), and would be required to petition EPA and obtain an exemption prior to an increase in the quantity or a change in the manner of handling PCBs under the NIST exemption. EPA would consider any such change as a new exemption petition and address the request by rulemaking. If NIST were to wish to continue its export activities beyond the 1-year timeframe under the EPA approved exemption, a certified letter, pursuant to the amended Interim Procedural Rules, would have to be submitted to EPA at least 6 months prior to the expiration of the exemption.

D. Processing and Distribution in Commerce

EPA received one petition requesting an exemption to allow the processing and distribution in commerce of PCBs.

Edwin C. Kraemer. On January 30, 1993, Edwin C. Kraemer requested an exemption to process and distribute in commerce products made from PCB containing car shredder waste or fluff.

a. *Current petition.* In the petition, Edwin Kraemer states that he seeks to use a procedure that converts car shredder waste or fluff (less than 50 ppm) into a product filler which will constitute a commodity in trade. The process Mr. Kraemer proposes to use is a mechanical process which specializes in grinding to a microstructure size resulting in filler material. Mr. Kraemer maintains that these fillers can be flame retarding, lightweight, compressible, absorbent, and have sound proofing, thermal insulating and energy absorbing characteristics. As described in the petition, items to be manufactured using this process include, but are not limited to: product filler, absorbent, solid bulk filler, substitute for concrete fill, ceiling tile, adobe block, brick, concrete block, insulation panels for walls and ceilings, packaging, furniture and mattress stuffing, gymnastics mats, safety barriers, sound insulation, replacement for asbestos, injection moulding filler, fire retardant coating, plaster board or building panel filler.

Mr. Kraemer proposes to conduct his initial work using material from the Orange County Steel Salvage Company which he states is considered one of the most contaminated sites in the country where 50,000 tons of contaminated material has been stockpiled. Based on the 50,000 tons of contaminated material, Mr. Kraemer estimates that 10,000,000 lbs. will be processed onsite at a concentration of 30 ppm PCBS, for a total of 300 lbs of PCBs. Mr. Kraemer also asserts that the PCB contamination is not the result of shredding appliances, motors and transformers or PCB Items, but is actually attributable to the use of plastics and finishes in products.

The petitioner maintains that due to the low concentrations and the anticipated nonfriable uses, that any release of PCBs to the environment is unlikely. In addition, the petitioner states that the predictable and anticipated level of inadvertently generated PCBs in any end product will be kept under 25 ppm; therefore, the manufacturing or processing for commercial purposes of products with PCB concentrations of less than 50 ppm should be excluded from the prohibitions of TSCA section 6(e)(2) and (3). The petitioner states that he does not see a need for any special labelling, disposal and recordkeeping requirements, since he is not producing a PCB Item, article, equipment or container.

The petitioner states that denial of this petition would eliminate a potential $18.5 million (cost for disposal) savings for the State of California and a potential $50 million in profit. If the exemption is granted and the process is successful, the petitioner states that it would generate employment, eliminate a hazardous waste, recycle a strategic material, conserve landfill space and protect the environment and public safety on a long term basis.

b. *Proposed decision on petition.* EPA proposes to deny the petition submitted by Edwin C. Kraemer. Although EPA agrees that conversion of fluff into viable products for trade might ameliorate the disposal problem in the area of PCB-contaminated fluff, EPA would not be able to make a finding of no unreasonable risk to health and the environment in this instance due to insufficient data to support such a finding. EPA encourages the petitioner to continue to pursue research in this area in order to generate more data in support of this petition. The good faith efforts criterion would have been met because the use of a substitute is not applicable in this instance in that this proposal seeks to provide an alternative to disposal for PCB-contaminated fluff.

E. Manufacture

EPA received two petitions to manufacture PCBs.

1. *General Electric (GE).* On November 16, 1992, GE submitted a petition to manufacture small quantities of PCBs for use on-site in EPA- authorized research activities.

a. *Current petition.* GE seeks to synthesize small quantities of PCBs for use on-site in EPA-authorized activities. In the petition GE states that ongoing and future research involving the remediation of PCB-contaminated media requires ready access to a supply of individual PCB congeners of a known quality and quantity, which is currently not readily available commercially. This activity would be conducted at GE-Corporate Research and Development, River and Van Antwerp Roads, Niskayuna, New York, 12309.

The petitioner states that the PCB congeners will be synthesized only as necessary for specific EPA-authorized research experiments while the amount of PCBs to be synthesized will be determined by the project specific requirements. The petitioner estimates that the total amount of PCBs to be synthesized will be limited to 2 kilograms per year, and the total amount of PCBs synthesized with bench-scale laboratory procedures will be limited to a maximum theoretical yield of 150 grams or less per experiment.

The petitioner maintains that the accidental release of PCBs is prevented by the use of apparatus such as condensers, cold traps, molecular sieves, or filters for retaining all reactants and reaction products. Also, reaction products and waste materials will be analyzed for PCB content, handled and disposed of in accordance with applicable regulations.

As described in the petition, PCB congeners are needed for research into developing alternative PCB remediation methods and innovative PCB destruction methods; therefore, use of a PCB substitute would not be feasible.

b. *Proposed decision on petition.* EPA proposes to grant GE an exemption for 1 year to manufacture small quantities of PCBs for use on-site in EPA-authorized activities. Because the research is being conducted by highly trained and experienced professionals under controlled conditions and only small quantities are involved, EPA finds that no unreasonable risk will result

from granting an exemption to GE to manufacture small quantities of PCBs for use on-site in EPA-authorized research activities. The good faith effort criterion has been met, because for research in development of alternative PCB remediation methods and PCB destruction methods, use of a PCB substitute may not be possible.

GE would be prohibited from manufacturing PCBs in excess of the amounts and quantities specified in their exemption petition, and would be required to petition EPA to obtain an exemption prior to an increase in the quantity or a change in the manner of handling PCBs under the GE exemption. EPA will consider any such change as a new exemption petition and address the request by rulemaking. If GE were to wish to continue its export activities beyond the 1–year timeframe according to the EPA approved exemption, a certified letter, pursuant to the amended Interim Procedural Rules, would have to be submitted at least 6 months prior to the expiration of the exemption.

2. *Supelco Inc. (Supelco).* On July 31, 1990, Supelco submitted a petition to manufacture PCBs in small quantities for use in research and development.

a. *Current petition.* Supelco seeks approval to manufacture individual pure PCB isomers in quantities of 0.02 to 0.04 pounds (i.e., 10 to 20 grams) each at its Supelco Park facility in Bellefonte, PA. The petitioner estimates that a 10 to 20 gram production lot of an individual pure PCB isomer would represent a 3 to 5 year supply. Total annual production is projected at less than 1 pound (i.e., 454 grams). The PCBs would be diluted in the microgram range and packaged for distribution in sealed vials for solids and amber ampules for liquids in either 5 milliliter or 1 milliliter quantities. Waste materials from the manufacture of PCBs would be manifested off-site for incineration in accordance with TSCA regulations.

To produce unsymmetrical PCBs, Supelco proposes to use a modified Gomberg-Bachmann reaction. An aromatic amine, an organic nitrite, and excess substrate are heated for several hours. Distillation under vacuum removes the remaining substrate. Column chromatography and/or high pressure liquid chromatography yields the product. Supelco asserts the merits of the method are that most of the starting materials are readily available from commercial sources, the synthesis is a simple one-step reaction, the final products following chromatography are sufficiently pure (>97 percent), and the yields are relatively good (30 to 35 percent).

To produce symmetrical PCBs, Supelco proposes to use replacement reaction of biphenylsulfonic acid with carbon tetrachloride. The reactants are heated in a Parr reactor for several hours at 250° C and, after removal of excess solvent, the final product is obtained in high purity (>98 percent) and high yield (>80 percent).

The synthesis of PCBs would be conducted in a controlled access laboratory that has been constructed for the preparation of hazardous chemicals by specially trained personnel in compliance with the Occupational Safety and Health Administration's (OSHA's) requirements at 29 CFR part 1910, subpart Z. Standards would be distributed in sealed glass ampules, no larger than 5 milliliters, to analytical laboratories with personnel trained in the handling of hazardous materials. Processing and distribution in commerce activities would be conducted pursuant to the class exemption at §761.80(g), and although processing activities would be expected to reach a maximum of 150 grams, distribution activities would not be expected to exceed 100 grams and therefore would not trigger the reporting requirement of the class exemption.

Supelco maintains that since it has been selected as the private industry participant in a Cooperative Research and Development Agreement (CRADA) to produce and distribute organic quality control samples for EPA's EMSL-Cincinnati laboratory, the consequences of EPA's denial of its exemption would be a serious inconvenience to the EPA and an economic loss of not less than $100,000 annually in potential sales to Supelco, Inc.

b. *Proposed decision on petition.* EPA proposes to grant Supelco an exemption for 1 year to manufacture PCBs for use in small quantities for research and development under §761.80(f) . EPA believes that, due to the careful handling of PCBs by trained personnel as demonstrated in the petition, there would be no unreasonable risk presented by granting this exemption petition request. All manufacturing, processing and distribution activities would be performed at the Supelco, Inc. facility at Supelco Park, Bellefonte, PA.

Since no PCB substitutes exist for analytical standards, the good faith effort criterion does not apply. Granting an exemption would benefit society by allowing important health, environmental, and analytical research to continue.

EPA proposes to prohibit Supelco from manufacturing PCBs in excess of the amounts and quantities specified in its petition (i.e., not to exceed 1 pound). Further exemptions beyond the 1–year period would be subject to the amended Interim Procedural Rules at 40 CFR part 750. Supelco would be required to petition EPA to increase the amount of PCBs handled, and to change the type of activities, the procedures for handling the PCBs, and any other term under the Supelco exemption. EPA would consider any such change as a new exemption petition and address the request by rulemaking. If Supelco were to wish to continue its manufacturing activities beyond the 1–year timeframe, a letter sent by certified mail would have to be received by EPA at least 6 months prior to the expiration of the exemption pursuant to the amended Interim Procedural Rules.

F. Manufacture, Import and Export

EPA received one petition to manufacture, import and export PCBs.

Chemsyn Science Laboratories (Chemsyn). On October 22, 1993, Chemsyn Science Laboratories submitted an exemption petition to manufacture/import and export PCBs in small quantities for research and development. Chemsyn is a manufacturer of chemical samples based in Lenexa, Kansas, and associated with Wellington Laboratories in Ontario, Canada. Chemsyn distributors are located in the United States, the Netherlands, Spain, Japan, and Italy. Chemsyn manufactures small quantity, high purity chemicals for use by industry, universities, government agencies, etc., for basic scientific research. Chemsyn produces standards such as radiolabelled, stable isotope labeled, and unlabelled environmental contaminants, including dibenzo-*p*-dioxins, chlorinated dibenzofurans, and EPA Method 1613 and 513 Standard Solutions. Samples are intended exclusively for laboratory applications.

a. *Current petition.* Chemsyn wishes to add PCB analytical standards to its current selection of environmental contaminant standards. The petition estimates that not more than 50 grams of PCBs would be produced annually. Chemsyn will produce each PCB congener in milligram quantities, and then diluted to the necessary concentration for the appropriate standard. Chemsyn also will import some standards containing PCBs that will be made in Canada by its partner, Wellington Laboratories. All the PCB standards will be flame sealed in 2 ml ampoules, and will contain less than 1 µg PCB per vial dissolved in 1.2 ml solvent. The PCB standards will be packaged and shipped in accordance with DOT shipping requirements.

Chemsyn literature indicates that all toxic preparations are shipped with documentation sheets describing known hazards. Chemsyn expects production waste generation to be minimal due to the small production rate and batch size involved. These wastes will be treated as PCB wastes. Chemsyn asserts that it has a highly trained staff, including chemists involved in the development of PCB chemistry and standards with Midwest Research Institute. Chemsyn estimates annual sales from PCB standards would be approximately $30,000.

b. *Proposed decision on petition.* EPA proposes to grant the Chemsyn petition for manufacture, import, and export PCBs. EPA has previously established the need for analytical standards [49 FR 28154, July 10, 1984]. Because of this need, the small quantity limitations, and the carefully controlled conditions of PCB manufacture, EPA finds that no unreasonable risk would result from granting an exemption to Chemsyn to manufacture PCBs in small quantities for research or development. This finding also applies to the import of samples from Chemsyn's Canadian partner, Wellington Laboratories, provided that the imported samples are prepared, packaged, and labeled in the same manner as domestically produced samples. Because the manufacture of these analytical standards is being conducted by highly trained and experienced professionals under controlled conditions and only small quantities are involved, EPA finds that no unreasonable risk would result from granting this exemption. As such, EPA does not believe that the importation of these standards, when compared with their domestic manufacture, would pose any added risk to health or the environment.

The Agency generally treats petitions for exemption to export PCBs more stringently than petitions to distribute PCBs within the United States. This is because once the PCBs cross beyond our borders, the United States loses its ability to monitor the handling and distribution activities, to inspect the receiving facilities for any regulatory violations, or to protect health or the environment from releases of those PCBs that might lead to additional PCB contamination in this country. However, EPA believes that those concerns are mitigated in the export of PCBs in small quantities for research and development particularly given the quantity, marking, and packaging of the PCBs, as well as the careful handling of the PCBs by trained laboratory personnel. This finding would be consistent with previous determinations regarding the export of PCB analytical samples for research and development [49 FR 28154].

EPA has determined that the good faith efforts finding would be met for petitions to manufacture, import, distribute or export PCBs in small quantities on projects consistent with the overall purposes of section 6(e) of TSCA, such as using PCBs as standards for the purpose of measuring PCB concentrations or using PCBs in the study of health and environmental effects of PCBs, because, in these cases, there are no PCB substitutes. There will always be a need for pure analytical standards to be developed to support laboratory analysis for PCBs. Also, pure PCBs are needed in critical health and environmental research because commercial PCBs contain mixtures of isomers and contaminants which may adversely affect experimental research.

Chemsyn would be prohibited from exporting PCBs in excess of the amounts and quantities specified in its petition (i.e., less than 50 grams/year), and would be required to petition EPA and obtain an exemption prior to an increase in the quantity or a change in the manner of handling PCBs under the Chemsyn exemption. EPA would consider any such change as a new exemption petition and address the request by rulemaking. If Chemsyn were to wish to continue its export activities beyond the 1–year timeframe under the EPA approved exemption, a certified letter, pursuant to the amended Interim Procedural Rules, must be submitted to EPA at least 6 months prior to the expiration of the exemption.

G. Processing and Distribution in Commerce of PCB in Buying and Selling Transformers

1. *Electric Apparatus Service Association (EASA).* On July 3, 1991, EASA submitted a petition requesting the renewal of their exemption which was originally granted in the May 22, 1990 **Federal Register** (55 FR 21023). This exemption allowed EASA members, for a period of 1 year, to process and distribute in commerce for reuse non-porous component parts from PCB-Contaminated Transformers that have been double washed and rinsed.

a. *Background.* EPA determined in granting the original exemption that, due to the non-porous nature of these component parts and, also, because of the relatively small amounts of PCBs involved, the activity of reusing component parts presents no unreasonable risk to health and the environment.

Regarding the benefits to society of granting this exemption, EASA maintained that, without access to their stockpiles of component parts, both economic loss to the member companies and detriment to the society would be incurred. EASA asserted that its members may be put out of business if reuse of these components were prohibited, due to their inability to repair transformers during the activities of buying and selling used transformers and servicing customers' transformers.

Although EPA made no judgement regarding this claim, EPA acknowledged that without stocks of component parts, many transformers could not be repaired promptly and equipment users could experience interruptions of electrical services and could be forced to prematurely dispose of reusable units.

To support its claim of good faith efforts to reduce inventories of PCB-contaminated components, EASA submitted evidence of their efforts to develop a double-rinse method to remove PCBs from the non-porous component parts that would be reused on the PCB-Contaminated Transformers. This double-rinse procedure employs a protocol similar to that in EPA's Spill Cleanup Policy (40 CFR part 761, subpart G). EASA maintained that the introduction of double-rinsed, non-porous component parts back onto the PCB-Contaminated Transformers would not change the original parts per million PCB content of the transformer into which the component part is incorporated.

EPA concluded that the processing and distribution in commerce of the PCB residues on non-porous, double-rinsed transformer component parts as well as the buying and selling of PCB or PCB-Contaminated Transformers that have been serviced with double-rinsed, non-porous parts, meets both the no unreasonable risk and good faith effort criteria. EPA granted this class exemption for 1 year.

EPA decided that in future requests for renewal of their (EASA) exemption, that EPA would consider the petitioner's evidence of no unreasonable risk and good faith efforts by evaluating whether stockpiles of component parts have been effectively decontaminated and also whether inventories of PCB and PCB-Contaminated Transformers in EASA's contained storage areas have been reduced.

b. *Current petition.* In this petition EASA seeks to renew their exemption to process and distribute in commerce for reuse non-porous component parts from PCB-Contaminated Transformers that have been double washed/rinsed as granted in the May 22, 1990 FR 21023.

EASA has submitted two additional reports from T R Service Company to support that the double wash/rinse method is effective to decontaminate non-porous components. As described in the renewal petition, one report showed that 20 samples were taken from 10 transformers and all showed PCB concentrations of less than 10 micrograms per 100 square centimeters.

On June 12, 1990 the petitioner stated that it surveyed its members and of those that responded, only 20 percent were still handling mineral oil transformers 50 ppm or greater. In the petitioner's opinion the number of members with inventories of 50 ppm to less than 500 ppm has decreased significantly.

c. *Proposed decision on petition.* EPA proposes to grant EASA's request for renewal of their exemption. EPA believes that EASA has fulfilled their responsibility in seeking to renew their exemption by demonstrating efficacy, a reduction in inventory and all other conditions as set forth in their original exemption.

V. 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 entitlements, 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 terms of this Executive Order, it has been determined that this rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (the Act), 5 U.S.C. 603, EPA must perform a regulatory flexibility analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." Pursuant to section 605(b) of the Regulatory Flexibility Act, which provides that section 603 of the Act "shall not apply to any proposed or final rule if the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities", EPA certifies that this rule will not have a significant impact on a substantial number of small entities. In addition, EPA is sending a copy of this rule to the Chief Counsel for Advocacy of the Small Business Administration. Section 6(e)(3)(A) and (B) of TSCA and EPA's PCB Ban Rule, 40 CFR part 761, prohibits the manufacture, processing, and distribution in commerce of PCBs. This rule, under section 6(e)(3)(B) of TSCA, would exempt persons from these prohibitions where petitioners have demonstrated that granting an exemption would not result in an unreasonable risk of injury to health or the environment and that they have made good faith efforts to develop substitutes for PCBs. Both small and large businesses must meet the same statutory standard. Thus, even if EPA believed that it was an economically desirable policy to grant an exemption petition for a small business, it could do so only if the small business met the requirements set forth in TSCA. This rule would not add to the burden placed on small businesses, it would only remove the prohibition placed on such businesses through granting an exemption. In essence, any impact from granting or denying a petition would only affect the petitioner.

Owners of individual small businesses who elect to petition the Administrator to engage in activities otherwise banned by the statute have already considered the economic consequences of conducting these activities, and nonetheless have opted to pursue an authorization for these activities. Finally, because this rule basically would benefit some small entities, without imposing direct economic costs on others, EPA believes that it is appropriate to certify that this rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., authorizes the Director of the Office of Management and Budget to review certain information collection requests by Federal Agencies. Under OMB Control Number 2070–0021, OMB has approved a general information collection request submitted by EPA for purposes of collecting information for rulemakings on PCB exemption petitions, and for any recordkeeping or reporting conditions to PCB exemption petitions granted by EPA.

Public reporting burden for this collection of information is estimated to average five 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.

VI. Official Rulemaking Record

All of the information previously submitted and filed in docket number OPTS–66001, 66002, 66008–66008K (manufacturing, processing, and distribution in commerce exemptions) has been consolidated into docket number OPTS–66011. EPA has established this consolidated docket for the convenience of the public but did not rely upon information in that docket when proposing this rule.

A public record, along with a complete index, is available for inspection in the Nonconfidential Information Center, Monday through Friday (excluding holidays) from 12 noon – 4:00 p.m. in Room G–102, Northeast Mall (401 M St., SW., Washington, DC).

The following material is cited in the Index to the Rulemaking Record for Polychlorinated Biphenyls, Manufacturing, Processing, and Distribution in Commerce; Exemptions, Docket Number OPTS 66011 at A2–File (Insert the date of this final rule).

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: November 23, 1994.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR chapter I, subchapter R is proposed to be amended as follows:

PART 761—[AMENDED]

1. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614 and 2616.

2. In §761.80 by adding paragraphs (c)(3), (c)(4), (c)(5), (f)(9), (f)(10) and (m)(8) and by revising paragraphs (h) and (n) to read as follows:

§761.80 Manufacturing, processing and distribution in commerce exemptions.

* * * * *

(c) * * *

(3) Sigma-Aldrich Corporation, St. Louis, MO, 63103.

(4) Millipore Corporation and ImmunoSystems Inc., Bedford, MA, 01730 and Scarborough, ME, 04074.

(5) National Institute of Standards and Technology, Gaithersburg, MD, 20899.

* * * * *

(f) * * *

(9) General Electric Company, Schenectady, NY,12301.

(10) Supelco Inc., Bellefonte, PA, 16823–0048.

* * * * *

(h) The Administrator grants the following petitioners a class exemption for 1 year to process and distribute in commerce non-porous transformer component parts which have been decontaminated of PCB residues and to buy and sell PCB Transformers or PCB-Contaminated Transformers to which only double-rinsed, non-porous component parts have been added:

(1) Electrical Apparatus Service Association, St. Louis, MO,63123.

(2) [Reserved]

* * * * *

(m) * * *

(8) Chemsyn Science Laboratories, Lenexa, KS, 66215.

(n) The 1–year exemption granted to petitioners in paragraphs (a) through (c)(1), (d), (f), and (m)(1) through (m)(6) of this section shall be renewed automatically as long as there is no increase in the amount of PCBs to be processed and distributed, imported (manufactured), or exported, nor any change in the manner of processing and distributing, importing (manufacturing), or exporting of PCBs. If there is such a change, a new exemption petition must be submitted to EPA and it will be addressed through rulemaking. In such a case, the activities granted under the existing exemption may continue until the new petition is addressed by rulemaking, but must conform to the terms of the existing exemption approved by EPA. The 1–year exemption granted to petitioners in paragraphs (c)(2), (3), (4) and (5), (f)(9) and (10), (h) and (m)(7) and (8) of this section may be extended pursuant to §750.11(e) or §750.31(e).

* * * * *

[FR Doc. 94–29569 Filed 11–30–94; 8:45 am]

BILLING CODE 6560–50–F

federal register

Tuesday
December 6, 1994

Part III

Department of Commerce

National Telecommunications and Information Administration

Public Telecommunications Facilities Program; Notice of Availability of Funds

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 941132-4332]

Public Telecommunications Facilities Program: Availability of Funds

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces that applications are available for planning and construction grants for public telecommunications facilities under the Public Telecommunications Facilities Program (PTFP), which is administered by NTIA.

Applicants for grants under the PTFP must file their applications on or before Wednesday, February 15, 1995. NTIA anticipates making grant awards by September 30, 1995.

Approximately $25.3 million is available in fiscal year 1995 for PTFP grants. The amount of a grant award will vary, depending on the application project. For fiscal year 1994, NTIA awarded $21.2 million in funds to 140 projects. The awards ranged from $4,102 to $850,000.

Prospective PTFP applicants should be aware that the Congress has appropriated funds for a related NTIA grant program. The program, which is part of the National Information Infrastructure effort, is called the Telecommunications and Information Infrastructure Assistance Program (TIIAP). The TIIAP's funds may be used for the planning and construction of telecommunications networks or for the purchase of telecommunications services and facilities that enhance the delivery of social services, such as education, culture, health care, public information, public safety, and other related services. The TIIAP program funds demonstration projects that support the formation of an advanced nationwide, telecommunications and information infrastructure incorporating the widest variety of information technologies. The Congress appropriated $64 million for the TIIAP in FY 1995. Formal announcement of the TIIAP program for FY 1995 will be made at a later date in a separate **Federal Register** notice. The TIIAP is distinct from the PTFP, which is the subject of this Notice. The PTFP or its predecessor programs have been in operation since 1962.

The Final Rules and Policy Statement for the PTFP were published on November 22, 1991 (56 Fed. Reg. 59168 (1991)). These rules, codified at 15 CFR part 2301, will be in effect for FY 1995 PTFP applications. Parties interested in applying for financial assistance should refer to these rules and to the authorizing legislation (47 U.S.C. 390–393 and Pub. L. 103–317) for additional information on the program's goals and objectives, eligibility criteria, evaluation criteria, and other requirements.

Authority: The Public Telecommunications Financing Act of 1978, as amended, 47 U.S.C. 390–393 (Act), and Pub. L. 103–317. (Catalog of Federal Domestic Assistance No. 11.550)

DATES: Pursuant to 15 CFR 2301.5(c), the Administrator of NTIA hereby establishes the closing date for the filing of applications for grants under the PTFP. The closing date selected for the submission of applications for 1995 is Wednesday, February 15, 1995. Applications delivered by mail or by hand must be delivered to the address referenced below by 5 p.m. on or before February 15, 1995. Applicants whose applications are not received by the deadline will be notified that their applications will not be considered in the current grant cycle and will be returned.

ADDRESSES: To obtain an application package, submit completed applications, or send any other correspondence, write to: Office of Telecommunications and Information Applications, NTIA/DOC, 14th Street and Constitution Ave., NW, Room H-4625, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dennis R. Connors, Director, Public Broadcasting, telephone: (202) 482-5802; fax: (202) 482-2156. Information about the PTFP can also be received electronically via Internet (send inquiries to PTFP@NTIA.DOC.GOV) or through the NTIA BBS at (202) 482-1199 (set computer modems for 8 stop bits, 0 polarity).

SUPPLEMENTARY INFORMATION:

I. Application Forms and Regulations

To apply for a PTFP grant, an applicant must file a timely and complete application on a current form approved by the Agency. *The current application form expires on October 31, 1997, and no previous versions of the PTFP Application Form may be used.* (In accordance with the Paperwork Reduction Act, the current application form has been cleared under OMB control no. 0660–0003.)

All persons and organizations on the PTFP's mailing list will be sent a copy of the current application form and the Final Rules. Those not on the mailing list may obtain copies by contacting the PTFP at the address or telephone, fax, computer bulletin board, or Internet numbers noted above. Prospective applicants should read the Final Rules carefully before submitting applications. Applicants whose applications were deferred in FY 1994 will be mailed pertinent PTFP materials and instructions for requesting reactivation.

Applicants should note that they must comply with the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." The Executive Order requires applicants for financial assistance under this program to file a copy of their application with the Single Points of Contact (SPOC) of all states relevant to the project. Applicants are required to serve a copy of their completed application on the appropriate SPOC on or before February 15, 1995. Applicants are encouraged to contact the appropriate SPOC well before the PTFP closing date.

NTIA requires that all applicants whose proposed projects need authorization from the Federal Communications Commission (FCC) must tender an application to the FCC for such authority on or before February 15, 1995. (An application is tendered to the FCC when it has been received by the Secretary of the FCC.) However, applicants are urged to submit it with as much lead time before the PTFP closing date as possible. The greater the lead time, the better the chance the FCC application will be processed to coincide with NTIA's grant cycle. NTIA will return the application of any applicant that fails to tender an application to the FCC for any necessary authority on or before February 15, 1995.

Indirect costs for *construction* applications are not supported by this program. The total dollar amount of the indirect costs proposed in a *planning* application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

All primary applicants must submit a completed Form CD-511, "Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying." Applicants are further advised that:

(1) *Nonprocurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR Part 26, Section 105)

are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form;

(2) *Drug Free Workplace.* Grantees (as defined at 15 CFR part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form;

(3) *Anti-lobbying.* Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form, which applies to applicants/bidders for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(4) *Anti-lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

For awards granted by NTIA, the recipient shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the grant award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to the Department. An SF–LLL completed by any tier recipient or subrecipient should be submitted to the Department in accordance with the instructions contained in the award document.

Approving a request to amend an award to increase funding or to extend the period of performance is at the total discretion of the Department.

Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal assistance awards. In addition, unsatisfactory performance by the applicant under prior Federal awards may result in the application not being considered for funding.

Applicants are reminded that a false statement on the application may be grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Special Note: As originally stated in the August 20, 1987, PTFP Final Rules (52 FR 31496 (1987)), and as reaffirmed and clarified in a November 22, 1991, PTFP Policy Statement (56 FR 59168 (1991)), NTIA has established a policy which is intended to encourage stations to increase from 25% to 50% the matching percentage for those proposals that call for equipment replacement, improvement, or augmentation. There are, however, some exceptions to this general policy direction. Small community-licensee stations, for example, will not be subjected to this policy. The same is true of a station that is licensed to a large institution (e.g., a college or university) that can document that it does not receive direct or in-kind support from the larger institution. Also, a showing of extraordinary need or an emergency situation will be taken into consideration as justification for grants of up to 75% of the project cost for such proposals. Nonetheless, except in these instances, the presumption of 50% funding will be the general rule for the replacement, improvement, or augmentation of equipment.

A point of clarification is in order: NTIA expects to continue funding projects to activate stations or to extend service at up to 75% of the total project cost. NTIA will do this because applicants proposing to provide first service to a geographic area ordinarily incur considerable costs that are not eligible for NTIA funding; such costs include those for construction or renovation of buildings and other similar expenses.

II. Documentation Concerning Discrimination Complaints

The NTIA Administrator is hereby extending a blanket waiver to all PTFP FY 1995 applicants and grant recipients exempting them from the requirements contained at 15 CFR 2301.5(d)(2)(xvii) and 2301.21(b)(1–2). Based on its experience, NTIA has found these requirements to be too burdensome and generally not pertinent to the PTFP's selection criteria. This blanket waiver means that FY 1995 PTFP applicants will not be required to provide a detailed list and explanation of any complaints of discrimination currently pending or decided against the applicant before any court or governmental agency. Moreover, FY 1995 PTFP grant recipients, once their projects are completed, will not be required to submit such documentation on their Annual Status Reports; nor will recipients have to provide the special academic certification concerning their admissions policies or their policies regarding the receiving or providing of services. Applicants are reminded, however, that they are still obligated to comply with the general Federal statutes relating to nondiscrimination, as stated in 15 CFR 2301.22(b)(15) and in Assurance No. 36 of the PTFP Application Form.

III. Eligible and Ineligible Costs

Eligible equipment for the 1995 grant round includes apparatus necessary for the production, interconnection, captioning, broadcast, or other distribution of programming, including but not limited to studio equipment; audio and video storage, processing, and switching; terminal equipment; towers, antennas, transmitters, remote control equipment, transmission line, translators, microwave equipment, mobile equipment, satellite communications equipment, instructional television fixed service equipment, subsidiary communications authorization transmitting and receiving equipment, cable television equipment, and optical fiber communications equipment.

NTIA recognizes that digital technology will be an important means for the more efficient creation and distribution of programming in the future. Consequently, public broadcasters seeking to replace, upgrade, and buy new equipment which employs digital technology will be permitted, when appropriate, to use PTFP funds for such purposes.

The following list provides clarification regarding several equipment and other cost areas that will be helpful in preparing applications. NTIA reserves the right to eliminate any costs, whether specified here or not, that it determines are not appropriate prior to the awarding of a grant.

A. Equipment and Supplies

(1) Buildings and Modifications to Buildings. (a) Eligible: Small equipment shelters that are part of satellite earth stations, translators, microwave interconnection facilities, and similar facilities. (b) Ineligible: Purchase or lease of buildings and modifications to buildings, including the renovation of space for studios intended to house eligible equipment; costs associated with removing old equipment.

(2) Land and Land Improvements. (a) Eligible: Site preparation necessary to construct towers and guy anchors for transmission and interconnection equipment. (b) Ineligible: Purchase or lease of land.

(3) Moving Costs. Ineligible: Moving costs required by relocation of transmitter or studio equipment.

(4) Reception Equipment. (a) Eligible: Fixed frequency demodulator, as required by good engineering practice for monitoring the off-air transmission of signals; subcarrier demodulator; telemetry transmitters and receivers; satellite receivers; and subcarrier decoders for the handicapped. (b) Ineligible: Consumer-type TV sets and FM receivers.

(5) Tower Modifications. (a) Eligible: Strengthening or modifying a commercial entity's tower to accommodate a public broadcasting entity (structural modifications on towers and/or antenna changes must meet EIA and any required local standards). (b) Ineligible: Modifying or strengthening the applicant's tower to accommodate a commercial entity.

(6) Production and Control Room Equipment. (a) Eligible: Standard production studio and control room equipment for TV or radio program production. (b) Ineligible: Consumer-type mixers, tape recorders, turntables, CD players, etc. Ancillary production devices such as stopwatches and stop-clocks, building lights, sound effects and sound effects equipment, scenery and props, cycloramas, sound insulation devices and materials, draperies and related equipment for production use, film and still photography processing, film sound synchronization editing.

(7) Video Equipment. (a) Eligible: Videotape editing and processing equipment that conforms to broadcast-standard quality equipment for field recording and production editing. (b) Ineligible: Consumer level videotape recording formats not accepted in the industry as broadcast-standard quality.

(8) Furniture and Office Equipment. (a) Eligible: Consoles required to mount equipment such as audio consoles and video switchers. (b) Ineligible: Such items as office furniture, office equipment, studio clocks and systems, blackboards, office intercoms, equipment inventory labels and label-makers, word processors, telephones and telephone systems, and printing and duplication equipment.

(9) Expendable Items and Spare Parts. (a) Eligible: A transmitter spare parts kit and one set of final and driver tubes for a transmitter awarded in the grant. A spare parts kit for video tape recorders awarded in the grant. (b) Ineligible; Spare lenses, spare circuit components, spare parts kits for studio equipment except as noted above; recording tape, film, reels, cartridge tapes, records, CDs, and record or tape cleaning equipment; art and graphics supplies; maintenance supplies, including replacement final and driver tubes normally considered in the industry as normal maintenance-budget-provided items and similar items.

(10) Backup Equipment. (a) Eligible: Hot standby or backup microwave for the main studio-to-transmitter link only; a backup or spare exciter for a television transmitter, as required by good engineering practice. (b) Ineligible: Redundant equipment, such as spare transmitters, or costs associated with them, as well as backup microwave equipment (except as noted above).

(11) Electric Power. (a) Eligible: Generally, all primary power costs from the output of the main power meter panel; regulators and surge protectors, as required by good engineering practice, to stabilize transmitter RF output. Where primary power is not available or is unusable for broadcast, then PTFP may provide funding for those devices needed to power the facility if the need for that equipment is fully documented in the application. (b) Ineligible: Costs of installing primary power to the facility, including transformers, power lines, gasoline or diesel powered generators, and related equipment.

(12) Test and Maintenance Equipment. (a) Eligible: Required test equipment, as indicated by good engineering practice for the maintenance of the project equipment. (b) Ineligible: Maintenance equipment such as hand and power tools, storage cabinets, and maintenance services.

(13) Air Conditioning and Ventilation. (a) Eligible: The costs to provide ventilation of eligible project equipment, such as ducting for transmitters, as required by good engineering practice. Transmitter air conditioning can be applied for and will be supported if the need is well-documented in the application. (b) Ineligible: Unless exceptionally well-documented, air conditioning for transmitters, control rooms, or equipment rooms, studios, mobile units, and other operational rooms and offices.

(14) Remote Vans. (a) Eligible: Items to equip a remote van for audio/video production. (b) Ineligible: All vehicles.

B. Other Expenses

(1) Construction Applications: NTIA generally will not fund salary expenses, including staff installation costs, pre-application legal and engineering fees. Certain "pre-operational expenses" are eligible for funding. (*See* 15 CFR 2301.1.) Despite this provision, NTIA regards its primary mandate to be funding the acquisition of equipment and only secondarily funding salaries. (A discussion of this issue appears in the PTFP Final Rules, 56 FR 59172 (1991).)

(2) Planning Applications. (a) Eligible: Salaries are eligible expenses for all planning grant applications, but should be fully described and justified within the application. Planning grant applications may lease office equipment, furniture and space, and may purchase expendable supplies under the terms of Section 392(c) of the Act. (b) Ineligible: Planning grant applications cannot include the cost of constructing or operating a telecommunications facility.

(3) Audit Costs. (a) Non-Profit Organizations: Non-profit organizations receiving payments of more than $25,000 in Federal funds during a one-year period are required to have an audit conducted in accordance with Federal guidelines. Audits for non-profit organizations are performed in one of two ways. An NTIA/PTFP-specific audit can be performed if the organization receives funds solely from NTIA. If the organization receives funds from more than one Federal source during the year that the audit is conducted, an organization-wide audit must be performed under OMB Circular A–133. (Note that Corporation for Public Broadcasting funding is not considered a Federal source.)

Federal guidelines allow NTIA/PTFP to include an amount for audit costs as part of a grant award. NTIA/PTFP policy permits non-profit organizations to include up to $5,000 for audit costs in an application. Because audit costs may vary depending on the size and scope of an organization's operations, NTIA/PTFP recommends that applicants obtain estimates from auditors to determine the appropriate amount to include in their applications. Construction Grant Applicants should list the amount requested for audit costs in Part II, Section D—Other Project Costs, 1. Outside Services of the PTFP Application Form. Planning Grant Applicants should include the amount on line 7, Other, in Part III—Budget Information for Planning Grant Applicants of the PTFP Application Form.

(b) Government Agencies, Indian Tribes, and Educational Institutions: State and local governments, Indian tribes, and educational institutions are also subject to federal audit requirements if they receive over $25,000 in Federal funds during a one-year period. NTIA/PTFP can allow only an amount for audit costs equal to the NTIA/PTFP percentage of all Federal funds received by an entity. It is expected that the NTIA/PTFP

percentage of the Federal funds received by state and local governments and educational institutions would be minimal in any one year, and NTIA/PTFP does not anticipate that these entities will include an amount for audit costs in their applications. These entities are not precluded from including such an amount in their applications, however, and the merit of such requests will be reviewed on a case-by-case basis.

IV. Purchase of American-Made Equipment and Products

Prospective PTFP applicants are hereby notified that they will be encouraged to purchase, to the greatest extent practicable, American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Public Law 103–317, Sections 607 (a) and (b).

V. Selection Process and Project Period

PTFP grants are awarded on the basis of a competitive review process. Before being selected for a grant award, a given application for PTFP funding will undergo many stages of review, all of which apply the program's Funding Criteria listed in the Final Rules (15 CFR 2301.13 and 2301.14). The review includes the following: an evaluation by PTFP staff; a technical assessment by staff engineers; a review by outside readers, all of whom have demonstrated expertise in either public broadcasting or distance learning; and a rating by National Advisory Panels, composed of representatives of the major national public radio and television organizations. In addition, NTIA gives "special consideration" to the applications according to the level of involvement of women and minorities in the control and operation of the applicant's station or project or the degree to which the project's programming will be specifically directed towards meeting the needs and interests of minority groups or women. Documentation of substantial involvement by minorities or women may increase a given application's competitiveness.

The PTFP Director presents recommendations to the NTIA Administrator on a proposed slate of grant recipients. Acting on these recommendations, the NTIA Administrator selects the applications to be negotiated for possible grant award. In making the selections, the Administrator will consider the following:

- The degree to which the slate of applications, taken as a whole, satisfies the program's stated purposes (see 47 U.S.C. § 390 and 15 CFR § 2301.2);
- The geographic distribution of the proposed grant awards;
- The Director's recommendations;
- The evaluations of the various reviewers;
- The program's priorities and the special applications category, as stated in 15 CFR § 2301 (Appendix) (1991);
- The extent of the involvement of minorities or women in the projects;
- Consideration as to whether the application is for a broadcast or a nonbroadcast project; and,
- The availability of funds.

After the applications are selected in this manner, negotiations take place between PTFP staff and the applicant. These negotiations are intended to resolve whatever differences might exist between the applicant's original request and what PTFP proposes to fund. During negotiations, some applications may be dropped from the proposed slate, due to lack of Federal Communications Commission licensing authority, applicant inability to make adequate assurance certifications, or other reasons. When the negotiations are completed, the PTFP Director recommends final grant-award action to the NTIA Administrator. Applying the same factors as listed above, the Administrator then makes the final selection of grant recipients from the pool of negotiated application projects.

Planning grant award periods customarily do not exceed one year, whereas construction grant award periods commonly range from one to two years. Although these time frames are generally applied to the award of all PTFP grants, variances in project periods may be based on specific circumstances of an individual proposal.

Dr. Charles M. Rush,

Acting Associate Administrator, Office of Telecommunications and Information Applications.

[FR Doc. 94–29917 Filed 12–5–94; 8:45 am]

BILLING CODE 3510–60–M

federal register

Tuesday
December 6, 1994

Part IV

Environmental Protection Agency

40 CFR Part 9 et al.

Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 60, 260, 262, 264, 265, 270, and 271

[IL-64-2-5807; FRL-5110-8]

RIN 2060-AB94

Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the authority of the Resource Conservation and Recovery Act (RCRA), as amended, the EPA is promulgating air standards that will further reduce organic emissions from hazardous waste management activities. The air standards apply to owners and operators of hazardous waste treatment, storage, and disposal facilities (TSDF) subject to RCRA subtitle C permitting requirements and to certain hazardous waste generators accumulating waste on-site in RCRA permit-exempt tanks and containers. Under these standards, air emission controls must be used for tanks, surface impoundments, and containers in which hazardous waste is placed on or after June 5, 1995 except under certain conditions specified in the rule. Air emission control requirements are also added to the RCRA permit terms and provisions specified for TSDF miscellaneous units. In addition, this action establishes a new EPA reference test method (Method 25E) to determine the organic vapor pressure of a waste.

EFFECTIVE DATE: The final rule is effective as of June 5, 1995. The EPA has specified in the final rule a schedule that establishes the compliance dates by which different requirements of the rule must be met. These compliance dates and requirements are explained further under **SUPPLEMENTARY INFORMATION.**

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 5, 1995.

ADDRESSES: *Background information document.* The background information document (BID) for the final rule may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone (919) 541-2777. Please refer to "Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF)—Background Information for Promulgated Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers", EPA document number EPA-453/R-94-076b.

This document and the BID are also available on the EPA's Clean-up Information Bulletin Board (CLU-IN). To access CLU-IN with a modem of up to 28,800 baud, dial (301) 589-8366. First-time users will be asked to input some initial registration information. Next, select "D" (download) from the main menu. Input the file name "RCRAAIR1.ZIP" to download this notice. Input the file name "RCRAAIR2.ZIP" to download the BID. Follow the on-line instructions to complete the download. More information about the download procedure is located in Bulletin 104; to read this type "B 104" from the main menu. For additional help with these instructions, telephone the CLU-IN help line at (301) 589-8368.

Docket. The supporting information used for this rulemaking is available for public inspection and copying in the RCRA docket. The RCRA docket numbers pertaining to this rulemaking are F-91-CESP-FFFFF, F-92-CESA-FFFFF, F-94-CESF-FFFFF, and F-94-CE2A-FFFFF. The RCRA docket is located at the EPA RCRA Docket Office (5305) in room 2616 of the U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: The RCRA Hotline, toll-free at (800) 424-9346. For further information on the specific air standards and test method promulgated by this action, contact Ms. Michele Aston, Emission Standards Division (MD-13), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-2363.

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

I. Compliance Dates
II. Summary of Rule Changes Since Proposal
A. TSDF Tanks, Surface Impoundments, and Containers
B. TSDF Miscellaneous Units
C. Generator 90-Day Tanks and Containers
D. Other RCRA Regulatory Actions
E. Test Methods
III. Summary of Final Rule Impacts
IV. Background
A. Implementation of RCRA Section 3004(n)
B. Public Participation in Rulemaking
C. Relationship to Other RCRA Standards
D. Relationship to CERCLA Standards
E. Relationship to Clean Air Act Standards
F. Relationship to Nuclear Regulatory Commission Standards
V. Basis for Final Rule
A. New Control Options
B. Control Option Impacts
C. Selection Rationale
VI. Summary of Responses to Comments on Proposed Rule
A. Development of Air Standards Under RCRA
B. Revised Impacts Analysis
C. Container Air Standards
D. Generator 90-Day Tanks and Containers
E. Implementation of RCRA Air Standards
F. Waste Stabilization in Tanks
VII. Requirements of Final Rule
A. TSDF Tank, Surface Impoundment, and Container Requirements
B. TSDF Miscellaneous Unit Requirements
C. 90-Day Tanks' and Containers' Requirements
D. Amendments to Subparts AA and BB Standards
VIII. Implementation of Final Rule
A. Existing Sources
B. New Sources
C. State Authority
IX. Test Methods
A. Method 25D
B. Method 25E
X. Administrative Requirements
A. Paperwork Reduction Act
B. Executive Order 12866 Review
C. Regulatory Flexibility Act
D. Docket
XI. Legal Authority

I. Compliance Dates

The final rule promulgated today establishes additional air standards for TSDF owners and operators subject to 40 CFR part 264 or 40 CFR part 265. In addition, this rule amends the conditions for hazardous waste generators accumulating waste on-site in RCRA permit-exempt tanks and containers pursuant to 40 CFR 262.34(a) to include air emission control requirements. All of these rule requirements are effective as of June 5, 1995. All hazardous waste placed in the affected tanks, surface impoundments, containers, and other affected units on and after this date must be managed in accordance with the requirements of the final rule. This includes implementing the required air emission controls on an affected unit or performing the required waste determinations and recordkeeping to indicate that the affected unit is exempted from these air emission control requirements. Under circumstances when the air emission control equipment required to comply with the rule cannot be operational at an existing TSDF by June 5, 1995, an implementation schedule for installation of the equipment must be developed and placed in the facility operating records no later than June 5, 1995. In such cases, the facility owner or operator must have all air emission

controls required by the final rule in operation no later than December 8, 1997.

Today's action amends 40 CFR 270.4 to require that owners and operators of TSDF for which a final permit has been issued by the EPA prior to June 5, 1995 must comply with the air emission control requirements for interim-status TSDF under 40 CFR 265 subparts AA, BB, and CC until the facility's permit is reviewed or reissued by the EPA. The EPA's rationale for adopting this implementation practice for today's rulemaking is explained in section VI.E of this preamble.

For tanks in which waste stabilization activities (sometimes referred to as waste fixation) are performed as of December 6, 1994, be the effective date of the final rules will December 6, 1995. As of the extended effective date for stabilization tanks, each TSDF owner or operator and each hazardous waste generator subject to the final rules must either install and operate the specified air emission control requirements on all affected tanks used for stabilization, or begin performing the specified waste determinations and recordkeeping to indicate that a stabilization tank is exempted from these requirements. Under circumstances where required air emission control equipment cannot be operational on stabilization tanks by December 6, 1995, an implementation schedule for installation of the required air emission controls must be developed and placed in the facility operating records no later than December 6, 1995.

In such cases, for stabilization tanks, the facility must have all air emission controls required by the final rules in operation no later than June 8, 1998.

II. Summary of Rule Changes Since Proposal

The EPA proposed the rule on July 22, 1991 (refer to 56 FR 33491). Based on public comments received by the EPA at proposal as well as the EPA's evaluation of additional information obtained after proposal, certain requirements of the rulemaking have been changed from those proposed. The major changes affect provisions establishing the rule applicability, the procedures for determining the average volatile organic concentration of a waste, and the air emission control requirements for containers. In addition, the EPA has made many changes to the specific regulatory text to clarify the EPA's intent in the application and implementation of the rule requirements. The substantive changes to the rulemaking since proposal are summarized below. A summary of the requirements of the rule as promulgated is presented in section VII of this preamble.

A. TSDF Tanks, Surface Impoundments, and Containers

A new subpart CC is added by today's action to both 40 CFR parts 264 and 265. Subpart CC under 40 CFR part 264 applies to owners and operators of permitted TSDF while subpart CC under 40 CFR part 265 applies to owners and operators of interim-status TSDF. All changes since proposal to subpart CC in 40 CFR part 264 and to subpart CC in 40 CFR part 265 are identical with the exception of changes to the rule reporting requirements. There are no reporting requirements under 40 CFR 265 subpart CC for owners and operators of interim-status TSDF. Hereafter for convenience in this preamble, the term "subpart CC standards" is used collectively to refer to both subpart CC in 40 CFR part 264 and subpart CC in 40 CFR part 265.

The compliance time for the subpart CC standards has been revised since proposal to allow up to an additional 30 months after June 5, 1995 to install and begin operation of air emission control equipment required by the rule provided that the owner or operator develops and places in the facility operating records by this date an implementation schedule for installation of the equipment. Compliance dates and implementation requirements for the final rule are explained in sections I and VIII of this preamble.

1. Applicability

The applicability of the subpart CC standards has been revised since proposal to specifically exempt from the rule certain tanks surface impoundments, and containers in which the owner or operator has stopped adding hazardous waste. The subpart CC standards do not apply to a tank, surface impoundment, or container that meets either of the following conditions:

(1) No hazardous waste is added to the waste management unit on or after June 5, 1995 (see generally 55 FR 39409, September 27, 1990); or

(2) Addition to hazardous waste to the waste management unit is stopped and the owner or operator has begun implementing or completed closure pursuant to an approved closure plan.

In addition, the applicability of the subpart CC standards has been changed such that the rule is not applicable to any container having a design capacity less than 0.1 m^3 (approximately 26 gallons) regardless of the organic content of the hazardous waste handled in the container. In response to comments on the proposed rule, the EPA reviewed the types of small containers commonly used to accumulate and transfer hazardous waste. Considering the small quantity of hazardous waste handled in a sample collection vial, safety can, disposal can, and other types of small containers and the short periods of time that the waste normally remains in one of these containers, the EPA concluded that existing rules for containers having a design capacity less than 0.1 m^3 are sufficient to protect human health and the environment.

Finally, the EPA has decided to temporarily defer application of the subpart CC standards to tanks, surface impoundments, and containers managing hazardous wastes under certain special circumstances. For now, the EPA is deferring application of the subpart CC standards to waste management units that are used solely to treat or store hazardous wastes generated on-site from remedial activities required under RCRA corrective action or CERCLA response authorities (or similar State remediation authorities). Also, the EPA is deferring application of the subpart CC standards to waste management units that are used solely to manage radioactive mixed wastes. The EPA's rationale for these deferrals is explained in section VIII.A.1 of this preamble.

2. General Standards

For each tank, surface impoundment, or container to which the subpart CC standards apply (referred to here as an "affected unit"), the owner or operator is required to use the air emission controls specified in the rule except when the hazardous waste placed in an affected unit meets certain conditions. As explained in the following paragraphs, the conditions under which an affected unit is exempted from the air emission control requirements of the subpart CC standards have been revised since proposal.

a. Waste volatile organic concentration exemption. Under the final subpart CC standards, an affected unit is exempt from the air emission control requirements of the rule if all hazardous waste placed in the unit is determined to have an average volatile organic concentration less than 100 parts per million by weight (ppmw) based on the organic composition of the hazardous waste at the point of waste origination. This waste volatile organic concentration limit incorporates several revisions that have been made by the EPA since proposal.

First, the format for the limit has been changed to be the average volatile organic concentration of the hazardous waste on a mass-weighted basis during normal operating conditions for the source or process generating the waste (in contrast to the proposed format of the maximum volatile organic concentration for the hazardous waste never to be exceeded). Averaging periods up to 1 year in duration are allowed for each individual waste stream under the final rule. The procedures for determining the average volatile organic concentration of a waste are explained further under "Waste Determination Procedures" in this section and in section VII.A.3 of this preamble.

Second, determination of the volatile organic concentration of the waste under the final rule is based on the organic composition of the waste at the "point of waste origination" (instead of the "point of waste generation" as proposed). The "point of waste origination" is defined in the final rule with respect to the point where the TSDF owner or operator first has possession of a hazardous waste. When the TSDF owner or operator is the generator of the hazardous waste, the "point of waste origination" means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as defined in 40 CFR part 261. In this case, this term is being used in a similar manner to the use of the term "point of generation" in waste operations air standards established under authority of the Clean Air Act in 40 CFR parts 60, 61, and 63 of this chapter. When neither the TSDF owner nor operator is the generator of the hazardous waste, the "point of waste origination" means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

Finally, the EPA revised the impact analysis used for this rulemaking after proposal to incorporate additional TSDF industry data. An opportunity for public comment on this analysis was provided by the EPA (refer to sections III.B and VI.B of this preamble). Based on the revised analysis results, the EPA selected a new value for the volatile organic concentration limit. Section V.C of this preamble presents the rationale for the selection of the control option used as the basis for the final rule.

b. Treated hazardous waste exemption. Under the subpart CC standards, each affected tank, surface impoundment, and container that manages hazardous waste having an average volatile organic concentration equal to or greater than 100 ppmw, as determined by the procedures specified in the rule, is required to use air emission controls in accordance with the rule requirements. The owner or operator must install and operate the specified air emission controls on every affected tank, surface impoundment, and container used in the waste management sequence from the point of waste origination (as applies to the specific hazardous waste stream) through the point where the organics in the waste are removed or destroyed by a process in accordance with the requirements of the rule. If a particular hazardous waste is not treated to meet these requirements, then all affected units at the TSDF used in the waste management sequence for this hazardous waste are required to use the air emission controls specified by the subpart CC standards.

If the hazardous waste is treated to remove or destroy the organics in the waste by a process that meets or exceeds a minimum level of performance as specified in the rule, then affected units at the TSDF operated downstream of the treatment process in the waste management sequence for this hazardous waste are not required to use the air emission controls specified by the subpart CC standards. It is important to emphasize that tanks, surface impoundments, and containers (subject to the rule) in which the treatment process is conducted are required to use the applicable air emission controls specified by the subpart CC standards with the exception of certain tanks and surface impoundments used for active biological treatment of hazardous waste and achieving the performance requirements specified in the rule (this exception is explained further in section VII.A.4 of this preamble).

The conditions under which a treated hazardous waste no longer is required to be managed in affected units using air emission controls under the subpart CC standards have been revised and expanded since proposal to include many alternatives from which an owner or operator can choose one with which to comply. The final subpart CC standards allow an owner or operator to use any type of treatment process that can continuously achieve one of the specified sets of performance conditions. These conditions have been changed to include:

(1) The average volatile organic concentration of the hazardous waste exiting the process is less than 100 ppmw (except for certain site-specific situations where multiple hazardous waste streams are treated by a single process in which case a volatile organic concentration limit for the waste exiting the process is established by the rule procedures at a value lower than 100 ppmw);

(2) The organic reduction efficiency for a process treating multiple hazardous waste streams is equal to or greater than 95 percent, and the average volatile organic concentration of the hazardous waste exiting the treatment process is less than 50 ppmw; or

(3) The actual organic mass removal rate for the process is greater than the required mass removal rate established for the process. The alternative treatment process performance requirements specified in the final subpart CC standards are discussed further in section VII.A.2 of this preamble.

The proposed explicit exemption for hazardous wastes complying with the land disposal restriction (LDR) treatment standards is not included in the final subpart CC standards. The EPA concluded that the expanded number of alternatives for treated hazardous waste and other provisions added to the final rule provide a reasonable regulatory mechanism by which a TSDF owner or operator can determine whether a hazardous waste complying with the LDR treatment standards is exempted from being managed in accordance with the air emission control requirements of the subpart CC standards.

3. Waste Determination Procedures

As already noted, the procedures that a TSDF owner or operator may use to determine the volatile organic concentration of a hazardous waste have been revised for the final subpart CC standards. For a case when direct measurement is chosen for determining the volatile organic concentration of a hazardous waste, the proposed statistical calculation procedure using Method 25D results is not included in the final subpart CC standards. Instead, procedures are specified in the final rule to compute the mass-weighted average volatile organic concentration of a hazardous waste using Method 25D results for waste generated as part of a continuous process and for waste generated as part of a batch process. Under circumstances when the same batch process is performed repeatedly but not necessarily continuously, the final rule allows the owner or operator to determine the average volatile organic concentration of the waste from this process by averaging results for one or more representative waste batches generated by the process. In all cases, a sufficient number of waste samples for analysis (with a minimum of four samples) must be collected to be representative of the normal range of the

operating conditions for the source or process generating the hazardous waste. Normal operating conditions for the source or process generating the waste include cyclic process operations such as startup and shutdown. Process malfunctions, maintenance activities, or equipment cleaning are not considered to be normal operating conditions for the purpose of determining the average volatile organic concentration of a waste. These waste determination procedures are discussed further in section VII.A.3 of this preamble.

The proposed explicit requirements for determining the volatile organic concentration of a hazardous waste using information in a waste certification notice prepared by the waste generator are not included in the final rule. Instead, for hazardous waste that is not generated by the TSDF owner or operator (i.e., waste shipped to the TSDF from off-site sources under different ownership), the final rule allows the TSDF owner or operator to determine the waste volatile organic concentration by either testing the waste when he or she accepts delivery of the hazardous waste or using appropriate information about the waste composition that is prepared by the generator of the waste. The generator prepared information can be included in manifests, shipping papers, or waste certification notices accompanying the waste shipment, as agreed upon between the waste generator and the TSDF owner or operator.

4. Tank Standards

Several changes to the tank standards have been made since proposal. An exemption from the tank standards has been added for those affected tanks used for biological treatment of a hazardous waste in accordance with requirements specified in the rule. Changes have been made to clarify the regulatory text regarding the tank cover design and operating requirements. Also, the conditions have been clarified that must be met for a particular tank to use a fixed-roof type cover without any additional controls in accordance with the subpart CC standards. Finally, provisions have been added to the rule to address those special situations in which emergency venting of the tank or the air emission controls installed on the tank is necessary for safety.

5. Surface Impoundment Standards

Changes to the surface impoundments standards have been made to be consistent with the changes to the tank standards as applicable.

6. Container Standards

Several changes have been made to the container standards since proposal in addition to limiting the applicability of the subpart CC standards to containers having a design capacity equal to or greater than 0.1 m^3. The air emission control requirements for affected containers have been revised to provide several air emission control alternatives from which an owner or operator may choose one with which to comply. For containers having a design capacity less than or equal to 0.46 m^3 (approximately 119 gallons), an owner or operator may place the hazardous waste in drums that meet U.S. Department of Transportation (DOT) specifications under 49 CFR part 178 without any additional testing, inspection, or monitoring requirements. An owner or operator is also allowed under the final rule to place the hazardous waste in tank trucks and tank railcars that are annually demonstrated to be vapor tight using Method 27 in 40 CFR part 60, appendix A without any additional testing, inspection, or monitoring requirements.

The requirements for waste transfer operations for containers have been revised under the final subpart CC standards. Submerged-fill of hazardous waste that is loaded into containers by pumping is required only when transferring the waste into containers having a design capacity greater than 0.46 m^3. Submerged fill of the waste is not required when filling smaller size containers such as 55-gallon drums.

The air emission control requirements for owners and operators treating hazardous waste in open containers have been revised. Whenever it is necessary for the container to be open during the treatment process, the container is required to be located in an enclosure connected to a closed-vent system with an operating organic emission control device. The final subpart CC standards include specific enclosure design and operation requirements which allow the enclosure to have permanent openings for worker access.

Finally, the container standards have been revised to be consistent with the safety venting provisions added to the tank and surface impoundment standards.

7. Closed-Vent System and Control Device Standards

The design and operating requirements for closed-vent systems and control devices have been changed to be consistent with those requirements already applicable to TSDF owners and operators under subpart AA in 40 CFR parts 264 and 265. The subpart AA standards have been in effect since 1990 and establish RCRA air standards to control organic emissions from process vents on certain types of hazardous waste treatment units.

8. Inspection and Monitoring Requirements

The inspection and monitoring requirements under the subpart CC standards have been revised since proposal. The requirements for inspection and monitoring of closed-vent systems and control devices have been changed to be identical to the inspection and monitoring requirements under subpart AA in 40 CFR parts 264 and 265. The required interval for the visual inspection of covers installed on tanks, surface impoundments, and certain containers has been changed to once every 6 months. After the initial cover inspection and monitoring for detectable organic emissions is completed, the owner or operator is only required to inspect and monitor those cover openings that have been opened (i.e., have not continuously remained in a closed, sealed position) since the last visual inspection and monitoring. Special inspection and monitoring provisions have been added for cover fittings that are unsafe or difficult, as defined in the rule, for facility personnel to inspect and monitor.

The subpart CC standards have been changed to allow leak repair on tank and surface impoundment covers to be delayed beyond 15 calendar days if both of the following conditions occur: (1) Repair of the leak requires first emptying the contents of the tank or surface impoundment; and (2) temporary removal of the tank or surface impoundment from service will result in the unscheduled cessation of production from the process unit, or operation of the waste management unit, that is generating the hazardous waste managed in the tank or surface impoundment. Repair of a leak must be performed at the next time the process, system, or waste management unit that is generating the hazardous waste managed in the tank or surface impoundment stops operation for any reason.

9. Recordkeeping Requirements

The subpart CC standards have been changed to require cover design documentation only for floating roof-type tank covers, surface impoundment covers, and enclosures used for control of air emissions from containers. Also, the recordkeeping requirements have

been revised as appropriate to address the changes to the final rule described previously in this section of the preamble.

10. Reporting Requirements

The reporting requirements in the subpart CC standards are the same as proposed with one exception. The time interval within which TSDF owners and operators subject to the subpart CC standards under 40 CFR part 264 must report to the Regional Administrator all circumstances resulting in noncompliance with the applicable conditions has been changed to within 15 calendar days of the time that an owner or operator becomes aware of the circumstances.

B. TSDF Miscellaneous Units

Today's action amends 40 CFR 264.601 by adding to the permit terms and provisions required for RCRA permitting of a miscellaneous unit the appropriate air emission control requirements in 40 CFR part 264, subparts AA, BB, and CC. This amendment is the same as proposed.

C. Generator 90-Day Tanks and Containers

The conditions with which a hazardous waste generator must comply, pursuant to 40 CFR 262.34(a), to exempt tanks and containers accumulating hazardous waste on-site for no more than 90 days from the RCRA subtitle C permitting requirements are amended by today's action to include compliance with the air emission control requirements of 40 CFR part 265, subparts AA, BB, and CC. This amendment is the same as proposed.

D. Other RCRA Regulatory Actions

The EPA proposed several amendments to existing RCRA air standards. One amendment proposed adding requirements for the management of spent carbon removed from a carbon adsorption system to the closed-vent system and control device standards under 40 CFR part 264, subparts AA and BB, and 40 CFR part 265, subparts AA and BB. The final amendment has been revised to allow the owner or operator the additional option of burning the spent carbon in a boiler or industrial furnace that is permitted under subpart H of 40 CFR part 266. A second amendment promulgated today updates the leak detection monitoring provisions under 40 CFR part 264, subparts AA and BB, and 40 CFR part 265, subparts AA and BB for closed-vent systems to be consistent with other air standards recently promulgated by the EPA. Under this amendment, annual leak detection monitoring is not required for those closed-vent system components which continuously operate in vacuum service or those closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (e.g., a welded joint between two sections of metal pipe, a bolted and gasketed pipe flange).

E. Test Methods

As part of this rulemaking, the EPA proposed two new reference test methods (Method 25D and Method 25E) to be added to 40 CFR part 60, Appendix A. Method 25D is a test method for the determination of the volatile organic concentration of waste materials. Since proposal, the EPA decided it is also appropriate to use method 25D to implement other EPA air standards being developed under authority of the Clean Air Act. The promulgation of some of these other air standards prior to today's action required the EPA to promulgate Method 25D in a separate rulemaking (refer to 59 FR 19402, April 22, 1994). Comments and responses relevant to Method 25D for this rulemaking are in the BID for the final rule and in the dockets pertaining to this rulemaking.

Method 25E is being promulgated today. Method 25E is the test method for determining the organic vapor pressure of wastes. The sampling requirements for Method 25E have been revised since proposal to provide for sampling of the waste in a tank.

III. Summary of Final Rule Impacts

The EPA estimates that implementation of the subpart CC standards will reduce nationwide organic emissions from TSDF tanks, surface impoundments, and containers by approximately 970,000 Mg/yr. In addition, the EPA estimates that nationwide organic emissions from 90-day tanks and containers will be reduced by approximately 73,000 Mg/yr.

Control of organic air emissions addresses many air quality problems including ambient ozone formation, adverse human health effects from inhalation of air toxics, and, to a lesser extent, depletion of stratospheric ozone. Ambient ozone concentrations exceed the National Ambient Air Quality Standards (NAAQS) in many metropolitan areas throughout the United States. Thus, the rule promulgated today will contribute to progress in attaining the NAAQS for ozone in nonattainment areas and also in preventing significant deterioration of the air quality in those areas of the United States currently in attainment with the NAAQS for ozone.

Today's action will also significantly reduce the risk to the public of contracting cancer posed by exposure to toxic constituents contained in the organic emissions from hazardous waste management activities. The cancer risk to the entire exposed population nationwide (i.e., annual cancer incidence) from exposure to organic emissions from TSDF is estimated by the EPA to be reduced from approximately 48 cases per year to a level of 2 cases per year. Annual cancer incidence as a result of exposure to organic emissions from 90-day tanks and containers is estimated by the EPA to be reduced from approximately four cases per year to less than one case per year.

Maximum individual risk (MIR) is a measure of the added probability of a person contracting cancer if exposed continuously over a 70-year period to the highest annual average ambient concentration of the air toxics emitted from a TSDF site. There are approximately 2,300 TSDF locations in the United States. The MIR for all but approximately 20 of these facilities is estimated by the EPA to be reduced by implementation of the subpart CC standards to a level that is less than 1×10^{-4}. The target MIR levels historically used by the EPA for other promulgated RCRA standards range from 1×10^{-4} to 1×10^{-6}. Because the MIR values for a few TSDF are estimated to remain higher than the historical RCRA target, the EPA is continuing to evaluate the waste management practices and the individual chemical compounds composing the organic emissions at these TSDF. Following this evaluation, the EPA will determine what other actions are necessary to attain the health-based goals of RCRA section 3004(n). The omnibus permitting authority in section 3005(c)(3) can be invoked to supplement or add to the requirements in today's rule, should the rule be determined to be insufficient to assure protection of human health and the environment at a particular facility.

The total nationwide capital investment cost to TSDF owners and operators to implement the subpart CC standards is estimated by the EPA to be approximately $290 million. The total nationwide annual cost for these standards is estimated to be approximately $110 million per year. The total nationwide capital costs to hazardous waste generators of installing the required air emission controls on 90-day tanks and containers is estimated by the EPA to be approximately $23 million. Total nationwide annual cost

for the 90-day tank and container controls is estimated to be approximately $7 million.

The EPA concludes that the rule promulgated today will not have a significant economic impact on hazardous waste generators or TSDF owners and operators. Prices for commercial hazardous waste management services are estimated by the EPA to increase by less than 1 percent on a nationwide annualized basis. The quantity of hazardous waste handled by commercial hazardous waste management companies is projected to be reduced by less than 1 percent on a nationwide annualized basis. Few, if any, facility closures are anticipated. Job losses in the hazardous waste industry are estimated to be less than 1.5 percent. Furthermore, this impact on employment does not reflect positive employment effects on industries producing the air emission control equipment that will be used to comply with the rule. No significant impacts are expected on small businesses.

IV. Background

A. Implementation of RCRA Section 3004(n)

The Hazardous and Solid Waste Amendments of 1984 added section 3004(n) to RCRA. Section 3004(n) directs the EPA to promulgate regulations for the monitoring and control of air emissions from TSDF as may be necessary to protect human health and the environment. The EPA completed the first phase of its regulatory development program to implement this Congressional directive with the promulgation of RCRA air standards that control organic emissions vented from certain hazardous waste treatment processes (i.e., distillation, fractionation, thin-film evaporation, solvent extraction, steam stripping, and air stripping) as well as from leaks in certain ancillary equipment used for hazardous waste management processes (55 FR 25454, June 21, 1990). Today's action completes the second phase of the EPA's regulatory development program with the promulgation of RCRA air standards for tanks, surface impoundments, containers, and miscellaneous units operated at TSDF. This rulemaking also adds air emission control requirements for certain hazardous waste generators accumulating waste on-site in RCRA permit-exempt tanks and containers.

As described at proposal (56 FR 33496, July 22, 1991), the EPA decided in both the first and second phases to develop standards that control organic emissions as a class (as opposed to constituent-by-constituent). Implementation of these nationwide standards will achieve significant organic emission and cancer risk reductions. However, the EPA estimates the cancer risk at a few TSDF after implementation of these nationwide standards to remain at a level that is higher than the range of target risk levels for other promulgated RCRA standards (refer to section V.C of this preamble.) The third phase of this regulatory development program is to determine what other actions are necessary to attain the health-based goals of RCRA section 3004(n). To make this determination, the EPA is evaluating hazardous waste operations at those individual TSDF estimated to have MIR values greater than the historical RCRA target MIR levels.

B. Public Participation in Rulemaking

The EPA is promulgating today's final rule after careful consideration of public comments on the proposed rule (56 FR 33491, July 22, 1991). The preamble to the proposed rule discussed the availability of the background information document (BID) pertaining to the health effects of organic emissions from hazardous waste TSDF using tanks, surface impoundments, and containers. The EPA mailed copies of the **Federal Register** notice and the BID for the proposed rule to industry representatives, environmental groups, and State and Federal agencies.

The EPA solicited comments from the public at the time of proposal and provided a 90-day comment period, from July 22, 1991 to October 21, 1991, for the public to prepare and submit written comments on the proposed rule. In addition, the EPA provided the opportunity for a public hearing to allow interested persons to present oral comments to the EPA concerning the proposed rule. However, no one requested that the EPA hold a public hearing on the proposed rule. The EPA did receive written comments from more than 80 companies, industrial trade associations, environmental groups, and State and Federal agencies. The BID for the final rule summarizes all of the comments on the proposed rule and presents the EPA's response to each of the comments. Section VI of this preamble presents responses to selected major comments.

Following the EPA's review of public comments received on the proposed rule, the EPA revised the impact analysis used for its final determination regarding today's rulemaking. This analysis used additional TSDF industry data obtained by the EPA. The EPA provided an opportunity for public comment on the additional TSDF industry data used for the impact modeling revisions. A **Federal Register** Notice of Data Availability (57 FR 43171, September 18, 1992) listed these additional data. The EPA also made the data available for public inspection at the EPA RCRA Docket Office. A 30-day comment period, from September 18, 1992 to October 19, 1992, provided the public the opportunity to comment on the additional data. The EPA received comments on the additional data from one industrial trade association. Section VI.B of this preamble presents a summary of these comments.

C. Relationship to Other RCRA Standards

1. RCRA Rules for TSDF Owners and Operators

Today's action establishes organic air emission control requirements for TSDF tanks, surface impoundments, and certain containers. Other types of waste management units operated at TSDF may be subject to these air emission control requirements as follows.

a. Miscellaneous units. Under RCRA in 40 CFR 260.10, the EPA defines a "miscellaneous unit" as a hazardous waste management unit where waste is treated, stored, or disposed of that is not a container, tank, surface impoundment, wastepile, land treatment unit, landfill, incinerator, boiler, industrial furnace, underground injection well with appropriate technical standards under 40 CFR part 146, or a unit eligible for a research, development, and demonstration permit under 40 CFR 270.65. The EPA has established provisions under 40 CFR part 264, subpart X to allow TSDF owners and operators to obtain permits to operate miscellaneous units. The EPA permits miscellaneous units on a case-by-case basis with terms and provisions as needed to protect public health and the environment through generic performance standards specified in 40 CFR 264.601.

Today's rule amends § 264.601 to state that the air emission controls required by the standards under 40 CFR 264 subparts AA, BB, and CC are among the "appropriate" controls a permit writer may require for a miscellaneous unit "to ensure protection of human health and the environment." Applicability of today's rule to miscellaneous units is discussed further in Section VII.B of this preamble.

b. Land disposal restrictions. The RCRA LDR treatment standards under 40 CFR part 268 require TSDF owners and operators to treat hazardous waste

to reduce the toxicity or mobility of specific constituents in the waste before the TSDF owner or operator can place the waste in a land disposal unit. Under certain conditions, the EPA may grant a TSDF owner or operator permission to land dispose a hazardous waste that does not meet the LDR treatment standards in a particular land treatment unit, landfill, wastepile, or surface impoundment. This action is referred to as the "no migration" variance. To obtain a "no migration" variance, a TSDF owner or operator must demonstrate in a petition to the EPA that, with a reasonable degree of certainty, there will be no migration of hazardous constituents from the disposal unit for as long as the waste remains hazardous.

On August 11, 1992, the EPA proposed its interpretation of the term "no migration", the procedures and substantive requirements for submitting to the EPA a petition to demonstrate "no migration" from a land disposal unit, and the EPA's criteria for evaluating the petitions (57 FR 35940). This proposal includes amending 40 CFR 268.6 to add as a condition for receiving a no migration variance that the applicant demonstrate that the subject land disposal unit complies with the applicable air emission standards the EPA has developed under 40 CFR parts 264 and 265.

c. Corrective action requirements. The EPA is temporarily deferring applicability of the subpart CC standards to any tank, surface impoundment, or container which is used solely for on-site treatment or storage of hazardous waste that is generated as the result of implementing remedial activities required under the RCRA corrective action authorities of 3004(u), 3004(v) or 3008(h). The EPA's rationale for this temporary deferral is explained in section VII.A.1 of this preamble.

2. RCRA Rules for Hazardous Waste Generators

Hazardous waste generators who accumulate waste on-site in containers or tanks for short periods of time can elect to be exempted from RCRA subtitle C permitting requirements provided that a generator complies with provisions specified in 40 CFR 262.34. The EPA allows a generator who generates 1,000 kilograms or more of hazardous waste per month to accumulate the hazardous waste on-site for up to 90 days in tanks and containers without a permit provided the generator complies with certain conditions specified in 40 CFR 262.34(a). These conditions include compliance with the requirements of 40 CFR part 265, subpart I when the waste is accumulated in a container and 40 CFR part 265, subpart J when the waste is accumulate in a tank. Tanks and containers used to accumulate hazardous waste on-site for 90 days or less pursuant to the conditions of 40 CFR 262.34(a) are hereafter referred to in this preamble as "90-day tanks and containers."

The rule promulgated today only amends the RCRA permit exemption requirements for generators operating 90-day tanks and containers. This action does not affect the existing RCRA permit exemption requirements for generators operating tanks and containers for on-site accumulation of hazardous waste in accordance with the provisions of 40 CFR 262.34 (d) or (e). Applicability of today's rule to 90-day tanks and containers is discussed further in Section VI.D of this preamble.

3. RCRA Rules for Hazardous Waste Transporters

Regulations in 40 CFR part 263 establish standards that apply to persons transporting hazardous waste within the United States if the transportation requires a manifest under 40 CFR part 262. Today's action does not change the RCRA rules under 40 CFR part 263. However, the air standards promulgated today may indirectly affect transporters accepting certain organic-containing hazardous wastes from TSDF owners and operators. The final subpart CC standards require that TSDF owners and operators only load these hazardous wastes into containers (including tank truck, railcars, and roll-off boxes) that use air emission controls as specified in the rule. Consequently, to continue accepting hazardous waste from a TSDF owner or operator, in some cases, transporters may need to ensure that their containers meet the subpart CC standards.

D. Relationship to CERCLA Standards

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), authorizes the EPA to undertake removal and remedial actions to clean up hazardous substance releases. Under CERCLA, on-site remedial actions are required to comply with the requirement of Federal and more stringent State environmental laws that are applicable or relevant and appropriate (ARAR) to the remedial action unless certain statutory waivers apply. In addition, the National Oil and Hazardous Substances Contingency Plan (NCP) provides that removal actions shall attain ARAR to the extent practicable considering the exigencies of the situation. [40 CFR 300.415(i)]. As explained in section VII.A.1 of this preamble, the EPA has decided to temporarily defer application of the subpart CC standards to tanks, containers and surface impoundments which are being used to treat or store hazardous wastes containing organics generated on-site from remedial activities required under RCRA corrective action or CERCLA response authorities, or similar State remediation authorities, provided that the wastes are managed in units that do not also manage other hazardous waste containing organics. However, after the temporary deferral has been lifted, today's rules may be considered an ARAR for certain types of remedial and removal actions.

A requirement under a Federal or State environmental law may be either "applicable" or "relevant and appropriate," but not both, to a remedial or removal action conducted at a CERCLA site. An ARAR is identified on a site-specific basis in a two-part analysis that considers first, whether a given requirement is applicable; then, if it is not applicable, whether it is nevertheless both relevant and appropriate. "Applicable" requirements as defined in the NCP are those that specifically address a hazardous substance, pollutant, contaminant, remedial action, location, or other circumstances found at a CERCLA site. [40 CFR 300.415(i)]. "Relevant and appropriate" requirements are those that, while not "applicable" at a CERCLA site, address problems or situations sufficiently similar to those encountered at the CERCLA site that their use is well suited to the particular site. [40 CFR 300.415(i)].

Some waste management activities used for remedial and removal actions of hazardous organic substances require the use of tanks, surface impoundments, and containers. For example, a TSDF may treat hazardous organic liquids and surface water contaminated with hazardous organic waste on site using destruction, detoxification, or organic removal processes that occur in tanks or surface impoundments. The facility may perform on-site solvent washing of soils contaminated with hazardous organic sludges in a tank or container. At a TSDF, hazardous waste in leaking drums may be repacked in new containers for treatment and disposal at another site.

Once today's deferral is lifted, the air emission control requirements of the subpart CC standards are likely to be "applicable" to on-site remedial and removal actions that use tanks, surface impoundments, and containers to

manage substances exhibiting characteristics or listed under RCRA as hazardous waste and having an average volatile organic concentration equal to or greater than 100 ppmw. In other cases, the standards may be "relevant and appropriate"; this determination must be made on a site specific basis.

On the other hand, the subpart CC standards do not specify control requirements for wastepiles, landfills, and land treatment units that manage hazardous wastes at TSDF. Therefore, the standards are not likely to be "applicable" to excavation, capping of wastes, land treatment, land farming, in situ treatment activities, and other activities involving wastepiles and landfills at CERCLA sites. Although in most cases the EPA does not expect the subpart CC standards to be "relevant and appropriate" to these types of units at CERCLA sites, remedial and removal actions performed in wastepiles may in some cases be similar in nature and scale to the waste management activities performed in surface impoundments; and waste stabilization may involve the basic process and air emission mechanism regardless of whether the mixing of the waste and binder is conducted in a tank, surface impoundment, container, wastepile, landfill, or land treatment unit. Thus, in some cases the subpart CC standards may be "relevant and appropriate" for such actions; this determination must be made on a site specific basis.

E. Relationship to Clean Air Act Standards

Section 112 of the Clean Air Act (CAA) regulates stationary sources of hazardous air pollutants (HAP). This section was comprehensively amended under Title III of the 1990 Amendments to the CAA. Under the amended CAA section 112(b), Congress listed 189 chemicals, compounds, or groups of chemicals as HAP. The EPA is directed by the CAA to regulate HAP emissions from stationary sources by establishing national emission standards for hazardous air pollutants (NESHAP).

The 1990 Amendments to the CAA required the EPA to develop and publish a list of source categories that emit HAP for which NESHAP will be developed. The EPA published its initial list of NESHAP source categories on July 16, 1992 (refer to 57 FR 31576). Many industrial sectors that may manage hazardous wastes are listed as specific NESHAP source categories. Consequently, facilities at which hazardous wastes are managed may be subject to both NESHAP and the RCRA air standards under 40 CFR part 264 and 265. At these facilities, some waste management units would be subject to either air emission control requirements under the NESHAP or the air emission control requirements under the RCRA air standards. However, in certain situations, some waste management units would be subject to air emission control requirements under both sets of rules.

The CAA requires that the requirements of standards developed under the Act be consistent, but avoid duplication, with requirements of standards developed under RCRA. Consequently, the EPA is taking into account the air standards promulgated under RCRA section 3004(n) in determining the requirements for NESHAP affecting air emission sources at which hazardous waste could be managed.

F. Relationship to Nuclear Regulatory Commission Standards

Radioactive mixed wastes are wastes that contain radioactive materials as well as materials listed or identified as hazardous under RCRA. Radioactive mixed wastes must be managed in accordance with RCRA regulations, in addition, these wastes also are subject to standards administered by the Nuclear Regulatory Commission (NRC) under the Atomic Energy Act and Nuclear Waste Policy Act of 1982 that address the safe handling and disposal of radioactive waste.

The EPA has previously stated its general position that the management of radioactive mixed waste at TSDF is subject to regulation under subtitle C of RCRA (51 FR 24504, July 3, 1986; 53 FR 37045, September 23, 1988). In developing the RCRA standards applicable to radioactive mixed wastes, the EPA considers the management practices required for these wastes to avoid inconsistencies between the EPA's hazardous waste management requirements and the NRC's radioactive waste management requirements. Furthermore, RCRA section 1006(a) precludes any solid or hazardous waste regulation by the EPA or a State that is "inconsistent" with the requirements of the Atomic Energy Act. Thus, in a case where the regulatory requirements for radioactive mixed waste are conflicting, the NRC requirement takes precedence over the RCRA requirement. Because of the potential that air emission control equipment required by the subpart CC standards promulgated today may conflict with certain radioactive waste management requirements under NRC standards, the EPA has decided to temporarily defer application of the subpart CC standards to tanks, containers, and surface impoundments which are being used solely to manage radioactive mixed wastes. This deferral is discussed further in section VII.A.1 of this preamble.

V. Basis for Final Rule

A. New Control Options

The EPA developed a national impacts model specific to the air emission sources affected by this rulemaking to compare the human health and environmental protection provided by the different air emission control options. Following proposal of the rule, the EPA revised this model to incorporate new information obtained by the EPA and to address public comments on the impact analysis methodology received at proposal. Section VI.B of this preamble presents a further discussion of the impact analysis revisions.

At proposal, the EPA gave notice that consideration of new results from revisions to the national impacts analysis could lead to selection of any one of the control options considered at proposal or possibly a new control option (56 FR 33516). Upon reviewing preliminary results for the revised national impacts model, the EPA decided to expand the number of control options considered for the final rule.

The EPA first performed a screening evaluation by using the revised national impacts model to estimate the nationwide organic emission and cancer incidence reductions for the original five control option configurations described at proposal (56 FR 33512), plus nine new control option configurations. The EPA included a summary of the impacts model results for these 14 control options in the information listed in the Notice of Data Availability (57 FR 43171) and made available for public inspection at the EPA RCRA Docket Office (refer to RCRA docket entry number F–92–CESA–00018).

The EPA used the screening evaluation results to select a final group of control options selected for further analysis. The EPA eliminated a control option from further consideration if another one of the control options was estimated to provide the same level of nationwide organic emission or cancer incidence reduction but at a lower cost. This is the same control option selection approach the EPA used at proposal.

Based on the screening evaluation results, the EPA selected four control options for further analysis. In addition to the control option used as the basis for the proposed rule, the EPA also analyzed "baseline" impacts. These

"baseline" impacts represent the estimated nationwide organic emissions and other impacts that would occur in the absence of implementing any of the control options. The final group of five control options (designated Options A through E) differ by the value used for the volatile organic concentration limit and the type of air emission controls used for surface impoundments.

Option A requires air emission controls on all TSDF tanks, surface impoundments, and containers managing hazardous waste with any detectable volatile organic concentration as determined at the point where the waste is generated (i.e., a volatile organic concentration action level of 0 ppmw). Under Option A, tanks use a cover vented to a control device except for tanks handling certain hazardous wastes. Tanks in which the organic vapor pressure of the hazardous waste in the tank is less than 10.4 kPa (approximately 1.5 psi) may use a cover without additional controls. All surface impoundments use a cover vented to a control device. Containers use cover and submerged fill for loading hazardous wastes into the containers.

Option B requires air emission controls only on those TSDF tanks, surface impoundments, and containers used to manage hazardous wastes having a volatile organic concentration at the point where the waste is generated equal to or greater than 100 ppmw. The control requirements are the same as described for Option A with one exception; surface impoundments used for storage of hazardous waste and surface impoundments used for treatment of hazardous waste by a process not requiring aeration or agitation of the waste require covers only.

Option C requires air emission controls only on those TSDF tanks, surface impoundments, and containers used to manage hazardous wastes having a volatile organic concentration at the point where the waste is generated greater than 500 ppmw. The air emission control requirements are the same as described for Option B. Option C is the same control option selected as the basis for the proposed rule.

Option D requires air emission controls only on those TSDF tanks, surface impoundments, and containers used to manage hazardous wastes having a volatile organic concentration at the point where the waste is generated greater than 1,500 ppmw. The air emission control requirements are the same as described for Options B and C.

Option E requires air emission controls only on those TSDF tanks, surface impoundments, and containers used to manage hazardous wastes having a volatile organic concentration at the point where the waste is generated greater than 3,000 ppmw. The air emission control requirements are the same as described for Options B, C, and D.

B. Control Option Impacts

The EPA estimated nationwide organic emission and cancer risk reductions that would be achieved if air standards were implemented for each of the five control options. The "baseline" nationwide organic emissions from TSDF are estimated to be approximately 1 million Mg/yr. The estimated nationwide TSDF organic emissions assuming implementation of the individual control options are 30,000 Mg/yr for Option A, 41,000 Mg/yr for Option B, 48,000 Mg/yr for Option C, 51,000 Mg/yr for Option D, and 90,000 Mg/yr for Option E.

To assess the risk of contracting cancer posed by exposure to organic emissions from TSDF, the EPA used two measures of health risk: Annual cancer incidence and maximum individual risk (MIR). The annual cancer incidence parameter represents an estimate of population risk and, as such, measures the aggregate risk to all people in the United States estimated to be living within the vicinity of TSDF. The MIR parameter represents the potential of air emissions from a particular source to cause cancer in the most exposed hypothetical individual under the assumptions used in the risk and exposure assessments.

Estimation of these health risk parameters requires the EPA to make several critical assumptions regarding the TSDF plant configurations and operating practices, the composition of wastes managed at these TSDF, the cancer potency of the organics contained in these wastes, the emission of these organics to the atmosphere from TSDF sources, and the exposure of people living near TSDF to these air toxic emissions. The complex interrelationship of the various assumptions prevents the EPA from definitively characterizing the estimated health risk parameter values as being overestimates or underestimates.

The EPA estimated annual cancer incidence for baseline and the five control options using the EPA's Human Exposure Model (HEM), the site-specific cancer risk factors, and TSDF industry profile data bases. This risk value is based on the estimated number of excess cancers occurring in the nationwide population after a lifetime exposure (defined to be 70 years). For statistical convenience, the EPA divided the aggregate risk by 70 and expressed the risk as cancer incidence per year. The information provided in RCRA docket entry numbers F–92–CESA–S00014 and S00015 describes the estimation methodology in more detail. The EPA estimates baseline nationwide annual cancer incidence from exposure to TSDF organic emissions to be 48 cases per year. The estimated nationwide TSDF cancer incidences, assuming implementation of the individual control options, are two cases per year for Option A, two cases per year for Option B, four cases per year for Option C, five cases per year for Option D, and nine cases per year for Option E.

The EPA uses the MIR parameter for relative comparisons of pollutants, emission sources, and control alternatives. For the impact analysis, the EPA estimated the MIR parameter assuming that exposure of the individual to the ambient air toxic concentrations occurs for 24 hours per day for a lifetime of 70 years. The EPA realizes that this is a conservative assumption since most people do not spend their entire lives at one location. However, it is completely possible for an individual to live in the same place for his or her entire life. Furthermore, other uncertainties in the analysis could lead to underestimating the risk. For example, the actual exposed subpopulations (such as children or asthmatics) may be more sensitive to the emitted air toxics than the reference adult male for which the unit risk factor extrapolations are based. In addition, the analysis does not address potential indirect exposure pathways to humans, or potential harm to environmental receptors.

The MIR parameter reflects the added probability that a person would contract cancer if exposed continuously over a 70-year period to the highest annual average ambient concentration of the air toxics emitted from a TSDF. Baseline MIR from exposure to TSDF organic emissions is estimated to be 3×10^2. The estimated MIR's, assuming implementation of the individual control options, are: 4×10^{-3} for Option A, 4×10^{-3} for Option B, 2×10^{-2} for Option C, 3×10^{-2} for Option D, and 3×10^{-2} for Option E. These MIR values apply only to the very few TSDF, of the approximately 2,300 TSDF operating in the United States, that are estimated to have the potential to cause the highest risk. The values do not represent actuarially measured risks nor do they apply to all TSDF in the United States.

The EPA is not attempting to estimate any specific individual's potential of developing cancer. Finally, the EPA is not interpreting any of these estimates as indicators of the absolute risks of contracting cancer. Rather, the purpose of this cancer risk assessment, both for incidence and MIR, is to compare relative differences among the individual control options (i.e., "degree" of human health protection).

In addition to estimating organic emissions and cancer risk parameters, the national impacts model provides an estimate of the total nationwide capital costs and annual costs to the TSDF owners and operators to install and operate the air emission controls specified by each control option. For these nationwide cost estimates, the EPA assumed that, at every TSDF location, treatment of all hazardous wastes to remove or destroy the organics in the waste occurs as the last step prior to disposal of the waste. In actuality, the EPA expects that, at many TSDF, the owner or operator (after becoming aware of the air standards) will elect to treat waste at an earlier step in the waste management sequence. By treating organics in compliance with one of the waste treatment alternatives provided in final rule, the owner or operator could avoid the costs of installing and operating control equipment on the downstream tanks, surface impoundments, and containers.

Capital investment cost represents the cost to TSDF owners and operators to purchase and install the air emission control equipment. The estimated nationwide capital costs in 1986 dollars to implement the control options are: $520 million for Option A, $290 million for Option B, $240 million for Option C, $200 million for Option D, and $140 million for Option E. Annual cost represents the total cost to TSDF owners and operators each year to pay for operating and maintaining the air emission controls as well as to repay the capital investment for the air emission controls. The capital recovery was estimated using an interest rate of 10 percent applied over a period ranging from 10 to 20 years depending on the expected service life for each type of air emission control equipment. The estimated nationwide annual costs to implement the control options are: $190 million/yr for Option A, $110 million/yr for Option B, $90 million/yr for Option C, $80 million/yr for Option D, and $60 million/yr for Option E.

C. Selection Rationale

From Options A through E, the EPA selected one control option to serve as the basis for today's final rule. The EPA applied the same decision rationale used at proposal for this rulemaking (56 FR 33515–33516, July 22, 1991) as well as for RCRA air standards promulgated under subparts AA and BB to 40 CFR parts 264 and 265 (refer to 55 FR 25470, June 21, 1990). This decision rationale requires the EPA to select, whenever possible, the level of control that provides an acceptable degree of protection of human health and the environment. If no control option is available to achieve acceptable levels of protection, the EPA's approach historically has considered cost under RCRA only for equally protective control options.

All five of the control options considered for the final rule are estimated to achieve similar levels of substantial reductions in nationwide organic emissions from TSDF. The nationwide organic emission reductions for the control options are estimated to be approximately 970,000 Mg/yr for Option A, 960,000 Mg/yr for Option B, 950,000 Mg/yr for Option C, 950,000 Mg/yr for Option D, and 910,000 Mg/yr for Option E.

Both Options A and B are estimated to achieve the lowest cancer MIR and greatest reduction in annual cancer incidence of the five options. However, none of the control options reduces MIR to the target cancer risk levels used for other promulgated RCRA standards, which have been in the range of 1×10^{-4} to 1×10^{-6}. The estimated MIR is an order-of-magnitude higher for Options C, D, and E (2×10^{-2} for Option C, 3×10^{-2} for Options C and D) compared to Options A and B (4×10^{-3}). Annual cancer incidence reductions estimated for Option C (44 cases per year), Option D (43 cases per year), and Option E (39 cases per year) are lower than the annual cancer incidence reductions estimated for Options A and B (46 cases per year).

On the basis of the estimated annual cancer incidence and MIR, the EPA concluded that Options A and B are more protective of human health than Options C, D, or E. Therefore, the EPA eliminated Options C, D, and E from further consideration as the basis for the final rule.

Both Options A and B are estimated to achieve the same level of cancer risk reduction (MIR to 4×10^{-3} and annual cancer incidence to two cases per year). Therefore, the EPA concluded that Options A and B are equally protective of human health and the environment (to the extent ascertainable by this modelling methodology). Historically under RCRA, the EPA has considered control option costs only to select between options estimated to achieve equivalent levels of protection. Therefore, to select between Options A and B, the EPA compared the estimated costs to implement each of the control options. Option B requires the use of air emission controls only on those TSDF tanks, surface impoundments, and containers used to manage hazardous wastes with a volatile organic concentration at the point where the waste is generated equal to or greater than 100 ppmw. Because TSDF owners and operators would need to install and operate air emission controls on fewer TSDF tanks, surface impoundments, and containers, Option B would be less expensive for the TSDF industry to implement than Option A. Therefore, the EPA selected Option B as the basis for the final rule.

While Option B does not achieve the target MIR levels historically used for other promulgated RCRA rules, Option B does achieve substantial reductions in cancer risk. The annual cancer incidence is estimated to be reduced by greater than 95 percent from the baseline value. Furthermore, the MIR for most of the 2,300 TSDF nationwide are estimated to achieve the target MIR levels. To address the remaining cancer risk at TSDF after implementation of the air standards promulgated today, the EPA is further evaluating the waste management practices and the specific chemical compounds composing the organic emissions from those individual TSDF for which the MIR values are estimated to be greater than the historical RCRA target MIR levels. Following this evaluation, the EPA will determine what other actions, such as the use of section 3005(c)(3) omnibus permitting authority or additional rulemaking, are necessary to attain the health-based goals of RCRA section 3004(n).

VI. Summary of Responses to Comments on Proposed Rule

All of the comments on the proposed rule and the EPA's response to each of these comments is presented in "Hazardous Waste Treatment, Storage, and Disposal Facilities (TSDF)—Background Information for Promulgated Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers", EPA document number EPA–453/R–94–076b (to obtain a copy of this document refer to the **ADDRESSES** section of this preamble). The EPA's responses to topics addressed by many of the commenters are summarized below.

A. Development of Air Standards Under RCRA

Comment: Many comments were received regarding the extent to which the congressional directive of RCRA section 3004(n) should be implemented using air standards established by the EPA under Clean Air Act (CAA) authority. Commenters stated the position that protection of human health and the environment from TSDF air emissions is most appropriately, effectively, and efficiently addressed by developing air standards under the CAA authority. Therefore, commenters believe that the EPA should make the determination that the requirements of RCRA section 3004(n) are best fulfilled by deferring to air standards established under CAA authority. Commenters stated that the air standards proposed by the EPA under authority of RCRA section 3004(n) are:

(1) Not needed because existing CAA programs adequately address the control of TSDF organic emissions;

(2) Duplicative or contradictory of new programs now being implemented by the EPA to control hazardous air pollutants as directed by section 112 of the CAA;

(3) Not in compliance with RCRA section 1006(b) regarding duplication or contradiction of CAA requirements;

(4) Inconsistent with CAA programs that establish ozone precursor control requirements depending on the national ambient air quality standards attainment status of the region in which a source is located;

(5) Inconsistent with the EPA's pollution prevention policy;

(6) Contrary to the EPA's "cluster concept" of examining and coordinating regulations addressing the same emission source to minimize duplicative or contradictory requirements; and

(7) Difficult to administer and enforce because, traditionally, one State regulatory agency administers rules regulating air emissions while another administers rules regulating hazardous waste management.

Response: The Hazardous and Solid Waste Amendments to RCRA added section 3004(n), which directs the EPA to "* * * promulgate regulations for the monitoring and control of air emissions from hazardous waste treatment, storage, and disposal facilities, including but not limited to open tanks, surface impoundments, and landfills, as may be necessary to protect human health and the environment." The EPA considers the most appropriate, effective, and efficient way to fulfill this congressional mandate is to develop air standards for TSDF that are implemented under the existing RCRA subtitle C permitting program already in place for these facilities. However, the EPA disagrees with one commenter's assertion that, in establishing these RCRA air standards, the EPA cannot consider the impact of air standards promulgated or currently being developed under other statutory authorities such as the CAA. On the contrary, RCRA section 1006(b) requires the EPA to coordinate its regulations under RCRA statutes and to avoid duplication, to the maximum extent practicable, with appropriate provisions of the CAA.

The EPA disagrees that the requirements of RCRA section 3004(n) are best fulfilled by deferring to air standards established under CAA authority. There is no indication that Congress intended for air standards to be issued only within the authority granted to the EPA by the CAA. If this was the case, then Congress would not have amended RCRA section 3004(n) under HSWA after Congress had already authorized the EPA to control air emissions under the CAA. Refer to S. Rep. No. 284, 98th Cong. 1st sess. 63. Thus, both RCRA and the CAA authorize the EPA to control air emissions from TSDF.

Although historically many standards promulgated by the EPA under authority of RCRA have addressed the prevention of soil and water contamination from improper management of hazardous waste, the EPA is not limited by RCRA to promulgating standards only for certain media (e.g., surface waters, groundwater, and soils). Indeed, RCRA section 3004(n) specifically directs the EPA to issue regulations controlling air emissions from TSDF as necessary to protect human health and the environment.

The selection of TSDF air emission sources for control by establishing air standards under RCRA section 3004(n) is based on controlling those TSDF air emission sources determined by the EPA to have significant toxic and ozone precursor emission potential but for which emission control is not adequately addressed by other standards promulgated by the EPA such as NESHAP and NSPS established under the CAA. At proposal, the EPA concluded that additional air emission control requirements for TSDF tanks, surface impoundments, and containers are needed. This decision was based on the EPA's determination that existing and future Federal standards under the CAA and State air standards do not adequately address the control of TSDF organic air emissions.

As previous described in section III.E of this preamble, CAA section 112 has been amended by Congress since RCRA section 3004(n) was enacted. Section 112 of the CAA as amended requires the EPA to identify major sources and area sources of HAP emissions and to develop NESHAP for these sources. To date for this air standards development program, the EPA has either promulgated or proposed several NESHAP that may apply to some hazardous waste management activities at TSDF. However, in general, these NESHAP added requirements to address HAP emissions from certain waste and material recovery operations that are not subject to or exempted from regulation under the RCRA air standards in 40 CFR parts 264 and 265. Thus, the NESHAP and other air standards being developed under CAA are not intended to duplicate the RCRA air standards, but instead to integrate with the RCRA air standards to create a comprehensive air program for addressing organic air emissions from all waste and related material recovery operations.

For example, on-site wastewater treatment operations at synthetic organic chemicals manufacturing industry (SOCMI) facilities are regulated under the hazardous organic NESHAP ("the HON") promulgated on April 22, 1994 (see 59 FR 19402). At many of these facilities, the hazardous wastewaters generated by process units and resulting wastewater treatment sludges are managed in tank systems that are exempted from RCRA permitting requirements under provisions in 40 CFR 264.1(g)(6) or 40 CFR 265.1(c)(10). Thus, the air emission control requirements under the HON, in most cases, affect wastewater treatment tanks not subject to the RCRA air standards.

A second example is the recently proposed NESHAP for off-site waste and recovery operations (59 FR 51913, October 13, 1994). This NESHAP would apply to owners and operators of facilities, with certain exceptions, that manage wastes or recoverable materials which have been generated off-site at another facility and contain specific organic HAP. The rule would apply to operations managing solid wastes as defined under RCRA (hazardous and nonhazardous wastes) as well as operations handling recovered materials excluded from the RCRA definition of solid waste (e.g., recycled materials containing organic HAP, used oil reprocessed for sale as a fuel). As a result, certain off-site waste and recovery operations with organic HAP

emissions, but exempted from regulation under the RCRA air standards, would be required to use air emission controls under this NESHAP.

In contrast to the NESHAP now being developed under CAA section 112, the EPA has already achieved progress toward full implementation of RCRA section 3004(n), which requires a "cradle to grave" approach to hazardous waste management that addresses protection of air, water, and groundwater. Air standards have been promulgated for TSDF treatment process vents (subpart AA in 40 CFR parts 264 and 265) and for TSDF process equipment leaks (subpart BB in 40 CFR parts 264 and 265) in addition to the development of these air standards for TSDF tanks, surface impoundments, and containers. There is no benefit to delaying implementation of air standards for TSDF tanks, containers, and surface impoundments to a future rulemaking under amended CAA section 112 when the EPA can proceed now with the promulgation of effective air standards under RCRA section 3004(n) for these air emission sources.

The RCRA air standards adopted today do comply with RCRA section 1006(b). This section requires that the air standards be consistent with and not duplicative of CAA standards. Although RCRA section 1006(b) requires some accommodation with existing regulatory standards, it "does not permit the substantive standards of RCRA to be compromised." *Chemical Waste Management* v. *EPA*, 976 F.2d at 23 (D.C. Cir. 1992). It is obviously reasonable for the EPA to view the RCRA section 3004(n) mandate as a standard which cannot (or at least need not) be compromised. Similarly, the CAA Amendments of 1990 require that air standards developed under the CAA be consistent with RCRA rules. To conform with the dual RCRA and CAA requirements that standards be consistent, the air standards developed under RCRA section 3004(n) do not duplicate or contradict existing NESHAP or NSPS.

The EPA is fully aware that at many facilities where hazardous wastes are managed, the RCRA air standards under 40 CFR part 264 and 265 as well as NESHAP and NSPS for specific source categories may be applicable to a particular TSDF. Certain testing, monitoring, inspection, recordkeeping, and other requirements under the RCRA air standards may be similar to or duplicative of requirements under the applicable NESHAP or NSPS. In many cases at a TSDF, individual waste operations will be subject to either the air emission control requirements under the RCRA air standards or the air emission control requirements under the applicable NESHAP or NSPS. Thus, it is necessary to include testing, monitoring, inspection, recordkeeping, and other implementation requirements in each rule to assure compliance with and enforcement of the rule. However, in certain situations, some individual waste operations at a TSDF could be subject to air emission control requirements under both the RCRA air standards as well as a NESHAP or NSPS. In such cases, the EPA believes it is unnecessary for owners and operators of these waste management units to conduct duplicative waste testing, keep duplicate sets of records, or perform other duplicative actions to demonstrate compliance with both sets of rules. Therefore, to be consistent with RCRA section 1006(b) to the maximum extent practicable, the EPA is coordinating the testing, recordkeeping, reporting, and other implementation activities required under the RCRA air standards and related rules developed under the CAA. The EPA has requested public comment in a related proposed NESHAP rulemkaing (the off-site waste and recovery operations NESHAP, see 59 FR 51919, October 13, 1994) on how the applicable requirements included in the RCRA air standards should be incorporated into CAA rules being developed by the EPA for waste and recovery operations that will allow owners and operators subject to both sets of rules to demonstrate compliance with all applicable rules without having to repeat the duplicative requirements.

Nevertheless, RCRA section 1006(b) cannot be used to ignore key elements of RCRA; see *Chemical Waste Management* v. *EPA*, 976 F.2d at 23. In this case, Congress has indicated that TSDF air emissions need to be controlled on the RCRA timetable, not that of the CAA. Deferring totally to the CAA would vitiate this key RCRA requirement. [See also RCRA section 3004(q) and CAA section 112(n)(7) in which Congress indicated that pendency of CAA air standards for RCRA units does not vitiate RCRA requirements.]

The EPA's approach to developing air standards for TSDF under RCRA is consistent with CAA programs to achieve attainment and to maintain national ambient air quality standards (NAAQS). The NAAQS specify limits to pollutant concentrations in the ambient air to protect public health and welfare. A NAAQS has been established for ozone. Ambient ozone concentrations in many metropolitan regions of the United States exceed the NAAQS. Organic emissions from TSDF as well as other sources react photochemically with other chemical compounds in the atmosphere to form ozone. The CAA requires that States develop and the EPA approve air emission control plans called "State implementation plans" (SIP's). For those regions within a State that are in nonattainment with the NAAQS for ozone, the SIP specifies the standards and other control measures to be implemented by the State to attain the NAAQS. However, the CAA requires the EPA not only to implement programs to attain the NAAQS in nonattainment areas but also to maintain, and prevent significant deterioration of, the air quality in those areas of the Nation currently in attainment with the NAAQS. Consequently, in addition to the CAA control programs to address specific regional NAAQS attainment problems, the EPA also develops under the CAA authority minimum national emission standards applicable to stationary sources independent of whether the source is located in a NAAQS attainment or nonattainment area. The EPA considers the subpart CC standards to be reasonable national standards needed to control emissions of air toxics as well as to attain and maintain NAAQS for ozone.

The subpart CC standards are consistent with the EPA's pollution prevention policy. Pollution prevention involves reducing the quantity of pollution produced for a given quantity of product prior to recycling, treatment, or control of emissions. Activities defined as source reduction measures in the Pollution Prevention Act include technology modifications, process and procedure modifications, reformulation or redesign of products, and substitution of raw materials. A decrease in production alone does not qualify as pollution prevention. Under the subpart CC standards, a TSDF owner or operator is not required to manage a hazardous waste in a tank, surface impoundment, or container using the specified air emission controls in cases when the owner or operator determines that the organic content of all hazardous waste placed in the unit meets certain conditions specified in the rule. Thus, the subpart CC standards encourage pollution prevention by providing an incentive to generators to initiate source reduction measures that will reduce the concentration of organics in a hazardous waste.

The development of TSDF air standards under RCRA is not contrary to the EPA's "cluster" approach of examining and coordinating regulations addressing the same emission source to minimize duplicative or contradictory

requirements. The different EPA Offices responsible for implementing RCRA and CAA requirements are coordinating the development of this rulemaking to ensure that subpart CC standards are compatible with other rules and programs applicable to TSDF owners and operators.

The air emission control requirements for tanks under the subpart CC standards incorporate provisions of NSPS that were promulgated under the authority of the CAA and apply to storage tanks constructed or modified after July 23, 1984, that contain volatile organic liquids (40 CFR part 60, subpart Kb). Therefore, air emission controls already in use on a TSDF tank in compliance with 40 CFR part 60, subpart Kb will comply with air emission control requirements of the subpart CC standards. Also, the subpart CC standards for closed-vent systems and control devices cross reference the requirements for closed-vent systems and control devices promulgated under subpart AA in 40 CFR parts 264 and 265. The subpart AA requirements are consistent with the requirements for closed-vent systems and control devices under several CAA air standards.

The implementation of air standards under RCRA does not create difficulties in administration and enforcement of the rules by State regulatory agencies. Although many existing RCRA standards focus on preventing the contamination of soil and water, other existing RCRA regulations regulate air emissions from some TSDF sources (e.g., combustion of hazardous waste is regulated under 40 CFR part 264, subpart O for hazardous waste incinerators and under 40 CFR part 266 subpart H for boilers and industrial furnaces). Air emissions are also sometimes addressed through the EPA's omnibus permitting authority under RCRA section 3005(c)(3). States authorized by the EPA administer and enforce the requirements of RCRA rules in lieu of the EPA administering the rules in that State. The EPA is aware that, in many States, one State agency administers air standards while another State agency administers rules regulating the management of hazardous waste in the State. Similarly, it is common for yet another State agency to administer water quality rules. The experience of authorized States administrating existing RCRA rules shows that responsibility for administrating these rules can be delegated to a separate State agency without impeding the administration and enforcement of non-RCRA air and water rules by other State agencies.

B. Revised Impacts Analysis

Comment: The commenter on the Notice of Data Availability (NDA) (57 FR 43171, September 18, 1992) supports the EPA's use of the updated waste data base for the national impacts analysis and the EPA's changes to the emission models for biological treatment processes. In addition, the commenter agrees with the EPA's conclusion that many surface impoundments reported in the waste data base to be managing waste at TSDF have been or are being replaced with tanks to comply with the RCRA land disposal restriction and other regulations. However, the commenter believes that the EPA's assumption that 75 percent of the total waste quantity reported in the waste data base to be managed in surface impoundments is now managed in tanks is too low. The commenter agrees with the EPA's revised approach in the impact analysis of using site-specific cancer risk factors to estimate cancer risk due to exposure to TSDF emissions. However, the commenter states that some of the specific assumptions made by the EPA for the risk analysis are implausible (e.g., assuming exposure of the individual for 70 years) and the analysis should be conducted in accordance with the EPA's own Exposure Assessment Guidelines. Finally, the commenter does not believe that any MIR estimate is necessary to assess the need for and effectiveness of the rule.

Response: For the national impacts analysis, the EPA believes that 75 percent is a reasonable assumption for the amount of waste that is converted from surface impoundment to tank management. As discussed further in the BID for the final rule, the EPA selected the 75 percent value based on information obtained by the EPA from a telephone survey of owners and operators of large TSDF and from TSDF site visits as well as information provided to the EPA by several TSDF owners and operators in comments on the proposed rule. The EPA did not find nor receive any additional information from the commenter that justifies increasing the percentage of waste converted from surface impoundment to tank management.

The cancer risk impact analysis for this rulemaking was conducted in accordance with the EPA's Exposure Assessment Guidelines. With regard to the 70 year lifetime assumption used in the impact analysis, the EPA believes 70 years to be conservative, but plausible. The EPA did however conduct a second risk assessment assuming a 33 year exposure scenario (95 percentile). Using this assumption reduced risk estimates by one-half, but did not change the decision to control these facilities, nor the choice of control options. Furthermore, the risk assessment conducted here was for the purpose of determining relative differences in risk estimates between the control options. For this application, the exposure scenario would not matter; the results, i.e., the relative differences in risk estimates, would not change.

The EPA holds that the assumptions used to determine the MIR are, as with the 70 year exposure scenario, conservative, but plausible, and result in a reasonable overall estimate of risk. In addition, while the EPA acknowledges the uncertainties associated with the MIR, such uncertainties cancel out when the risk assessment is used to discern relative risk, as in this case. Thus the EPA believes that the use of the MIR is an appropriate tool to apply in the impact analysis for this rulemaking to both estimate risk and to discern differences between risk estimates associated with the various control options.

C. Container Air Standards

Comment: Many commenters disagree with the EPA's decision to require air emission controls for containers under the subpart CC standards. One group of commenters argues that the organic emission potential from TSDF containers does not warrant the application of additional controls beyond those already required by existing RCRA standards. A second group of commenters contends that TSDF containers should not be subject to this rulemaking because the EPA analysis does not show organic emissions from TSDF containers to be a significant emission source warranting controls.

Response: The EPA maintains that the management of organic-containing wastes in containers at TSDF is a potentially significant source of organic emissions that is not adequately regulated by existing regulations. Control requirements for containers under the subpart CC standards are needed to:

(1) Ensure that containers used for storage of organic-containing waste use covers effective for organic emission control;

(2) Control organic emissions from treatment of organic-containing wastes in containers by waste stabilization and other processes; and

(3) Prevent circumvention of the containment and control strategy that serves as a key component of the

integrated approach to implementing RCRA section 3004(n).

The EPA disagrees with the commenters' conclusion that existing regulations are sufficient to control organic emissions from containers used to manage hazardous waste at TSDF. Existing RCRA regulations under 40 CFR 264.173 require containers used to store hazardous waste at TSDF to be closed except when necessary to add or remove waste. This requirement for closed containers during storage does not specify organic air emission controls for these covers. Furthermore, no RCRA requirements exist that address organic emissions associated with other container operations such as hazardous waste transfer or treatment in open containers.

The EPA also disagrees with the commenters' conclusion that managing hazardous wastes in containers is not a significant potential source of organic air emissions. The baseline analysis to estimate nationwide TSDF organic emissions by waste management category is not the only factor that the EPA considered in assessing the organic emission potential of containers. The revised nationwide baseline emissions from storage of hazardous waste in TSDF containers is estimated to be approximately 5,000 Mg/yr. However, this emission estimate for containers does not include organic emissions from hazardous waste treatment in containers. As described in the BID for the final rule, the EPA estimates the total organic emissions from waste fixation operations performed in containers to be approximately 11,000 Mg/yr. Information obtained by the EPA representatives during site visits to TSDF conducting waste fixation operations indicates that use of containers for waste fixation continues to be a common industry practice. Thus, treatment of hazardous waste in containers is a large potential source of organic emissions that is not regulated by the existing RCRA regulations.

The air emission control requirements for the subpart CC standards are based on applying a containment and control strategy to TSDF tanks, surface impoundments, and containers from generation of the waste through treatment of the waste to remove or destroy the organics in the waste. Requiring control of only TSDF tanks and surface impoundments but not containers creates a significant potential organic emission source if large quantities of hazardous waste currently stored or treated in tanks required to use air emission controls under subpart CC standards are transferred to containers not using air emission controls. This would allow organics in the hazardous waste managed in uncontrolled containers to escape to the atmosphere prior to treatment and, thus, reduce the effectiveness of the containment and control approach.

D. Generator 90-Day Tanks and Containers

Comment: Many commenters disagree with the EPA's decision to apply the proposed air standards to 90-day tanks and containers for the following reasons:

(1) The EPA is not authorized under RCRA section 3004(n), or under other provision, to extend the air standards to 90-day tanks and containers;

(2) The proposed rule failed to cite authority to extend the requirements to 90-day tanks and containers, in violation of section 553(b)(2) of the Administrative Procedures Act;

(3) If the EPA imposes air emission controls on generators, this must be accomplished pursuant to the pre-HSWA authorization process and thus should not become effective in authorized States until enacted and implemented as State law; and

(4) Application of air emission control requirements to 90-day tanks and containers impermissibly interferes with manufacturing processes.

Response: The EPA disagrees with each of these comments. The provisions of 40 CFR 262.34 (promulgated under the authority of RCRA section 2002, 3001–3005, and 3007) allow generators to accumulate hazardous waste in tanks and containers for specified time periods without obtaining RCRA permits, provided the generator meets certain conditions. Amending these conditions is a valid exercise of the EPA's authority under RCRA section 3004(n).

The intent of including the provisions of 40 CFR 262.34 in the RCRA requirements for hazardous waste generators is to obtain a reasonable balance between the Congress's desire not to interfere with the generator's manufacturing or production processes with the need to provide adequate protection of human health and the environment (45 FR 12730, February 26, 1980). Thus, 40 CFR 262.34 does not provide a hazardous waste generator with a complete exemption from all RCRA requirements. On the contrary, it incorporates most of the relevant tank and container requirements under 40 CFR part 265 and requires compliance with these standards as a condition for maintaining RCRA permit-exempt status [refer to 40 CFR 262.34(a)(1)]. The intent of these provisions is not to exclude 90-day tanks and containers from future technical TSDF requirements. Therefore, it is wholly appropriate for the EPA to update the technical requirements for tanks and containers that serve as the basis for the RCRA permit exemption. The EPA has already done so, for example, when tank standards were amended in 1986.

Although 90-day tanks and containers are not required to be permitted under RCRA subtitle C, the EPA rejects the commenters' narrow reading of RCRA section 3004(n) as limiting the EPA's authority to extend the requirements to these units. Section 3004(n) of RCRA requires the EPA to promulgate standards for the control of air emissions from "hazardous waste treatment, storage, and disposal facilities." The EPA does not agree that RCRA section 3004(n) reflects a congressional intend that the EPA regulate air emissions only from permitted and interim-status TSDF and not from 90-day tanks and containers. These tanks and containers are physically identical (i.e., the same types of tanks and containers are used by generators to accumulate and by TSDF owners and operators to store and treat waste). There is no environmental basis for not considering them subject to the section 3004(n) mandate. Such units are, in fact, storing or treating hazardous waste and are subject to numerous standards promulgated under the authority of both RCRA sections 3002 and 3004. The exemption of 90-day tanks and containers from the permitting requirements of RCRA subtitle C is regulatory, not statutory; there is no directive in the RCRA legislation that precludes the EPA from imposing any or all of the TSDF requirements on them. The use of the term "facility" in RCRA section 3004(n) can certainly be read to encompass 90-day tanks and containers, given the EPA's flexibility to construe that term (see *United Technologies* v. *EPA*, 821 F.2d at 814 (D.C. Cir. 1988) and the fact that 90-day tanks and containers are already subject to the substantive standards for tanks and containers and pose precisely the same potential environmental risks as other tanks and containers holding hazardous waste. In addition, the EPA sees to reason that Congress intended 90-day tanks and containers to be subject to air emission controls at a different time than other tanks and containers (which would be the case if the 90-day units are not regulated pursuant to a HSWA provision).

Therefore, it is proper for the EPA to use its authority under RCRA section 3004(n) to amend 40 CFR 262.34(a) by adding air emission control

requirements to the conditions required for a 90-day tank or container to be exempted from the RCRA permitting requirements. For these reasons, the EPA rejects the commenters' arguments that the Agency is not authorized or failed to cite authority to use this rulemaking to amend the exemption requirements for 90-day tanks and containers. In addition, the EPA rejects the argument that the exemption requirements are under the EPA's pre-HSWA authority and, therefore, are not applicable in authorized States until the individual States are authorized to implement the rule (See 51 FR 25464, July 14, 1986, where the EPA indicated that the modifications to 40 CFR 262.34, to reflect amended tank standards, were HSWA rules).

As a variation of the argument that 90-day tanks and containers should not be regulated, one commenter asserts that RCRA section 3004(n) reflects a congressional intent that the EPA regulate air emissions only from permitted and interim-status TSDF and not from 90-day tanks and containers. The commenter apparently argues that the explicit inclusion of such authority under RCRA section 3004(n) and not under RCRA section 3002 implies a congressional finding that waste accumulation does not significantly contribute to air pollution. The EPA finds no indication, in the legislative history of RCRA, or elsewhere, that Congress ever made such a finding, and the EPA's conclusion, as discussed later in this section, is that on-site accumulation of hazardous waste in 90-day units is a significant source of organic air emissions. Again, the EPA finds no indication that Congress intended to preclude the EPA from regulating air emissions from nonpermitted hazardous waste storage and treatment under RCRA section 3004(n).

In addition to RCRA section 3004(n), the EPA has authority under RCRA section 3002 to amend 40 FR 262.34(a). One commenter states that, although RCRA section 3002(a)(3) authorizes the EPA to require the use of appropriate containers, RCRA section 3002 provides no authority to regulate air emissions. The EPA disagrees with this statement. The RCRA section 3002(a)(3) authority, as well as the general authority under RCRA section 3002 to promulgate such rules regulating generators "as may be necessary to protect human health and the environment," is broad enough to encompass the regulation of air emissions from units storing or treating hazardous waste at generator facilities.

Finally, the EPA cited both RCRA sections 3002 and 3004 as the statutory authority for the proposed rule. Therefore, this rulemaking is in full conformance with section 553(b)(2) of the Administrative Procedures Act.

The EPA also rejects the argument that the application of air emission controls to 90-day tanks and containers impermissibly interferes with manufacturing processes. The EPA concluded in 1980, as cited above, that the appropriate balance between protection of the environment and noninterference with manufacturing processes was achieved by requiring 90-day tanks and containers to comply with certain technical requirements as a condition of being exempt from the requirement to have a RCRA permit. The EPA estimates that nationwide baseline organic emissions from 90-day tanks and containers are approximately 76,000 Mg/yr. Given the significant organic emissions from 90-day tanks and containers, the same rationale has led the EPA to require that these units comply with the appropriate air emission control requirements of the subparts AA, BB, and CC standards to maintain an exemption from RCRA permitting. In contrast, the EPA decided not to extend under this rulemaking the requirements of these air standards to containers used for satellite accumulation because of the widespread use of these containers by manufacturing process operators to collect small quantities of hazardous waste as generated, and the integrated use of these containers with the manufacturing operations (discussed further in section 7.2 of the BID for today's rule). The EPA believes that this regulatory framework maintains the appropriate balance between environmental protection and noninterference with manufacturing processes.

E. Implementation of RCRA Air Standards

Comment: A total of 24 commenters addressed the EPA's proposed action of modifying the "permit-as-a-shield" practice to require that owners and operators of TSDF that have been issued final permits prior to the effective date of this rulemaking comply with the air standards under 40 CFR 265 subparts AA, BB, and CC until the facility's permit is reviewed or reissued by the EPA. Four of the commenters support the EPA's proposed modification. The other 20 commenters oppose the proposed modification and maintain that "permit-as-a-shield" practice should remain unchanged because any action by the EPA to remove this practice:

(1) Is without the legal authority and that to do so would be contrary to congressional intent;

(2) Violates the due process rights of permittees, which are normally protected through the permit process;

(3) Negates the purpose and importance of the RCRA permit because the "permit-as-a-shield" practice serves to unify all the regulatory requirements in the permit for a TSDF;

(4) Is contrary to previously stated policy whereby the EPA binds itself to the principle of using "permit-as-a-shield" (45 FR 33290, May 19, 1980); and

(5) Is disruptive to TSDF owner and operator planning, burdensome to comply with, and has an adverse effect on the availability and cost of control equipment.

Response: The practice known as "permit-as-a-shield" is derived from an exercise of the EPA's regulatory authority and was first codified in the 1980 implementing regulations of the RCRA permit program (45 FR 33290, May 19, 1980). It is not a provision of RCRA and is therefore no part of the statutory mandate by Congress to manage the Nation's hazardous wastes. *Shell Oil* v. *EPA*, 950 F.2d at 741, 762 (D.C. Cir. 1991). Because it is a regulatory and not a statutory provision, the EPA can modify the "permit-as-a-shield" practice in any situation where the Agency determines that the practice does not serve the EPA's mandate to protect human health and the environment. For the final subpart CC standards, the EPA estimates that baseline nationwide excess cancer incidence resulting from exposure to TSDF organic emissions is 48 cases per year. In addition, total nationwide organic emissions from TSDF are estimated to be approximately 1 million Mg/yr and, thus, contribute significantly to the formation of atmospheric ozone. These health and environmental impacts are very high relative to the impacts of emissions from other sources regulated under RCRA and the CAA. Accordingly, the EPA has determined that the health and environmental impacts resulting from organic air emissions from TSDF are of a magnitude to warrant narrowly rescinding the "permit-as-a-shield" practice for this limited case.

The "permit-as-a-shield" practice is not a consequence of Constitutional or statutory obligations of the EPA to any individual and its removal does not violate any substantive or procedural due process rights of individuals. The "permit-as-a-shield" practice was established by regulations promulgated by the EPA and therefore can be

modified when the EPA determines it is necessary to do so for the protection of human health and the environment. Numerous government regulations have a direct effect on regulated entities, and the EPA's "permit-as-a-shield" practice does not vest the regulated community with a right to a variance from all new RCRA regulations. Furthermore, the proposal put the public on notice that the EPA was planning to modify the "permit-as-a-shield" practice in this rule, and the public has therefore had an opportunity for meaningful comment on the issue.

The EPA continues to believe that the permit process and requirements are fundamental components of the RCRA program and that, by and large, compliance with the permits should constitute compliance with the RCRA program. For the other rulemakings for which the EPA rescinded the "permit-as-a-shield" practice, the EPA determined that the risk to human health and the environment was too high to allow the practice to continue (for remaining permit periods), and required that all TSDF comply with the new requirements regardless of their permit status. The EPA has determined that allowing owners and operators of permitted TSDF to be shielded from compliance with the regulatory requirements of subparts AA, BB, and CC standards will allow excessively high risks. Today's action by the EPA does not negate the value of the RCRA permit program or the "permit-as-a-shield" practice. Instead, the EPA is making a distinction between a provision that is sufficiently protective in most cases and one that, under specific situations, is not sufficiently protective.

The EPA disagrees with the commenters' claims that the permit modification process can adequately accommodate the timely implementation of the subpart CC standards. For the EPA to apply the subpart CC standards into permits by way of modifications would require a significant and unreasonable resource commitment. Furthermore, the fact that existing permits can be modified to incorporate new regulatory requirements [per 40 CFR 270.41(a)(3), which implements RCRA section 3005(c)(3)] shows that "permit-as-a-shield" is hardly an inviolate principle. The ruelmaking simply accomplishes nationally what a modification would accomplish individually. Accordingly, the EPA developed the subpart AA, BB, and CC standards to be "self-implementing" so that State and Regional permit writers will not be required to reopen and rewrite permits to incorporate the provisions. Permitted facilities will be able to comply directly with the regulatory standards in the same way that interim-status facilities must comply. Modifying "permit-as-a shield" for these rules eliminates any confusion or ambiguity as to which TSDF is subject to the requirements.

As noted by the commenters, the EPA stated a policy for "permit-as-a-shield" in the so-called consolidated permit regulations issued in 1980 (45 FR 33290). However, this does not mean that the policy for "permit-as-a-shield" can never be amended. The EPA has never agreed to "bind" itself to any particular policy or provision. Instead, the EPA may adhere to a general practice or policy with the understanding that, if the circumstances warrant and the EPA provides a rational explanation, it can modify or rescind a particular provision. It should be noted, for example, that Congress has since amended RCRA to require that air emissions from TSDF be controlled, and in the same amendments provide that the EPA may reopen permits to add conditions reflecting new control practices and to redress potential risks posed by the facility (RCRA section 3005(c)(3) and S. Rep. No. 284, 98th Cong. 1st Sess. at 31). Here, the EPA is determining that there are excessively high risks from these facilities, and therefore that these more protective provisions should become effective immediately.

It should also be noted that the EPA does not intend to rescind "permit-as-a-shield" on a regular or frequent basis for other rulemakings. As stated earlier, the EPA generally does view "permit-as-a-shield" as a beneficial and legitimate part of the RCRA program and that, in most cases, it will apply.

The EPA believes that the commenters claiming that removing "permit-as-a-shield" will be disruptive to TSDF implementation planning are greatly overstating the adverse or disruptive effects that an accelerated implementation will have on TSDF owner and operator planning and operations because the control technologies for the different kinds of management units are varied and widely available. The EPA specifically considered the costs and economic impacts of the various control options in the regulatory impact analysis for the proposed rule (RCRA docket entry number F–91–CESP–S00494). Based on this analysis, the EPA found that the costs of installing and operating air emission control equipment required by the control options are projected to be less than 1 percent of the total cost of hazardous waste management at TSDF. Any air emission control equipment supply availability constraints resulting from these rules should be short term, if at all. Furthermore, TSDF owners and operators required to install air emission control equipment to comply with the subpart CC standards are allowed up to an additional 30 months after the rule's effective date to complete the equipment design and installation if they can document that the air emission controls cannot be installed and operating by the effective date, for reasons such as the unavailability of control equipment.

Also, the EPA expects that many TSDF owners and operators will choose to treat their hazardous waste earlier in the management sequence that they now do to reduce the organic content of the waste in accordance with one of the treatment requirements allowed for in the final subpart CC standards, and thus avoid the cost of installing and operating the control equipment on the downstream tanks, surface impoundments, and containers. The EPA also encourages the use of pollution prevention techniques as a means of reducing the quantity of waste generated, the organic concentration of the waste, or the toxicity of constituents in the waste.

F. Waste Stabilization in Tanks

Just prior to the long-scheduled and publicly-known promulgation date, representatives from the hazardous waste treatment industry notified the EPA of their opinion that the draft requirements for waste stabilization operations performed in tanks are economically and technically infeasible. These draft requirements are included in a May 19, 1994 interim review draft of the final rule, made publicly available in June 1994. (See RCRA docket entry number F–94–CESP–S00509.) Moreover, the industry indicated that volatilization of organic constituents during stabilization operations are negligible. No data were submitted to the EPA in support of these assertions. Industry representatives nevertheless feel strongly that for the majority of waste streams treated by stabilization, the organic constituents in the waste are not volatilized during the stabilization process. Additionally, they allege that for these same stabilization operations:

(1) It is technically infeasible to comply with the air emission control requirements for tanks in the subpart CC standards; and

(2) It is not feasible to treat organic waste prior to stabilization such that the volatile organic concentration of the waste entering the stabilization process would be below 100 ppmw, and the

downstream units managing the waste (including the stabilization tanks) would thereby be exempt from subpart CC tank control requirements. (See RCRA docket number F–94–CESF–FFFFF.)

These statements contradict the conclusions drawn by the EPA based on site visits to observe hazardous waste stabilization processes, and experiments and studies conducted by the EPA to characterize waste stabilization processes and estimate associated organic emissions. The most recent EPA studies were mentioned in the Notice of Data Availability (see 57 FR 43171, September 18, 1992) and were made available for public review and comment in the docket for this rulemaking (see RCRA docket number F–92–CESA–FFFFF). No comments were received concerning the validity of these stabilization study conclusions.

At the same time, however, and despite the inappropriate timing of industry's comments on this issue (compounded by the industry's failure to comment on the information presented by the Notice of Data Availability), the EPA has determined that it may be worthwhile to review pertinent data for current waste stabilization activities at hazardous waste TSDF. Industry has pledged to provide detailed data from an emissions test conducted to measure organic emissions from a full-scale stabilization operation treating hazardous waste streams. The test will be conducted using the EPA approved sampling and analytical methods, and the volatile organic concentration of the waste streams will be measured using Method 25D, with gas chromatography and with mass spectrometry (see RCRA docket number F–94–CESF–FFFFF). The EPA will accept until September 6, 1995 all pertinent information and comments on the following limited issues: (1) Volatilization of organics during waste stabilization activities, (2) feasibility of treating organic wastes to destroy or remove organics prior to stabilization to immobilize toxic metals, and (3) alternative organic emission controls applicable to stabilization tanks. Persons interested in submitting comments or data pertaining to these issues should notify the EPA of their intent by contacting Ms. Michele Aston at the address listed in the FOR FURTHER INFORMATION CONTACT section at the beginning of this preamble. Written information and comments regarding the above issues should be mailed to the RCRA Docket Office (5305), U.S. Environmental Protection Agency, room 2616, 401 M Street SW., Washington, DC 20460 Please send an original and two copies of all information, and refer to RCRA docket number F–94–CESA–FFFFF.

The EPA will assess all submitted information, and will make a rapid determination whether to amend the requirements under the subpart CC standards being promulgated today for tanks in which waste stabilization operations are performed. The EPA emphasizes that the current record does not support any amendment to these standards. However, if the EPA were to amend the requirements for stabilization tanks, the amendment could include any of the provisions described below, a modification of today's promulgated requirements, or possibly other options.

The EPA may choose to amend the final subpart CC tank standards such that stabilization tanks could comply with alternative air emission controls to those included in today's promulgation. The EPA will determine the appropriateness of such an amendment based on the evaluation of:

(1) Information that is submitted relating to industry's comments that it is not feasible to comply with the technical requirements of today's final rule or to pretreat waste prior to stabilization;

(2) Information related to alternative emission controls that could be applied to stabilization tanks for effective organic emission reduction;

(3) Data related to the specific characteristics of hazardous waste that is stabilized at TSDF;

(4) Detailed information regarding the stabilization processes performed in TSDF tanks; and

(5) Other related information.

For a given stabilization tank to qualify for certain compliance options, the EPA could require the facility owner or operator to demonstrate (through specified testing, monitoring, sampling, or other means) that organic constituents are not volatilized during the hazardous waste stabilization operations performed in that tank. A similar requirement for biological treatment performed in tanks and surface impoundments is included in the final subpart CC standards (for example see 40 CFR 264.1085(a)(2)) as well as other air standards developed by the EPA under the Clean Air Act (e.g., the Hazardous Organic NESHAP (59 FR 19402, April 22, 1994) and the proposed Off-Site Waste and Recovery Operations NESHAP (59 FR 51919, October 13, 1994)). For biological treatment processes, which are generally acknowledged by the EPA as appropriate treatment for organic constituents in waste with respect to controlling organic emissions, the EPA considers such a demonstration to be a reasonable requirement for certain compliance options. Therefore, the EPA also could consider it reasonable to require that stabilization operations, which the EPA does not consider appropriate treatment for organic constituents in waste with respect to controlling organic emissions, perform at least an equivalent demonstration for certain compliance options. If the EPA were to amend today's promulgated subpart CC tank standards to include such a demonstration, the required procedure could include any of the following, or possibly other procedures: whole waste analyses, full-scale analyses, specified emissions monitoring, material balance calculations, temperature monitoring, and water content information.

In light of this supplemental comment opportunity, the EPA considers it appropriate to extend the effective date of the final rules for tanks that could be affected if the EPA chooses to modify the standards. Therefore, a separate compliance schedule is applicable to tanks in which waste stabilization activities are performed as of December 6, 1994. It is important to note that all applicable requirements with respect to other units at a facility subject to the subpart CC standards will be effective June 5, 1995. For these stabilization tanks, the effective date of the final rules will be December 6, 1995. As of the extended effective date for stabilization tanks, each TSDF owner or operator and each hazardous waste generator subject to the final rules must either install and operate the specified air emission control requirements on all affected tanks used for stabilization, or begin performing the specified waste determinations and recordkeeping to indicate that a stabilization tank is exempted from these requirements. Under circumstances where required air emission control equipment cannot be operational by December 6, 1995, an implementation schedule for installation of the required air emission controls must be developed and placed in the facility operating records no later than December 6, 1995. In such cases, the facility must have all air emission controls required by the final rules in operation no later than June 8, 1998.

VII. Requirements of Final Rule

A. TSDF Tank, Surface Impoundment, and Container Requirements

Today's action by the EPA promulgates air emission standards for TSDF tanks, surface impoundments, and containers as a new subpart CC in both 40 CFR parts 264 and 265. Subpart

CC under 40 CFR part 265 establishes standards for owners and operators of interim-status TSDF. As discussed in section VIII.A of this preamble, owners and operators of permitted TSDF that have been issued final permits prior to June 5, 1995, are required to comply with subpart CC under 40 CFR part 265 until the facility's permit is reviewed or reissued by the EPA.

The air emission control requirements of the final subpart CC standards in 40 CFR part 264 and 40 CFR part 265 are identical with the exception of the reporting requirements. There are no reporting requirements in subpart CC under 40 CFR part 265.

1. Applicability

a. General applicability. In general, the subpart CC standards apply to RCRA-permitted tanks, surface impoundments, and containers subject to 40 CFR part 264, subparts J, K, or I, respectively, as well as to interim-status TSDF tanks, surface impoundments, and containers subject to 40 CFR part 265, subparts J, K, or I, respectively. However, certain specific types of TSDF tanks, surface impoundments, and containers are not subject to the subpart CC standards under applicability provisions in other RCRA regulations as well as provisions included specifically in the subpart CC standards.

The subpart CC standards do not apply to those TSDF tanks, surface impoundments, or containers excluded from regulation under 40 CFR 264.1. For example, TSDF owners and operators are not required to obtain a RCRA permit for tanks or tank systems that manage hazardous wastewaters or wastewater treatment sludges and are subject to regulation under either section 402 or 307(b) of the Clean Water Act [refer to 40 CFR 264.1(g)(6) and 40 CFR 265.1(c)(10)]. Because these tanks are exempted from RCRA permitting requirements, they are not subject to the requirements of 40 CFR parts 264 and 265. Thus, the subpart CC standards do not apply to a TSDF tank that is considered to be a part of a "wastewater treatment unit" as defined in 40 CFR 260.10. Similarly, the subpart CC standards do not apply to TSDF tanks, surface impoundments, or containers when these units are used for emergency or spill management activities in accordance with 40 CFR 264.1(g)(8)(i) or 40 CFR 265.1(c)(11)(i).

b. Exemptions. The subpart CC standards are only applicable to containers with a design capacity greater than or equal to 0.1 m^3 (approximately 26 gallons). This means that any container that has a design capacity less than 0.1 m^3 is not subject to the subpart CC standards regardless of the volatile organic concentration of the hazardous waste placed in the container.

The subpart CC standards apply only to TSDF tanks, surface impoundments, and containers in which an owner or operator places hazardous waste on or after June 5, 1995. With respect to surface impoundments, the EPA has already explained that RCRA regulations do not apply to impoundments at which there is no active management of hazardous waste after the rule's effective date (see 55 FR 39410, September 27, 1990). This would include impoundments that cease operation before the rule's effective date, and impoundments that convert to non-hazardous waste impoundments before the effective date. This latter class of impoundments includes those impoundments that contain hazardous wastes deposited before the rule's effective date for which the impoundment is the final disposal site for hazardous waste already in the unit (i.e., the impoundment is a disposal unit) and hazardous wastes are not actively managed in the impoundment. *Id.* The principle in today's rule is consistent with this existing interpretation.

The rationale for not applying the subpart CC standards to tanks and containers that do not receive hazardous waste after the effective date is somewhat different. Under the subpart CC standards, the need to apply air emission controls to a particular tank or container is determined by the organic content of the hazardous waste at a point prior to being placed in the tank or container (this is discussed in the following section under "General Standards"). In many situations where existing tanks and containers at a TSDF already hold hazardous waste but no longer receive new wastes, a TSDF owner or operator will be unable to perform a waste determination as specified in the rule because waste samples cannot be collected at the required locations and the owner or operator has insufficient knowledge about the waste. Furthermore, even if a waste determination can be performed for these tanks or containers but the units presently are uncovered or have other openings, most if not all of the volatile organics in the waste have most likely already been emitted to the atmosphere. Thus, the EPA decided that air emission control requirements should only apply to those tanks and containers in which hazardous waste is placed on or after the effective date of the rule.

The EPA decided not to apply the subpart CC standards to a tank once an owner or operator stops adding hazardous waste to the unit and begins closure pursuant to an approved closure plan because in many cases, use of the required air emission controls would hinder or prevent closure activities from being performed.

c. Remediation wastes. The EPA has further decided to temporarily defer application of the subpart CC standards to tanks, containers, and surface impoundments which are being used on-site to treat or store hazardous wastes containing organics generated from remedial activities required under RCRA corrective action or CERCLA response authorities, or similar State remediation authorities, provided that the wastes are managed in units that do not also manage other hazardous wastes. This deferral applies only to on-site management of such wastes. For remediation waste transported off-site, the point of waste origination will be the point at which the wastes are physically moved outside the facility boundary (or for CERCLA response actions, outside the site boundary).

As the D.C. Circuit recently explained, a temporary deferral such as today's is permissible if the Agency legitimately needs further time to ascertain the best means of integrating concurrent statutory and regulatory schemes to avoid potential interference with the objectives of both schemes, and where Congress has not expressly forbidden a temporary deferral. *Edison Electric Inst.* v. *EPA*, 2 F. 3d 438, 451–53 (D.C. Cir. 1993). See also RCRA section 1006, requiring the EPA to integrate all provisions of RCRA for purposes of administration and enforcement, and to avoid duplication to the maximum extent practicable in doing so.

This situation is presented here. Control of air emissions from units at remediation sites implicates the overlapping and potentially competing concerns of RCRA section 3004(n) and the complex statutory provisions under RCRA, CERCLA, and State laws relating to remediation. The EPA's primary goal in this rulemaking has been to develop air emission standards for tanks, containers, and surface impoundments holding as-generated hazardous wastes containing organics. At proposal, the EPA thus did not fully consider the issue of whether different standards should appropriately apply to wastes that are generated and managed as the result of remedial activities, or how the proposed rule for air emissions could best be integrated with the remediation authorities of RCRA and other Federal

or State laws. 56 FR at 33497–98 (July 22, 1991).

Commenters on the proposed subpart CC regulations pointed out that these were important issues deserving careful attention. The EPA agrees. It is possible that certain provisions of the air emission requirements promulgated today may be inappropriate or unnecessarily restrictive if applied to remediation activities (see 58 FR 8660, February 16, 1993).

The EPA notes that some measure of control of air emissions from remediation tanks, containers, and impoundments will be assured during the deferral period. Remediation authorities of RCRA and CERCLA and similar State authorities allow overseeing officials to impose, on a site-specific basis, appropriate air emission controls on these types of units, as well as on other waste management units and handling operations. In addition, hazardous wastes containing organics that are managed off-site (i.e., outside a RCRA facility's boundary, or outside a CERCLA site) would be subject to the subpart CC management standards.

Finally, the EPA emphasizes that the deferral is indeed temporary. The issue of appropriate air emission controls for remediation units is likely to be addressed in the context of the Hazardous Waste Identification Rules which are currently being developed by the EPA. The issue is also potentially part of the third phase of the RCRA section 3004(n) implementation. In addition, waste remediation sites are on the initial list of source categories under CAA section 112, and the EPA currently is scheduled to issue technology-based standards to control emissions of hazardous air pollutants from this source (see 57 FR 31576, July 16, 1992). Consequently, the EPA will be addressing this issue in the reasonably near future.

d. Radioactive mixed wastes. As explained in section IV.F of this preamble, the management of radioactive mixed waste at TSDF is subject to regulation under subtitle C of RCRA. The EPA reviewed the special nature of radioactive mixed wastes with respect to the air emission control requirements under the final subpart CC standards. In certain cases, the air emission controls used as the basis for the subpart CC standards are not compatible with the NRC requirements for safe handling of radioactive mixed wastes. For example, drums used to store radioactive mixed waste cannot be sealed with vapor leak-tight covers because of unacceptable pressure buildup of hydrogen gas to levels that can potentially cause rupture of the drum or create a potentially serious explosion hazard. This generation of hydrogen gas results from the radiolytic decomposition of organic materials (e.g., plastics) or aqueous solutions stored in the drums. Consequently, a drum used for storage of radioactive mixed wastes must be continuously vented through special filters in accordance with technical guidance issued by the NRC to prevent the hydrogen concentration in the drum from reaching dangerous levels. The EPA is planning to further investigate methods for effective control of organic emissions from waste management units handling radioactive mixed waste that are consistent with the NRC waste management practices.

2. General Standards

The final subpart CC standards require that TSDF owners and operators install and operate air emission controls on each tank, surface impoundment, and container subject to the rules except when all of the hazardous waste placed in the unit is determined to meet certain conditions. These conditions are based on properties of the hazardous waste determined at either one of two locations:

(1) The point where a hazardous waste is generated or the point where the waste is received by an off-site facility; or

(2) The point following treatment of a hazardous waste to remove or destroy the organics in the waste.

a. Point of waste origination. Under the final subpart CC standards, a TSDF owner or operator is exempted from managing a hazardous waste in a tank, surface impoundment, or container in accordance with the air emission control requirements of the rule when the owner or operator determines that all hazardous waste placed in the unit has an average volatile organic concentration at the point of waste origination less than 100 ppmw. The point of waste origination is defined in the rule with respect to the point where the TSDF owner or operator first has possession of a hazardous waste. When the TSDF owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as defined in 40 CFR part 261. As previously stated, the term "point of waste origination" applied to this situation is being used in a similar manner to the use of the term "point of generation" in waste operations air standards established under authority of the Clean Air Act in 40 CFR parts 60, 61, and 63 of this chapter. When neither the TSDF owner nor operator is the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

b. Treated Hazardous Waste. If a hazardous waste has an average volatile organic concentration equal to or greater than 100 ppmw based on the hazardous waste composition at the point of waste origination, then this waste is required under the subpart CC standards to be managed in accordance with the air emission control requirements of the rule. Under these requirements, specific air emission controls must be installed and operated on every tank, surface impoundment, and container subject to the rule used in the waste management sequence from the point of waste origination through the point where the organics in the waste are removed or destroyed by a process that meets or exceeds a minimum level of performance specified in the rule. In other words, once a hazardous waste is treated to remove or destroy the organics in the waste in accordance with the rule requirements, the subsequent downstream tanks, surface impoundments, and containers used to manage this particular hazardous waste are not required to meet the air emission control requirements of the subpart CC standards.

The final subpart CC standards provide TSDF owners and operators with several alternative provisions for determining when a treated hazardous waste is no longer required to be managed in tanks, surface impoundments, and containers meeting the air emission control requirements of the rule. Treated hazardous waste provisions are specified in the subpart CC standards for the following processes:

(1) An organic destruction, biological degradation, or organic removal process that reduces the organic content of the hazardous waste and is designed and operated in accordance with certain conditions specified in the rule;

(2) A hazardous waste incinerator that is designed and operated in accordance with the requirements of 40 CFR 264 subpart O or 40 CFR 265 subpart O; or

(3) A boiler or industrial furnace that is subject to the requirements of 40 CFR part 266 subpart H.

A process that simply mixes, blends, combines, or aggregates a hazardous waste stream with other materials does not destroy the organics in the waste stream or remove the organics from the waste stream. While diluting a hazardous waste stream having a volatile organic concentration greater

than 100 ppmw with sufficient quantities of other hazardous waste streams having a volatile organic concentration less than 100 ppmw (or water or other low organic content materials) would reduce the volatile organic concentration of the resulting hazardous waste mixture to a level below 100 ppmw, the total mass quantity of organics in the waste does not change since no organics were removed or destroyed from the waste. The potential for organic emissions from handling the waste mixture is essentially the same as for the individual hazardous waste streams prior to being mixed. Therefore, the EPA does not allow dilution of a hazardous waste as a means for complying with the requirements specified in the subpart CC standards for placing treated hazardous waste in affected tanks, surface impoundments, or containers not using the required air emission controls. Consequently, when a hazardous waste is treated by an organic destruction or removal process and the hazardous waste has been mixed or aggregated together with other hazardous wastes or materials with a volatile organic concentration less than 100 ppmw prior to the point of waste treatment, the subpart CC standards require that TSDF owners and operators meet special requirements to ensure that organics in the hazardous waste have actually been removed or destroyed. An owner or operator can choose from several alternative provisions to comply with these requirements.

One provision requires that mixed hazardous wastes be treated by an organic destruction or removal process that reduces the volatile organic concentration of the hazardous waste to meet a site-specific treatment process exit concentration limit. This limit is determined by the TSDF owner or operator on a case-by-case basis using an equation specified in the rule that accounts for the portion of the reduction in the volatile organic concentration in the resulting treated hazardous waste stream due to dilution. To use this equation, the owner or operator must first determine the volatile organic concentration at the point of waste origination for each individual hazardous waste stream that is mixed together prior to entering the treatment process. As an alternative to calculating the exit concentration limit for a treatment process, the subpart CC standards allow the owner or operator to treat the mixed hazardous wastes to a volatile organic concentration level that is less than or equal to the lowest waste volatile organic concentration at the point of waste origination for all of the individual hazardous waste streams mixed together prior to entering the treatment process.

Another alternative in the subpart CC standards available to owners and operators allows mixed hazardous wastes to be treated using a single process that achieves an organic reduction efficiency of 95 percent or greater on a mass basis, and reduces the average volatile organic concentration of the resulting hazardous waste stream exiting the process to a level less than 50 ppmw. This alternative does not require the owner or operator to perform any volatile organic concentration waste determinations for the hazardous wastes prior to mixing, yet still accommodates the mixing of wastes that have different volatile organic concentrations. For a waste stream having a volatile organic concentration greater than 2,000 ppmw, requiring only a minimum 95 percent reduction of the organic content in the waste stream would not lower the volatile organic concentration of the treated waste stream to the 100 ppmw level of the rule. However, if such a waste stream had been mixed together prior to treatment with other waste streams having lower volatile organic concentrations, then the volatile organic concentration of the treated waste exiting the process could be less than 100 ppmw. The EPA does not consider such situations to be unlikely, and has therefore chosen for this alternative to require an exit concentration for the treated waste lower than 100 ppmw. The EPA considers an exit concentration of 50 ppmw, combined with a 95 percent treatment efficiency, to be an appropriate demonstration that the reduction in volatile organic concentration for a mixture of hazardous waste streams has been achieved through destruction or removal of organic constituents in the waste, rather than by dilution.

The final subpart CC standards also provide another alternative that does not require the owner or operator to perform any volatile organic concentration waste determinations for the hazardous wastes prior to mixing when the waste is treated by a biological process that destroys or degrades the organics contained in the hazardous waste to meet certain performance requirements specified in the rule. These conditions are either of the following:

(1) Achieve an organic reduction efficiency for the biological treatment process equal to or greater than 95 percent, and achieve an organic biodegradation efficiency for the process equal to or greater than 95 percent; or

(2) Achieve a total actual organic mass biodegradation rate for all hazardous waste treated by the process equal to or greater than the required organic mass removal rate for the process.

Compliance with these parameters is determined using the procedures specified in rule.

The EPA may at any time measure or request that the owner or operator measure using Method 25D the volatile organic concentration of a hazardous waste that is placed in a tank, surface impoundment, or container not using air emission controls in accordance with the requirements of the subpart CC standards. Measurement results showing that the volatile organic concentration of the hazardous waste is equal to or greater than 100 ppmw constitutes noncompliance with the subpart CC standards. However, in a case where the owner or operator has used an averaging period greater than 1 hour for determining the volatile organic concentration of a hazardous waste, the Regional Administrator may consider information that was used by the owner or operator to determine the average volatile organic concentration of the hazardous waste (e.g., test results, measurements, calculations, and other documentation) together with the results of the waste determination in determining whether the owner or operator is in compliance with the subpart CC standards.

3. Waste Determination Procedures

A determination of the volatile organic concentration of a hazardous waste is required by the subpart CC standards only when a hazardous waste is to be placed in a tank, surface impoundment, or container subject to the rule that does not use air emission controls in accordance with the requirements of the rule. A TSDF owner or operator is not required to determine the volatile organic concentration of the waste if it is placed in a tank, surface impoundment, or container using the required air emission controls.

When the hazardous waste is generated as part of a continuous process, the owner or operator is required to perform an initial waste determination of the average volatile organic concentration of the waste stream before the first time any portion of the material in the waste stream is placed in a waste management unit subject to the rule, and thereafter update the information used for the waste determination at least once every 12 months following the date of the initial waste determination. When the hazardous waste is generated as part of a batch process that is performed

repeatedly but not necessarily continuously, the owner or operator is required to perform an initial waste determination of the average volatile organic concentration for one or more representative waste batches generated by the process before the first time any portion of the material in the these waste batches is placed in a waste management unit subject to the rule, and thereafter update the information used for the waste determination at least once every 12 months following the date of the initial waste determination. For either case, the owner or operator is required to perform a new waste determination whenever changes to the process generating the hazardous waste are reasonably likely to cause the average volatile organic concentration to increase to a level at or above 100 ppmw. If an average volatile organic concentration is used, an initial waste determination must be performed for each averaging period.

Waste determinations should be performed for any waste that is generated as a part of an unplanned event or is generated as a part of an event that is not included in the normal operating conditions for the source or process generating the hazardous waste. Examples of an unplanned event include malfunctions that affect the operation of the process or that alter the composition of the waste or product. Examples of events that are not normal operating conditions include maintenance activities and equipment cleaning. Normal operating conditions for the source or process generating the waste include cyclic process operations such as start-up and shutdown.

For processes that have variations in normal operating conditions such that the waste volatile organic concentration may exceed 100 ppmw, but for which the average waste volatile organic concentration for the averaging period is below 100 ppmw, documentation must be retained in the facility operating record that specifies the following information: (1) The maximum and minimum waste volatile organic concentration values that will occur for that averaging period; (2) the circumstances under which a waste volatile organic concentration above 100 ppmw would occur, and; (3) the calculations and waste determination procedures used as the basis for the determination of the average volatile organic concentration. For a given averaging period, if there are no deviations from the operating circumstances or from the maximum or minimum waste volatile organic concentrations specified in the operating plan, then no additional waste determinations would be required after the initial waste determination for that averaging period.

The subpart CC standards include provisions that allow a TSDF owner or operator to use either direct measurement or knowledge of the waste to determine the volatile organic concentration of a hazardous waste. The following paragraphs describe these two options available to the owner or operator for performing a waste determination.

a. *Direct measurement.* When the hazardous waste is generated on a continuous basis, the averaging period to be used for determining the volatile organic concentration on a mass-weighted average basis must be designated and recorded. This averaging period can represent any time interval that the hazardous waste flows until such time that a new waste determination must be performed pursuant to the requirements of the rule. However, this averaging period cannot exceed 1 year. A sufficient number of samples, but no less than four, must be collected to represent the complete range of organic compositions and organic quantities that occur in the hazardous waste stream during the entire averaging period due to normal variations in the operating conditions for the source or process generating the hazardous waste.

When the hazardous waste is generated as part of a batch process that is performed repeatedly but not necessarily continuously, samples are collected from one or more representative waste batches generated by the process. The volatile organic concentration for the waste is calculated as a mass-weighted average based on the analysis results for all of the waste samples collected for these waste batches. A sufficient number of samples, but no less than four, must be collected to represent the organic composition for each representative batch.

Each sample of the hazardous waste is to be collected in accordance with the requirements specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW–846, third edition, November 1986, as amended by Update I, November 15, 1992. Sufficient information must be recorded to document the waste quantity and the operating conditions for the source, process, or waste management unit generating the hazardous waste represented by each sample collected.

Each of the collected waste samples is to be prepared and analyzed in accordance with the requirements of Method 25D in 40 CFR part 60, appendix A. The volatile organic concentration for a hazardous waste on a mass-weighted average basis is then calculated by entering the analysis results for all of the collected waste samples into an equation specified in the rule.

b. *Knowledge of the waste.* The final subpart CC standards allow TSDF owners or operators to use their knowledge of the waste for waste determinations (see *Hazardous Waste Treatment Council* v. *EPA*, 886 F.2d 355, 370–71 (D.C. Cir. 1989) upholding the use of generator knowledge to determine if treatment standards are met). Information may be used that is prepared by either the facility owner or operator or by the generator of the hazardous waste. Examples of information that could constitute acceptable knowledge include:

(1) Organic material balances for the source, process, or waste management unit generating the waste;

(2) Documentation that lists the raw materials or intermediate products fed to a process showing that no organics are used in the process generating the waste;

(3) Information that shows the waste is generated by a process that is substantially similar to a process at the same or another facility that generates a waste that has previously been determined by direct measurement to have a volatile organic content less than the action level;

(4) Test data that provide speciation analysis results for the waste that are still applicable to the current waste management practices and from which the total concentration of organics in the waste can be computed; or

(5) Other knowledge based on manifests, shipping papers, or waste certification notices.

When test data are used as the basis for knowledge of the waste, the owner or operator must provide documentation describing the testing protocol and the means by which sampling variability and analytical variability are accounted for in the determination of the volatile organic concentration of the hazardous waste. For example, an owner or operator may use individual organic constituent concentration test data that are validated in accordance with Method 301 in appendix A to 40 CFR part 63 as the basis for knowledge of the waste.

4. Tank Standards

The tank standards establish the requirements for tanks using air emission controls to comply with the general standards of the rule. No air emission controls are required under the

subpart CC standards for a tank in which all hazardous waste placed in the unit has been treated to remove or destroy organics in accordance with the requirements specified in the general standards.

Also, the tank standards do not apply to a tank in which biological degradation of the organics in the hazardous waste treated in the unit is demonstrated to achieve specific performance levels. Either of the following sets of conditions must be demonstrated to qualify for this exemption: (1) The organic reduction efficiency for the process is equal to or greater than 95 percent, and the organic biodegradation efficiency for the process is equal to or greater than 95 percent; or (2) the total actual organic mass biodegradation rate for all hazardous waste treated by the process is equal to or greater than the required organic mass removal rate. The organic biodegradation efficiency or the organic mass biodegradation rate for a biological treatment unit is determined by procedures specified in the rule.

The tank standards specify that the owner or operator install and operate on each affected tank one of the following air emission control systems: (1) A cover that is connected through a closed-vent system to a control device; (2) a fixed-roof type cover with an internal floating roof that is designed and operated in accordance with the requirements equivalent to the new source performance standard (NSPS) for volatile organic liquid (VOL) storage; (3) an external floating roof that is designed and operated in accordance with the requirements equivalent to the VOL storage NSPS; or (4) a pressure tank that is designed to operate as a closed system. Under the subpart CC standards, an owner or operator is allowed to use a fixed-roof type cover (without any additional controls) for affected tanks under certain conditions.

Four conditions must be met for a particular tank before use of a fixed-roof type cover (without any additional controls) is allowed under the subpart CC standards. First, the hazardous waste cannot be mixed, stirred, agitated, or circulated within the tank by a process that results in splashing, frothing, or visible turbulent flow on the waste surface except during limited circumstances. Second, the hazardous waste in the tank cannot be heated by the owner or operator except when necessary to prevent the waste from freezing or to maintain adequate waste flow conditions for continuous normal process operations. Third, the hazardous waste cannot be treated using a waste stabilization process or a process that produces an exothermic reaction. Finally, the maximum organic vapor pressure of the hazardous waste in the tank must be less than the limit established in the rule by tank design capacity. For a tank having a design capacity equal to or greater than 151 m^3 (approximately 40,000 gallons), then the maximum organic vapor pressure of the hazardous waste in the tank must be less than 5.2 kPA. For a tank having a design capacity equal to or greater than 75 m^3 (approximately 20,000 gallons) but less than 151 m^3, then the maximum organic vapor pressure of the waste in the tank must be less than 27.6 kPa. For a smaller tank (design capacity less than 75 m^3), the maximum organic vapor pressure must be less than 76.6 kPa.

The subpart CC standards require each cover opening not vented to a control device to be maintained in a closed, sealed position except at those times when a specific opening must be used to add, remove, inspect, or sample the waste in the tank or when it is necessary to use the opening to inspect, maintain, or repair equipment located inside the tank. Also, safety devices that vent directly to the atmosphere may be used on the tank, cover, closed-vent system, or control device provided that the safety device is not used for planned or routine venting of organic vapors. These safety devices are to remain in a closed position except when an unplanned event requires that the device be open for the purpose of preventing physical damage or permanent deformation of the tank, cover, closed-vent system, or control device in accordance with good engineering and safety practices for handling flammable, combustible, explosive, or other hazardous materials. An example of an unplanned event is a sudden power outage.

5. Surface Impoundment Standards

The surface impoundment standards establish the requirements for surface impoundments using air emission controls to comply with the general standards of the rule. No air emission controls are required under the subpart CC standards for a surface impoundment in which all hazardous waste placed in the unit has been treated to remove or destroy organics in accordance with the requirements specified in the general standards. Also, air emission controls are not required for a surface impoundment in which biological treatment of a hazardous waste is performed under the same conditions specified in the rule for tanks.

The surface impoundment standards specify that the owner or operator install and operate on each affected surface impoundment a cover (e.g., air-supported structure) that is connected through a closed-vent system to a control device. Under the subpart CC standards, an owner or operator is allowed to use a floating membrane cover (without any additional controls) for affected surface impoundments under certain conditions specified in the rule.

The requirements under the subpart CC standards for surface impoundment air emission control equipment are consistent with the requirements for tanks.

6. Container Standards

The container standards establish the requirements for affected containers (containers with a design capacity greater than or equal to 0.1 m^3) using air emission controls to comply with the general standards of the rule. No air emission controls are required by the subpart CC standards for any container with a design capacity less than 0.1 m^3 regardless of the volatile organic concentration of the hazardous waste placed in the container.

For affected containers used for storage, treatment, or handling of hazardous waste, the owner or operator is required to use either: (1) A container that is equipped with a vapor leak-tight cover; (2) a container having a design capacity less than or equal to 0.46 m^3 (approximately 119 gallons) that is equipped with a cover and complies with all applicable U.S. Department of Transportation (DOT) regulations on packaging hazardous waste for transport under 49 CFR part 178; or (3) a container that is attached to or forms a part of any truck, trailer, or railcar and that has been demonstrated within the preceding 12 months to be organic vapor tight in accordance with the procedure specified in Method 27. For a container in which treatment of hazardous waste is performed, the owner or operator is required to place the container inside an enclosure that is connected through a closed-vent system to a control device at all times that the container is completely or partially uncovered during the treatment operation. Transfer of hazardous waste by pumping into a container having a design capacity greater than 0.46 m^3 is required to be performed using submerged fill loading.

The requirement for use of leak-tight covers on containers is established by testing the cover for no detectable organic emissions as determined using Method 21 in 40 CFR part 60, appendix

A. The test is performed when all openings in the cover (e.g., lids, bungs, hatches, and sampling ports) are secured in a closed, sealed position. Under certain circumstances, the EPA has determined that a cover other than a rigid, gasketed cover can be used on a container that will meet the requirement for no detectable organic emissions. For example, the EPA has concluded that use of a tarpaulin with a vapor-suppressing foam is an acceptable cover for roll-off boxes used for short-term storage (e.g., less than 30 days) of bulk solid materials (refer to RCRA docket entry number F–94–CESP–S00507 for specific conditions under which this type of cover is acceptable).

As an alternative to using covers tested for no detectable organic emissions on drums and other containers with a design capacity less than or equal to 0.46 m^3, the subpart CC standards allow an owner or operator to place the hazardous waste in drums meeting the DOT specifications and testing requirements under 49 CFR part 178. When a container meeting these DOT regulations is used, no leak detection monitoring nor recordkeeping for the container is required by the subpart CC standards. It is important to note that none of the exceptions to the 49 CFR part 178 regulations other than the exception for lab packs used for combination packagings as specified in 49 CFR 173.12(b) apply to a container for the purpose of complying with the subpart CC standards.

The subpart CC container standards allow use of a tank truck or tank railcar that has been tested for organic vapor tightness within the preceding 12 months in accordance with the requirements of Method 27. This method is a pressure test procedure originally developed by the EPA for determining the vapor-leak tightness of a tank truck into which gasoline is placed. The EPA considers Method 27 also appropriate for determining vapor-leak tightness of tank trucks and railcars into which hazardous wastes containing volatile organics are placed. No Method 21 leak monitoring or recordkeeping is required for tank trucks or tank railcars complying with this provision of the rule.

When it is necessary for a container to be open during certain treatment processes, the subpart CC standards require the container to be located in an enclosure connected to a closed-vent system with control device. The enclosure must be designed to operate with sufficient airflow into the structure to capture all organic vapors vented from the container and route the vapors through the closed-vent system to the control device. The enclosure may have permanent or temporary openings to allow worker access, passage of containers through the enclosure by conveyor or other mechanical means, entry of permanent mechanical or electrical equipment, or to direct airflow into the enclosure. Whenever an open container is placed inside the enclosure, the pressure drop across each opening in the enclosure is to be maintained at a pressure below atmospheric pressure such that no organic vapors released from the container can exit the enclosure through the opening.

Finally, the container standards include the same unit and control equipment safety venting provisions allowed under the subpart CC standards for tanks and surface impoundments.

7. Closed-Vent System and Control Device Requirements

The design and operating requirements under the final subpart CC standards for a closed-vent system with control device are the same as those already applicable to TSDF owners and operators under subpart AA in 40 CFR parts 264 and 265 with one exception. The subpart CC standards require that each control device achieve at least a 95 percent reduction in the total organic content of the vapor stream vented to the device or, in the case of an enclosed combustion device, a reduction of the total organic content of the vapor stream to a level less than or equal to 20 ppmw on a dry basis corrected to 3 percent oxygen.

The standards do not require the use of any specific type of equipment or add-on control device. The standards allow the owner or operator the flexibility of choosing the control device best suited for a control application based on the characteristics of the particular organic vapor stream. Furthermore, the subpart CC standards do not require that each tank, surface impoundment, and container be vented to a separate control device dedicated to that particular unit. Vent streams from several units can be combined and discharged to a single control device that achieves the required level of performance.

8. Inspection and Monitoring

The subpart CC standards provide exemptions from inspection and monitoring for specific circumstances defined in the rule. In the case of an underground tank, only those portions of the tank cover and those connections to the tank cover or tank body (e.g., fill ports, access hatches, gauge wells, etc.) that extend to or above the ground surface and can be opened to the atmosphere must be inspected and monitored. Leak monitoring using Method 21 in 40 CFR part 60, appendix A, is not required for the following: (1) Drums that meet applicable DOT regulations specified in the rule; (2) tank trucks and tank railcars that are annually demonstrated to be vapor-tight by Method 27 in 40 CFR part 60, appendix A; and (3) closed-vent systems and control devices operated in vacuum service (i.e., equipment that is operated at an internal pressure that is at least 5 kPa below ambient pressure) or closed-vent system connections that are permanently or semi-permanently sealed (e.g., a welded joint between two sections of metal pipe or a bolted and gasketed pipe flange). Also, semiannual leak monitoring is not required for a cover opening that has continuously remained in the closed, sealed position for the entire period since the cover opening was last monitored.

To ensure that emission control equipment is properly operated and maintained, the subpart CC standards require the TSDF owner or operator to visually inspect certain emission control equipment items semiannually. For example, emission control equipment covers on tanks are to be checked semiannually by facility employees to ensure that equipment is being used properly (e.g., covers are closed and latched except when an opening must be used to add, remove, inspect, or sample the waste in the tank or to inspect, maintain, replace, or repair equipment located inside the tank or to vent gases or vapors from the tank) and the equipment is being maintained in good condition (e.g., no visible holes, gaps, tears, or splits have developed in covers).

Continuous monitoring of control device operation is required under the subpart CC standards. This involves the use of automated instrumentation to measure critical operating parameters that indicate whether the control device is operating correctly or is malfunctioning. Semiannual leak detection monitoring using Method 21 under 40 CFR part 60, appendix A, is required for certain cover components to ensure gaskets and seals are in good condition and for closed-vent systems to ensure all fittings remain leak-tight. In addition, with the previously noted exception of permanently or semi-permanently sealed connections, each closed-vent system must be monitored for leaks using Method 21 at least once per year.

Special inspection and monitoring provisions are included in the final subpart CC standards for cover fittings

that are unsafe or difficult for facility personnel to inspect and monitor. A TSDF owner or operator may designate a cover fitting as "unsafe to inspect and monitor" if a worker would be exposed to dangerous, hazardous, or other unsafe conditions when performing the inspection or monitoring. A cover fitting that is designated as unsafe must be inspected and monitored as frequently as practicable during those times when it is safe to inspect and monitor the fitting. Similarly, a cover may be designated as "difficult to inspect and monitor" if in so doing a worker would be elevated to a height more than 2 meters above a support surface and the cover was installed before June 5, 1995. A cover fitting that is designated as difficult must be monitored and inspected at least once per calendar year.

The subpart CC standards require that the TSDF owner or operator repair a cover fitting found to be leaking within 15 days of detection. Repair of control equipment on a tank or surface impoundment may be delayed beyond 15 calendar days under certain circumstances. To delay repair, the owner or operator must document that the repair cannot be completed without emptying the contents of the unit and also that removing the unit from service would result in the unscheduled cessation of production from the process unit or operation of the waste management unit that is generating the hazardous waste. Repair of this control equipment must be completed the next time the process unit or waste management unit that is generating the hazardous waste managed in the tank or surface impoundment is shut down.

9. Recordkeeping Requirements

The final subpart CC standards require the TSDF owner or operator to record certain information in the on-site facility operating logs or files. This information is to be readily available for review by authorized representatives of the EPA. Consistent with 40 CFR 264.73 and 40 CFR 265.73, the rule requires that air emission control equipment design records and certain other records be maintained in the facility operating record until facility closure. Records and results of waste determinations, inspections, and monitoring are required to be kept for at least 3 years from the date of entry.

The information to be collected and recorded includes: the results of all waste determinations such as of volatile organic concentration at the point of waste origination and organic vapor pressure; design specifications for closed-vent systems and control devices and certain control equipment; emission control equipment inspection and monitoring results; Methods 27 test results; control device exceedances and actions taken to remedy them; leak repairs; management of carbon removed from carbon adsorption systems; identification of incinerators, boilers, or industrial furnaces used to treat hazardous waste in accordance with the general requirements of the rule; documentation for biological wastewater treatment units using air emission controls in accordance with the rule requirements; and identification of equipment fittings designated as unsafe or difficult to monitor or inspect.

At a facility where air emission control equipment required by the final rule cannot be in operation by June 5, 1995, the owner or operator is required to prepare an implementation schedule for the air emission control equipment specifying dates by which progress will be completed by the facility owner or operator to ensure the required air emission controls are in operation no later than December 8, 1997. Alternatively, the owner or operator may come into compliance by modifying facility processes to eliminate waste streams with average volatile organic concentration greater than or equal to 100 ppmw at the point of waste origination. At a minimum, specific calendar dates shall be established for award of contracts or issuance of purchase orders for the air emission control equipment; initiation of on-site installation of the equipment; completion of the equipment installation; and performance of any testing to demonstrate that the installed air emission control equipment meets the standards.

The EPA recognizes that, in some cases, owners or operators may be unable to meet the implementation date for reasons beyond their control. For example, several commenters pointed out that permit modifications may be required to implement necessary changes, and that modification processes can be lengthy. The EPA developed this rule to be self-implementing and to eliminate the need for permit modifications to the extent possible; furthermore, in the final rule the implementation period has been extended from 2 to 3 years. Therefore, the EPA expects that most if not all facilities will be able to comply. However, the EPA acknowledges that in some cases State permits may have to be modified (e.g., when surface impoundments are replaced with tanks). If the permit process is lengthy, or undergoes extensive appeal, the facility's ability to comply with the implementation date may be jeopardized. To address this and similar situations, the EPA has included a provision that will allow the Regional Administrator to extend the implementation date in situations beyond the owner or operator's control, where he or she made all reasonable and prudent efforts to meet the date. The EPA emphasizes that this extension would be available only where meeting the date was truly beyond the facility's control, and the EPA expects its application would be limited to situations such as delays in State permit processing. The extension would not be available where the facility's planning was at fault, a permit application was submitted unreasonably late, or permit processing was delayed because the permit application was inadequate.

In some cases, the owner or operator of a facility in interim status at the time this rule becomes effective may not be able to implement the requirements of the rule before EPA (or an authorized state) issues the facility its RCRA permit. In this case, the EPA will generally incorporate the facility's implementation schedule into the permit, in accordance with the requirements of 40 CFR 270.33, which allows schedules of compliance in RCRA permits. Consistent with this approach, 40 CFR 270.27(a)(7) requires permit applicants to submit their schedules of implementation with their permit applications, if the owner or operator cannot implement the requirements of this rule before permit issuance.

As the EPA develops new hazardous waste listings or characteristics in the future, new containers, tanks, and surface impoundments will become subject to subpart CC standards. For these units, the effective date of the standards will be the effective date of the new listing or characteristic. Owners or operators of these units must institute controls by that date. In cases when owners or operators cannot comply with the applicable requirements of the subpart CC standards by this date, they must install and operate required air emission control equipment no later than 30 months after the effective date provided that they prepare a implementation schedule (as described above) for this control equipment by the effective date.

10. Reporting Requirements

The final subpart CC standards in 40 CFR part 264 require a TSDF owner or operator to submit reports to the EPA only when circumstances occur at the facility resulting in noncompliance with certain provisions of the rule. There are

no reporting requirements under 40 CFR 265 subpart CC for owners and operators of interim-status TSDF.

Each report required under the final subpart CC standards in 40 CFR part 264 is to be submitted to the EPA Regional office having jurisdiction for a particular TSDF location. The report is required to be signed and dated by an authorized representative of the facility owner or operator.

A TSDF owner or operator subject to the requirements of 40 CFR 264 subpart CC must report to the EPA all circumstances resulting in placement of a hazardous waste in a tank, surface impoundment, or container subject to the rule and not using air emission controls required by the rule when either of the following conditions occur: (1) The hazardous waste has a volatile organic concentration equal to or greater than 100 ppmw as determined on a mass-weighted average basis at the point of waste origination, or (2) the process used to treat the hazardous waste fails to meet the applicable conditions specified in the rule. The owner or operator must submit a written report within 15 calendar days of the time that the owner or operator becomes aware of the circumstances.

A TSDF owner or operator subject to the requirements of 40 CFR part 264, subpart CC and using a control device in accordance with the requirements of the rule is required to submit a semiannual written report to the EPA. This report is to describe each occurrence during the previous 6-month period when a control device is operated continuously for 24 hours or longer in noncompliance with the applicable operating values defined in 40 CFR 264.1035(c)(4) or when a flare is operated with visible emissions as defined in 40 CFR 264.1033(d). A TSDF owner or operator is not required to submit this report for a 6-month period during which all control devices at a facility subject to the subpart CC standards are operated by the owner or operator so that during no period of 24 hours or longer did a control device operate continuously in noncompliance with the applicable operating values defined in the rule.

B. TSDF Miscellaneous Unit Requirements

The EPA permits miscellaneous units at TSDF on a case-by-case basis with terms and provisions as needed to protect public health and the environment through generic performance standards specified in 40 CFR 264.601. Today's rule amends § 264.601 to include the air emission controls required by the standards under 40 CFR part 264, subparts AA, BB, and CC among the "appropriate" controls a permit writer may require for a miscellaneous unit.

Application of the air standards under 40 CFR part 264, subparts AA, BB, and CC to subpart X miscellaneous units will require determining which one of the waste management unit categories (e.g., tank, surface impoundment, container), if any, is most similar to the miscellaneous unit. As an example, hazardous waste is sometimes stored or treated in a miscellaneous unit consisting of a flexible, synthetic liner supported by an above ground metal frame (instead of a depression formed of earthen materials as is the case for a surface impoundment). Placing hazardous waste containing organics in this type of miscellaneous unit could result in significant organic emissions from the exposed waste surface comparable to those resulting from placing the waste in a similar size surface impoundment. Using the types of air emission controls applicable to surface impoundments (e.g., floating membrane cover) would reduce organic emissions from this type of miscellaneous unit. Therefore, in the case where the miscellaneous unit is determined to resemble a surface impoundment, a subpart X permit may be issued that includes air emission control requirements for surface impoundments under the subpart CC standards. The same application of the rule would be true for a miscellaneous unit used to manage organic-containing hazardous waste and determined to be similar to a tank or a container.

C. 90-Day Tanks and Containers Requirements

Today's final rulemaking amends subparts I and J of 40 CFR part 265 to add a requirement that 90-day tanks and containers covered by these subparts also have to comply with air emission control requirements in subparts AA, BB, and CC. The rule adds these provisions as conditions with which generators must comply to not be required to obtain a permit for on-site tanks and containers used to accumulate hazardous waste.

D. Amendments to Subparts AA and BB Standards

Today's action adds new requirements for TSDF owners and operators using activated carbon adsorption systems to comply with the control device requirements of subparts AA and BB under 40 CFR parts 264 and 265. These requirements specify the procedures for managing the spent carbon removed from the control devices, and are consistent with the requirements promulgated today in subpart CC under 40 CFR parts 264 and 265.

VIII. Implementation of Final Rule

A. Existing Sources

Today's action by the EPA modifies the "permit-as-a-shield" practice for implementation of RCRA rules by owners and operators of existing TSDF for which final RCRA permits have been issued by the EPA. The EPA is amending 40 CFR 270.4 to require that owners and operators of TSDF that have been issued final permits prior to June 5, 1995, comply with the air standards under 40 CFR part 265, subparts AA, BB, and CC until the facility's permit is reviewed or reissued by the EPA. This amendment eliminates application of the "permit-as-a-shield" practice for these air standards but does not require that the EPA or the TSDF owner or operator initiate a permit modification to add the requirements of 40 CFR part 264, subparts AA, BB, or CC. The EPA believes that this will minimize the administrative burden on the TSDF owner or operator as well as limit the additional burden on the permitting resources of the EPA. However, when a permit is reopened or subject to renewal, or when a TSDF owner or operator submits a Class 3 modification request pertaining to an existing unit or addition of a new unit subject to these standards (e.g., a modification regarding a tank, surface impoundment, or container), then the applicable requirements of 40 CFR part 264, subparts AA, BB, and CC shall be incorporated into the permit conditions.

The subpart CC standards promulgated today are implemented on the following schedule by owners and operators of existing TSDF (except for tanks in which waste stabilization activities are performed as of December 6, 1994, as explained in section VI.F of this preamble):

(1) All owners and operators of existing TSDF become subject to the requirements of 40 CFR part 265, subparts AA, BB, and CC effective June 5, 1995.

(2) Beginning June 5, 1995, each TSDF owner or operator is required to be in compliance with 40 CFR part 265, subparts AA, BB, and CC. Implementation of the leak detection and repair program required by the subpart BB standards is required by this date. At a facility where the air emission controls required by the subpart AA, BB, and CC standards are not in place, the owner or operator must have one of the following in the facility's operating

record: An implementation schedule for the air emission controls in accordance with the recordkeeping requirements of the rule or the facility's waste determination that indicates that air emission controls are not required.

(3) No later than December 8, 1997, the air emission controls required by 40 CFR part 265, subparts AA, BB, and CC must be installed and in operation.

All final permits, or Class 3 permit modifications, issued by the EPA after June 5, 1995, must incorporate the requirements of 40 CFR part 264, subparts AA, BB, and CC. The owner and operator of an interim status TSDF who have submitted Part B applications to the EPA but have not received a draft permit as of June 5, 1995, are required to modify the Part B application to incorporate the requirements of 40 CFR part 264, subparts AA, BB, and CC prior to a draft permit being issued by the EPA. However, if the owner and operator have received a draft permit as of June 5, 1995, then the requirements of 40 CFR part 264, subparts AA, BB, and CC must be incorporated into the permit conditions prior to final permit determination. The Regional Administrator may establish, on a case-by-case basis, a reasonable date for submittal of the revised Part B application.

An existing solid waste management unit (or facility) may become a hazardous waste management unit (or facility) requiring a RCRA permit when a waste becomes newly listed or identified as hazardous. Owners and operators of TSDF not previously requiring a RCRA permit who have existing units handling newly listed or identified hazardous waste can submit a Part A application and gain interim status. The air standards being promulgated today are implemented at these facilities on the following schedule:

(1) 180 days following the date the waste is listed or identified as hazardous waste, the standards become effective; all facilities become subject to the standards.

(2) Beginning June 5, 1995, each TSDF owner or operator is required to be in compliance with the subpart AA, BB, and CC standards. At a facility where the air emission controls required by the subpart AA, BB, and CC standards are not in place, the owner or operator must have one of the following in the facility's operating record: an implementation schedule for the air emission controls in accordance with the recordkeeping requirements of the rule, or the facility's waste determination that indicates that air emission controls are not required.

(3) No later than December 8, 1997, the controls required by the standards must be installed at all facilities.

B. New Sources

All air emission controls required by 40 CFR part 264, subparts AA, BB, and CC must be in place and operating upon startup of a new TSDF. Under 40 CFR 270.10, owners and operators of new TSDF are required to submit Part A and Part B permit applications and to receive a final permit from the EPA prior to construction of the facility. The Part B application for a new facility must incorporate the requirements of 40 CFR part 264. Owners and operators who have submitted a Part B application for a new TSDF but have not been issued a final permit as of June 5, 1995, are required to modify their Part B applications to incorporate the requirements of 40 CFR part 264, subpart CC.

C. State Authority

1. Applicability of Rule in Authorized States

Under RCRA section 3006, the EPA may authorize a qualified State to administer and enforce the RCRA program within the State (refer to 40 CFR part 271 for the standards and requirements for authorization). Although an authorized State has primary responsibility for enforcement of RCRA, the EPA retains enforcement authority under RCRA sections 3008, 7003, and 3013, as well as inspection authority under RCRA section 3007.

Prior to the enactment of the HSWA, a State with final authority administered its hazardous waste program entirely in lieu of the EPA administering the Federal program in that State. The Federal requirements no longer applied in the authorized State, and the EPA could not issue permits for facilities in that State. When new, more stringent Federal requirements were promulgated or enacted, the State was obligated to enact equivalent requirements within specified time frames. The new Federal requirements did not take effect as Federal law in an authorized State until the State adopted the requirements as State law and was granted authority by the EPA to administer the requirements.

In contrast, new Federal requirements promulgated under authority of the HSWA, become effective in authorized States at the same time they are effective in nonauthorized States. Under RCRA section 3006(g)(1), the EPA is directed to administer the new Federal requirements in authorized States, including the issuance of permits, until the State is granted authority to do so. While authorized States must still adopt all new RCRA provisions as State law to retain final authorization, requirements promulgated under RCRA provisions added by the HSWA are administered by the EPA as Federal law in authorized States in the interim.

Today's rules are promulgated under authority of RCRA section 3004(n), a provision added to RCRA by the HSWA. Therefore, the EPA is adding the requirements of the rules to Table 1 in 40 CFR 271.1(j). This table identifies the Federal program requirements that are promulgated pursuant to the HSWA and that take effect in all States, regardless of their authorization status.

2. Effect on State Authorizations

The EPA will implement the air standards promulgated today in an authorized State until such a time when the State either: (1) Modifies its RCRA program to adopt the rule and receives final authorization from the EPA for the modification; or (2) receives interim authorization from the EPA as described below. Because these air standards are promulgated under authority of the HSWA, a State submitting a program modification may apply to receive either interim or final authorization under RCRA section 3006(g)(2) or 3006(b), respectively, on the basis of requirements that are substantially equivalent or equivalent to the EPA's. The procedures and schedule for State program modifications for either interim or final authorization are described in 40 CFR 271.21. The availability of HSWA interim authorization was recently extended by the EPA until January 1, 2003 (see 57 60129, December 18, 1992).

In accordance with the requirements of 40 CFR 271.21(e)(2), States with final authorization must modify their programs to reflect Federal program changes and subsequently must submit the modifications to the EPA for approval. The deadline by which a State must modify its RCRA program to adopt today's rulemaking is determined by the date of promulgation of the final rule, in accordance with 40 CFR 271.21(e)(2). This deadline can be extended in certain cases [40 CFR 271.21(e)(3)]. Once the EPA approves the modification, the State requirements become subtitle C RCRA requirements.

A State that submits its Base program application less than 12 months after the effective date of these standards is not required to include standards equivalent to these standards in its application. However, the State must modify its program by the deadlines set forth in 40 CFR 271.21(e). States that submit official applications for final

authorization 12 months after the effective date of these standards must include standards equivalent to these standards in their applications. The 40 CFR 271.3 sets forth the requirements a State must meet when submitting its final authorization application.

States with authorized RCRA programs may already have requirements similar to those in today's rule. Such State regulations have not been assessed against the Federal regulations being finalized today to determine whether they meet the tests for authorization. Thus, a State is not authorized to implement these requirements as RCRA requirements until the State program modification is assessed against Federal requirements and approved. Of course, States with existing standards may continue to administer and enforce their standards as a matter of State law. In implementing the Federal program, the EPA will work with States under cooperative agreements to minimize duplication of efforts. In many cases, the EPA will be able to defer to the States in their efforts to implement their programs, rather than take separate actions under Federal authority.

IX. Test Methods

A. Method 25D

Method 25D in 40 CFR part 60, appendix A is the applicable test method for the determination of the volatile organic concentration of wastes. Method 25D was originally proposed as a part of this rulemaking but was subsequently promulgated in a separate rulemaking (see 56 FR 19402, April 22, 1994). Responses to comments received on the proposed Method 25D as part of this rulemaking are presented in the BID for today's final rule. Additional comments and responses relevant to the proposed Method 25D that were received as part of other EPA rulemakings are available in Air Docket Number A–90–23 located at the EPA's Air and Radiation Docket Information Center, Waterside Mall, room 1500, 1st Floor, 401 M Street, SW., Washington, DC 20460.

The sampling requirements in Method 25D have been changed since proposal. The promulgated version of Method 25D requires that samples of waste be collected from a source following specific procedures for sampling a single-phase or well-mixed waste, a multiple-phase waste, and solid materials. Each sample is suspended in an organic/aqueous matrix, then heated and purged with nitrogen for 30 minutes to separate certain organic compounds. A portion of the sample is analyzed for carbon concentration, as methane, with a flame ionization detector. The other portion of the sample is analyzed for chlorine concentration, as chloride, with an electrolytic conductivity detector. The volatile organic concentration of the waste is then computed as the sum of the measured carbon and chlorine contents.

B. Method 25E

Method 25E is the applicable test method for determining the organic vapor pressure of waste managed in tanks. The version of Method 25E promulgated today in 40 CFR part 60, appendix A, is the same as the proposed version with one addition to the sampling requirements to provide for sampling waste in a tank. Method 25E requires collection of a waste sample in a headspace sample vial and transfer of the vial to a balanced pressure headspace sampler. The headspace vapor of the sample is analyzed for carbon content by a headspace analyzer, which uses a flame ionization detector.

X. Administrative Requirements

A. Paperwork Reduction Act

The information collection requirements in these rules have been approved by the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 et seq., and have been assigned control number 1593.02.

To aid the EPA with enforcement of the rule being promulgated today, TSDF owners and operators and hazardous waste generators subject to today's action are required to record certain information in the on-site facility operating logs or files. The recordkeeping requirements for each respondent (i.e., person subject to the rule) will vary depending on a variety of site-specific factors. These factors include: the number of tanks, surface impoundments, and containers subject to the rule in operation at the respondent's facility; the number of hazardous waste streams managed at the facility; the type of waste determination methods selected by the respondent; and the type of air emission control equipment selected by the respondent to comply with the requirements of the rule.

This collection of information has an estimated reporting burden averaging 1.4 hours per response and an estimated annual recordkeeping burden averaging 62.5 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.

In general, a respondent is not required to submit any reports to the EPA unless certain events occur at the respondent's facility in which a hazardous waste is improperly managed in a unit not using the required air emission controls or a control device malfunction cannot be corrected by the respondent within 24 hours of being detected. Thus, the EPA expects that many respondents complying with this rule will have no reporting burden. On a nationwide average basis, the public reporting burden resulting from today's action is estimated by the EPA to be approximately 2 hours per year per respondent.

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 St., S.W. (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."

B. Executive Order 12866 Review

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

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

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

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" based on the estimated annual cost of the rulemaking to the economy (i.e., the EPA's estimate of nationwide annual costs for the subpart CC standards exceeds $100 million). As such, the EPA has submitted this action

to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), whenever a Federal agency publishes any proposed or final rule in the **Federal Register**, it must prepare a Regulatory Flexibility Analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, organizations, and governmental jurisdictions). This analysis is not necessary, however, if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has established guidelines for determining whether an RFA is required for the EPA rulemaking. These guidelines state that, if a preliminary analysis indicates that a proposed regulation would affect 20 percent or more of "small entities", then an RFA is to be prepared. In addition, these guidelines are used to evaluate if a regulation will have a "significant impact" on small entities. A regulation is considered by the EPA to have a "significant impact" if any one of the following four criteria is met:

(1) Annual compliance costs increase the relevant production costs for small entities by more than 5 percent;

(2) The ratio of compliance costs to sales will be 10 percent higher for small entities than for large entities;

(3) Capital costs of compliance will represent a significant portion of the capital available to small entities, taking into account internal cash flow plus external financing capabilities;

(4) Costs of the regulation will likely result in closures of small entities.

The EPA used the economic impact model developed for the RIA to estimate the effects of today's rulemaking on small entities (refer to Chapter VI of the RIA for additional details). The results of this analysis indicate that the effects of the air standards on small entities are minimal. The number of affected small entities is insubstantial, and the impacts are insignificant.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that these final rules promulgated today will not have a significant impact on a substantial number of small entities. Therefore, an RFA is not required for this rulemaking.

D. Docket

Three RCRA dockets contain information pertaining to today's rulemaking:

(1) RCRA docket number F-91-CESP-FFFFF, which contains copies of all BID references and other information related to the development of the rule up through proposal;

(2) RCRA docket number F-92-CESA-FFFFF, which contains copies of the supplemental data made available for public comment prior to promulgation; and

(3) RCRA docket number F-94-CESF-FFFFF, which contains copies of all BID references and other information related to development of the final rule following proposal.

The public may review all materials in these dockets at the EPA RCRA Docket Office.

The EPA RCRA Docket Office is located in room 2427 of the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The Docket Office is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays. The public must have an appointment to review docket materials. Appointments can be scheduled by calling the Docket Office at (202) 260-9327. An individual may copy a maximum of 100 pages of material from any one regulatory docket free of charge. Additional pages of material from the docket may be copied at a charge of $0.15 per page.

XI. Legal Authority

These regulations are promulgated under the authority of sections 2002, 3001-3007, 3010, and 7004 of the Solid Waste Disposal Act of 1970, as amended by RCRA, as amended (42 U.S.C. 6921-6927, 6930, and 6974).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 60

Air pollution control, Test method, Vapor-phase organic concentration, Volatile organic concentration, Waste, Waste testing.

40 CFR Part 260

Air pollution control, Incorporation by reference.

40 CFR Part 262

Accumulation time, Air pollution control, Container, Tank.

40 CFR Parts 264 and 265

Air pollution control, Container, Control device, Hazardous waste, Incorporation by reference, Inspection, Miscellaneous unit, Monitoring, Reporting and recordkeeping requirements, Standards, Surface impoundment, Tank, Waste determination.

40 CFR Part 270

Administrative practice and procedure, Air pollution control, Confidential business information, Hazardous waste, Permit, Permit modification, Reporting and recordkeeping requirements.

40 CFR Part 271

Administrative practice and procedure, Air pollution control, Confidential business information, Hazardous waste, Reporting and recordkeeping requirements.

Dated: November 15, 1994.

Carol M. Browner,

The Administrator.

For the reasons set out in the preamble, title 40, chapter I, parts 9, 60, 260, 262, 264, 265, 270, and 271 of the Code of Federal Regulations are amended as follows:

PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 7 U.S.C. 135 *et seq.*, 136-136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601-2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901-6992k, 7401-7671q, 7542, 9601-9657, 11023, 11048.

2. Section 9.1 is amended by adding new entities in numerical order to the table under the indicated headings to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	
* * * * *	
264.1089	2060-0318
264.1090	2060-0318
* * * * *	
Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities	
* * * * *	
265.1090	2060-0318
* * * * *	

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

3. The authority citation for part 60 continues to read as follows:

Authority: Sections 111, 301(a) of the Clean Air Act as amended (42 U.S.C. 7411, 7601(a)) unless otherwise noted.

4. Appendix A is amended by adding Method 25E:

Appendix A—Test Methods

* * * * *

Method 25E—Determination of Vapor Phase Organic

Concentration in Waste Samples

Introduction

Performance of this method should not be attempted by persons unfamiliar with the operation of a flame ionization detector (FID) nor by those who are unfamiliar with source sampling because knowledge beyond the scope of this presentation is required.

1. Applicability and Principle

1.1 Applicability. This method is applicable for determining the vapor pressure of waste samples which represent waste which is or will be managed in tanks.

1.2 Principle. The headspace vapor of the sample is analyzed for carbon content by a headspace analyzer, which uses an FID.

2. Interferences

2.1 The analyst shall select the operating parameters best suited to the requirements for a particular analysis. The analyst shall produce confirming data through an adequate supplemental analytical technique and have the data available for review by the Administrator.

3. Apparatus

3.1 Sampling. The following equipment is required:

3.1.1 Sample Containers. Vials, glass, with butyl rubber septa, Perkin-Elmer Corporation Numbers 0105–0129 (glass vials), B001–0728 (gray butyl rubber septum, plug style), 0105–0131 (butyl rubber septa), or equivalent. The seal must be made from butyl rubber. Silicone rubber seals are not acceptable.

3.1.2 Vial Sealer. Perkin-Elmer Number 105–0106, or equivalent.

3.1.3 Gas-Tight Syringe. Perkin-Elmer Number 00230117, or equivalent.

3.1.4 The following equipment is required for sampling.

3.1.4.1 Tap.

3.1.4.2 Tubing. Telfon, 0.25-in. ID. Note: Mention of trade names or specific products does not constitute endorsement by the Environmental Protection Agency.

3.1.4.3 Cooling Coil. Stainless steel (304), 0.25 in.–ID, equipped with a thermocouple at the coil outlet.

3.2 Analysis. The following equipment is required:

3.2.1 Balanced Pressure Headspace Sampler. Perkin-Elmer HS–6, HS–100, or equivalent, equipped with a glass bead column instead of a chromatographic column.

3.2.2 FID. An FID meeting the following specifications is required:

3.2.2.1 Linearity. A linear response (±5 percent) over the operating range as demonstrated by the procedures established in Section 6.1.2.

3.2.2.2 Range. A full scale range of 1 to 10,000 ppm CH_4. Signal attenuators shall be available to produce a minimum signal response of 10 percent of full scale.

3.2.3 Data Recording System. Analog strip chart recorder or digital integration system compatible with the FID for permanently recording the output of the detector.

3.2.4 Thermometer. Capable of reading temperatures in the range of 30° to 60°C with an accuracy of ±0.1°C.

4. Reagents

4.1 Analysis. The following items are required for analysis:

4.1.1 Hydrogen (H_2). Zero grade.

4.1.2 Carrier Gas. Zero grade nitrogen, containing less than 1 ppm carbon (C) and less than 1 ppm carbon dioxide.

4.1.3 Combustion Gas. Zero grade air or oxygen as required by the FID.

4.2 Calibration and Linearity Check.

4.2.1 Stock Cylinder Gas Standard. 100 percent propane. The manufacturer shall:

(a) Certify the gas composition to be accurate to ±3 percent or better (see Section 4.2.1.1);

(b) Recommend a maximum shelf life over which the gas concentration does not change by greater than ±5 percent from the certified value; and

(c) Affix the date of gas cylinder preparation, certified propane concentration, and recommended maximum shelf life to the cylinder before shipment to the buyer.

4.2.1.1 Cylinder Standards Certification. The manufacturer shall certify the concentration of the calibration gas in the cylinder by (a) directly analyzing the cylinder and (b) calibrating his analytical procedure on the day of cylinder analysis. To calibrate his analytical procedure, the manufacturer shall use, as a minimum, a three-point calibration curve.

4.2.1.2 Verification of Manufacturer's Calibration Standards. Before using, the manufacturer shall verify each calibration standard by (a) comparing it to gas mixtures prepared in accordance with the procedure described in Section 7.1 of Method 106 of part 61, appendix B, or by (b) calibrating it against Standard Reference Materials (SRM's) prepared by the National Bureau of Standards, if such SRM's are available. The agreement between the initially determined concentration value and the verification concentration value shall be within ±5 percent. The manufacturer must reverify all calibration standards on a time interval consistent with the shelf life of the cylinder standards sold.

5. Procedure

5.1 Sampling.

5.1.1 Install a sampling tap to obtain the sample at a point which is most representative of the unexposed waste (where the waste has had minimum opportunity to volatilize to the atmosphere). Assemble the sampling apparatus as shown in Figure 25E–1.

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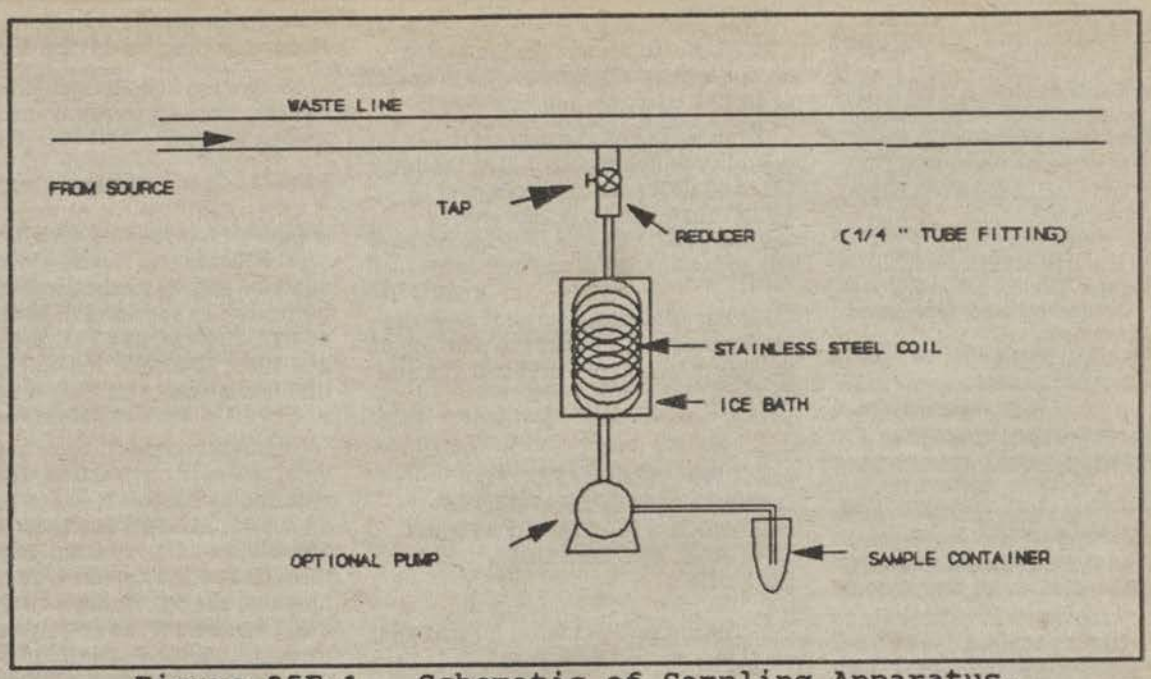

Figure 25E-1. Schematic of Sampling Apparatus.

BILLING CODE 6560-50-C

5.1.2 Begin sampling by purging the sample lines and cooling coil with at least four volumes of waste. Collect the purged material in a separate container and dispose of it properly.

5.1.3 After purging, stop the sample flow and transfer the Teflon sampling tube to a sample container. Sample at a flow rate such that the temperature of the waste is <10°C (<50°F). Fill the sample container halfway (±5 percent) and cap it within 5 seconds. Store immediately in a cooler and cover with ice.

5.1.4 Alternative sampling techniques may be used upon the approval of the Administrator.

5.2 Analysis.

5.2.1 Allow one hour for the headspace vials to equilibrate at the temperature specified in the regulation. Allow the FID to warm up until a stable baseline is achieved on the detector.

5.2.2 Check the calibration of the FID daily using the procedures in Section 6.1.2.

5.2.3 Follow the manufacturer's recommended procedures for the normal operation of the headspace sampler and FID.

5.2.4 Use the procedures in Sections 7.4 and 7.5 to calculate the vapor phase organic vapor pressure in the samples.

5.2.5 Monitor the output of the detector to make certain that the results are being properly recorded.

6. Operational Checks and Calibration

Maintain a record of performance of each item.

6.1 Use the procedures in Section 6.1.1 to calibrate the headspace analyzer and FID and check for linearity before the system is first placed in operation, after any shutdown longer than 6 months, and after any modification of the system.

6.1.1 Calibration and Linearity. Use the procedures in Section 6.2.1 of Method 18 of Part 60, Appendix A, to prepare the standards and calibrate the flowmeters, using propane as the standard gas. Fill the calibration standard vials halfway (±5 percent) with deionized water. Purge and fill the airspace with calibration standard. Prepare a minimum of three calibration standards in triplicate at concentrations that will bracket the applicable cutoff. For a cutoff of 5.2 kPa, prepare nominal concentrations of 30,000, 50,000, and 70,000 ppm as propane. For a cutoff of 27.6 kPa, prepare nominal concentrations of 200,000, 300,000, and 400,000 ppm as propane.

6.1.1.1 Use the procedures in Section 5.2.3 to measure the FID response of each standard. Use a linear regression analysis to calculate the values for the slope (k) and the y-intercept (b). Use the procedures in Sections 7.2 and 7.3 to test the calibration and the linearity.

6.1.2 Daily FID Calibration Check. Check the calibration at the beginning and at the end of the daily runs by using the following procedures. Prepare two calibration standards at the nominal cutoff concentration using the procedures in Section 6.1.1. Place one at the beginning and one at the end of the daily run. Measure the FID response of the daily calibration standard and use the values for k and b from the most recent calibration to calculate the concentration of the daily standard. Use an equation similar to 25E-2 to calculate the percent difference between the daily standard and C_s. If the difference is within 5 percent, then the previous values for k and b may be used. Otherwise, use the procedures in Section 6.1.1 to recalibrate the FID.

7. Calculations

7.1 Nomenclature.

A = Measurement of the area under the response curve, counts.

b = y-intercept of the linear regression line.

C_a = Measured vapor phase organic concentration of sample, ppm as propane.

C_{ma} = Average measured vapor phase organic concentration of standard, ppm as propane.

C_m = Measured vapor phase organic concentration of standard, ppm as propane.

C_s = Calculated standard concentration, ppm as propane.

k = Slope of the linear regression line.

P_{bar} = Atmospheric pressure at analysis conditions, mm Hg (in. Hg).

P* = Organic vapor pressure in the sample, kPa (psi).

$\beta = 1.333 \times 10^{-7}$ kPa/[(mm Hg)(ppm)], (4.91×10^{-7} psi/[(in. Hg)(ppm)])

7.2 Linearity. Use the following equation to calculate the measured standard concentration for each standard vial.

$C_m = k A + b$ Eq. 25E-1

7.2.1 Calculate the average measured standard concentration (C_{ma}) for each set of triplicate standards and use the following equation to calculate the percent difference (PD) between C_{ma} and C_s.

$$PD = \frac{C_s - C_{ma}}{C_s} \times 100 \qquad \text{Eq. 25E-2}$$

The instrument linearity is acceptable if the percent difference is within five for each standard.

7.3 Relative Standard Deviation (RSD). Use the following equation to calculate the RSD for each triplicate set of standards.

$$RSD = \frac{100}{C_{ma}}\sqrt{\frac{\sum(C_m - C_{ma})^2}{2}} \qquad \text{Eq. 25E-3}$$

The calibration is acceptable if the RSD is within five for each standard concentration.

7.4 Concentration of organics in the headspace. Use the following equation to calculate the concentration of vapor phase organics in each sample.

$C_a = k A + b$ Eq. 25E-4

7.5 Vapor Pressure of Organics in the Headspace Sample. Use the following equation to calculate the vapor pressure of organics in the sample.

$P^* = \beta P_{bar} C_a$ Eq. 25E-5

* * * * *

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

5. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

6. Section 260.11 is amended by adding the following references to the end of paragraph (a) and by revising the first sentence of paragraph (b) to read as follows:

§ 260.11 References.

(a) * * *

API Publication 2517, Third Edition, February 1989, "Evaporative Loss from External Floating-Roof Tanks," available from the American Petroleum Institute, 1220 L Street, Northwest, Washington, D.C. 20005.

"ASTM Standard Test Method for Vapor Pressure—Temperature Relationship and Initial Decomposition Temperature of Liquids by Isoteniscope," ASTM Standard D 2879–92, available from American Society for Testing and Materials (ASTM), 1916 Race Street, Philadelphia, Pennsylvania 19103;

* * * * *

(b) The references listed in paragraph (a) of this section are also available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

8. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912(a), 6922, 6923, 6924, 6925, 6937 and 6938, unless otherwise noted.

8a. Section 262.34 is amended by revising paragraphs (a)(1)(i), (a)(1)(ii) and (d)(2) as follows:

§ 262.34 Accumulation time.

(a) * * *

(1) * * *

(i) In containers and the generator complies with subparts I AA, BB and CC of 40 CFR part 265; and/or

(ii) In tanks and the generator complies with subparts J, AA, BB and CC of 40 CFR part 265, except §§ 265.197(c) and 265.200; and/or

* * * * *

(d) * * *

(2) The generator complies with the requirements of subpart I of part 265 of this chapter, except for §§ 265.176 and 265.178;

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

9. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924 and 6925.

Subpart B—General Facility Standards

§ 264.13 [Amended]

10. In § 264.13, paragraph (b)(6) is amended by adding "264.1083," after the phrase "as specified in §§ 264.17, 264.314, 264.341, 264.1034(d), 264.1063(d),".

11. In § 264.13, paragraph (b)(8) is added to read as follows:

§ 264.13 General waste analysis.

* * * * *

(b) * * *

(8) For owners and operators seeking an exemption to the air emission standards of subpart CC in accordance with § 264.1082—

(i) The procedures and schedules for waste sampling and analysis, and the analysis of test data to verify the exemption.

(ii) Each generator's notice and certification of the volatile organic concentration in the waste if the waste is received from off site.

* * * * *

§ 264.15 [Amended]

12. In § 264.15, paragraph (b)(4) is amended by removing the word "and" after the phrase "frequencies called for in §§ 264.174, 264.193, 264.195, 264.226, 264.254, 264.278, 264.303, 264.347, 264.602, 264.1033, 264.1052, 264.1053," and adding "264.1088, and 264.1091(b)," after "264.1058,".

Subpart E—Manifest System, Recordkeeping, and Reporting

13. Section 264.73 is amended by revising paragraphs (b)(3) and (b)(6) to read as follows:

§ 264.73 Operating record.

* * * * *

(b) * * *

(3) Records and results of waste analyses and waste determinations performed as specified in §§ 264.13, 264.17, 264.314, 264.341, 264.1034, 264.1063, 264.1083, 268.4(a), and 268.7 of this chapter.

* * * * *

(6) Monitoring, testing or analytical data, and corrective action where required by subpart F of this part and §§ 264.19, 264.191, 264.193, 264.195, 264.222, 264.223, 264.226, 264.252 through 264.254, 264.276, 264.278, 264.280, 264.302 through 264.304, 264.309, 264.347, 264.602, 264.1034(c) through 264.304(f), 264.1035, 264.1063(d) through 264.1063(i), 264.1064, 264.1088, 264.1089, and 264.1091.

* * * * *

14. Section 264.77 is amended by revising paragraph (c) to read as follows:

§ 264.77 Additional reports.

* * * * *

(c) As otherwise required by subparts F, K through N, AA, BB, and CC of this part.

Subpart I—Use and Management of Containers

15. Section 264.179 is added to read as follows:

§ 264.179 Air Emission Standards.

The owner or operator shall manage all hazardous waste placed in a container in accordance with the requirements of subpart CC of this part.

Subpart J—Tank Systems

16. Section 264.200 is added to read as follows:

§ 264.200 Air emission standards.

The owner or operator shall manage all hazardous waste placed in a tank in accordance with the requirements of subpart CC of this part.

Subpart K—Surface Impoundments

17. Section 264.232 is added to read as follows:

§ 264.232 Air emission standards.

The owner or operator shall manage all hazardous waste placed in a surface impoundment in accordance with the requirements of subpart CC of this part.

Subpart X—Miscellaneous Unit

§ 264.601 [Amended]

18. The introductory text of § 264.601 is amended by adding the words "and subparts AA through CC" after "subparts I through O".

Subpart AA—Air Emission Standards for Process Vents

19. Section 264.1033 is amended by revising paragraph (k)(2) and adding paragraph (m) to read as follows:

§ 264.1033 Standards: Closed-vent systems and control devices.

* * * * *

(k) * * *

(2) Closed-vent systems shall be monitored to determine compliance with this section during the initial leak detection monitoring, which shall be conducted by the date that the facility becomes subject to the provisions of this section, annually, and at other times as requested by the Regional Administrator. For the annual leak detection monitoring after the initial leak detection monitoring, the owner or operator is not required to monitor those closed-vent system components which operate in vacuum service or those closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (e.g., a welded joint between two sections of metal pipe or a bolted and gasketed pipe flange).

* * * * *

(m) The owner or operator using a carbon adsorption system shall document that all carbon removed from a carbon adsorption system to comply with § 264.1033(g) and § 264.1033(h) is managed in one of the following manners:

(1) Regenerated or reactivated in a thermal treatment unit that is permitted under subpart X of this part;

(2) Incinerated by a process that is permitted under subpart O of this part; or

(3) Burned in a boiler or industrial furnace that is permitted under subpart H of part 266 of this chapter.

20. In part 264, subpart CC is added to read as follows:

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

Sec.

264.1080 Applicability.
264.1081 Definitions.
264.1082 Standards: General.
264.1083 Waste determination procedures.
264.1084 Standards: Tanks.
264.1085 Standards: Surface impoundments.
264.1086 Standards: Containers.
264.1087 Standards: Closed-vent systems and control devices.
264.1088 Inspection and monitoring requirements.
264.1089 Recordkeeping requirements.
264.1090 Reporting requirements.
264.1091 Alternative control requirements for tanks.

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

§ 264.1080 Applicability.

(a) The requirements of this subpart apply to owners and operators of all facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments, or containers subject to either subparts I, J, or K of this part except as § 264.1 and paragraph (b) of this section provide otherwise.

(b) The requirements of this subpart do not apply to the following waste management units at the facility:

(1) A waste management unit that holds hazardous waste placed in the unit before June 5, 1995, and in which no hazardous waste is added to the unit on or after June 5, 1995.

(2) A container that has a design capacity less than or equal to 0.1 m^3.

(3) A tank in which an owner or operator has stopped adding hazardous waste and the owner or operator has begun implementing or completed closure pursuant to an approved closure plan.

(4) A surface impoundment in which an owner or operator has stopped adding hazardous waste (except to implement an approved closure plan) and the owner or operator has begun implementing or completed closure pursuant to an approved closure plan.

(5) A waste management unit that is used solely for on-site treatment or storage of hazardous waste that is generated as the result of implementing remedial activities required under the corrective action authorities of RCRA sections 3004(u), 3004(v) or 3008(h), CERCLA authorities, or similar Federal or State authorities.

(6) A waste management unit that is used solely for the management of radioactive mixed waste in accordance with all applicable regulations under the authority of the Atomic Energy Act and the Nuclear Waste Policy Act.

(c) For the owner and operator of a facility subject to this subpart and who received a final permit under RCRA section 3005 prior to June 5, 1995, the requirements of this subpart shall be incorporated into the permit when the permit is reissued in accordance with the requirements of 40 CFR 124.15 or reviewed in accordance with the requirements of 40 CFR 270.50(d). Until such date when the owner and operator receives a final permit incorporating the requirements of this subpart, the owner and operator is subject to the requirements of 40 CFR part 265, subpart CC.

§ 264.1081 Definitions.

As used in this subpart, all terms shall have the meaning given to them in 40 CFR 265.1081, the Act, and parts 260 through 266 of this chapter.

§ 264.1082 Standards: General.

(a) This section applies to the management of hazardous waste in tanks, surface impoundments, and containers subject to this subpart.

(b) The owner or operator shall control air emissions from each waste management unit in accordance with standards specified in §§ 264.1084 through 264.1087 of this subpart, as applicable to the waste management unit, except as provided for in paragraph (c) of this section.

(c) A waste management unit is exempted from standards specified in §§ 264.1084 through 264.1087 of this subpart provided that all hazardous waste placed in the waste management unit is determined by the owner or operator to meet either of the following conditions:

(1) The average VO concentration of the hazardous waste at the point of waste origination is less than 100 parts per million by weight (ppmw). The average VO concentration shall be determined by the procedures specified in § 264.1083(a) of this subpart.

(2) The organic content of the hazardous waste has been reduced by an organic destruction or removal process that achieves any one of the following conditions:

(i) A process that removes or destroys the organics contained in the hazardous waste to a level such that the average VO concentration of the hazardous waste at the point of waste treatment is less than the exit concentration limit (C_t) established for the process. The average VO concentration of the hazardous waste at the point of waste treatment and the exit concentration limit for the process shall be determined using the procedures specified in § 264.1083(b) of this subpart.

(ii) A process that removes or destroys the organics contained in the hazardous waste to a level such that the organic reduction efficiency (R) for the process is equal to or greater than 95 percent, and the average VO concentration of the hazardous waste at the point of waste treatment is less than 50 ppmw. The organic reduction efficiency for the process and the average VO

concentration of the hazardous waste at the point of waste treatment shall be determined using the procedures specified in § 264.1083(b) of this subpart.

(iii) A process that removes or destroys the organics contained in the hazardous waste to a level such that the actual organic mass removal rate (MR) for the process is greater than the required organic mass removal rate (RMR) established for the process. The required organic mass removal rate and the actual organic mass removal rate for the process shall be determined using the procedures specified in § 264.1083(b) of this subpart.

(iv) A biological process that destroys or degrades the organics contained in the hazardous waste, such that either of the following conditions is met:

(A) The organic reduction efficiency (R) for the process is equal to or greater than 95 percent, and the organic biodegradation efficiency (R_{bio}) for the process is equal to or greater than 95 percent. The organic reduction efficiency and the organic biodegradation efficiency for the process shall be determined in accordance with the procedures specified in § 264.1083(b) of this subpart.

(B) The total actual organic mass biodegradation rate (MR_{bio}) for all hazardous waste treated by the process is equal to or greater than the required organic mass removal rate (RMR). The required organic mass removal rate and the actual organic mass biodegradation rate for the process shall be determined using the procedures specified in § 264.1083(b) of this subpart.

(v) A process that removes or destroys the organics contained in the hazardous waste and meets all of the following conditions:

(A) All of the materials entering the process are hazardous wastes.

(B) From the point of waste origination through the point where the hazardous waste enters the process, the hazardous waste is continuously managed in waste management units which use air emission controls in accordance with the standards specified in §§ 264.1084 through 264.1087 of this subpart, as applicable to the waste management unit.

(C) The average VO concentration of the hazardous waste at the point of waste treatment is less than the lowest average VO concentration at the point of waste origination determined for each of the individual hazardous waste streams entering the process or 100 ppmw, whichever value is lower. The average VO concentration of each individual hazardous waste stream at the point of waste origination shall be determined using the procedure specified in § 264.1083(a) of this subpart. The average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedure specified in § 264.1083(b) of this subpart.

(vi) A hazardous waste incinerator for which the owner or operator has either:

(A) Been issued a final permit under 40 CFR part 270, and designs and operates the unit in accordance with the requirements of subpart O of this part; or

(B) Has certified compliance with the interim status requirements of 40 CFR part 265, subpart O.

(vii) A boiler or industrial furnace for which the owner or operator has either:

(A) Been issued a final permit under 40 CFR part 270, and designs and operates the unit in accordance with the requirements of 40 CFR part 266, subpart H, or

(B) Has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(d) When a process is used for the purpose of treating a hazardous waste to meet one of the sets of conditions specified in paragraphs (c)(2)(i) through (c)(2)(v) of this section, each material removed from or exiting the process that is not a hazardous waste but has an average VO concentration equal to or greater than 100 ppmw shall be managed in a waste management unit in accordance with the requirements of paragraph (b) of this section.

(e) The Regional Administrator may at any time perform or request that the owner or operator perform a waste determination for a hazardous waste managed in a tank, surface impoundment, or container exempted from using air emission controls under the provisions of this section as follows:

(1) The waste determination for average VO concentration of a hazardous waste at the point of waste origination shall be performed using direct measurement in accordance with the applicable requirements of § 264.1083(a) of this subpart. The waste determination for a hazardous waste at the point of waste treatment shall be performed in accordance with the applicable requirements of § 264.1083(b) of this subpart.

(2) In a case when the owner or operator is requested to perform the waste determination, the Regional Administrator may elect to have an authorized representative observe the collection of the hazardous waste samples used for the analysis.

(3) In a case when the results of the waste determination performed or requested by the Regional Administrator do not agree with the results of a waste determination performed by the owner or operator using knowledge of the waste, then the results of the waste determination performed in accordance with the requirements of paragraph (e)(1) of this section shall be used to establish compliance with the requirements of this subpart.

(4) In a case when the owner or operator has used an averaging period greater than 1 hour for determining the average VO concentration of a hazardous waste at the point of waste origination, the Regional Administrator may elect to establish compliance with this subpart by performing or requesting that the owner or operator perform a waste determination using direct measurement based on waste samples collected within a 1-hour period as follows:

(i) The average VO concentration of the hazardous waste at the point of waste origination shall be determined by direct measurement in accordance with the requirements of § 264.1083(a) of this subpart.

(ii) Results of the waste determination performed or requested by the Regional Administrator showing that the average VO concentration of the hazardous waste at the point of waste origination is equal to or greater than 100 ppmw shall constitute noncompliance with this subpart except in a case as provided for in paragraph (e)(4)(iii) of this section.

(iii) For the case when the average VO concentration of the hazardous waste at the point of waste origination previously has been determined by the owner or operator using an averaging period greater than 1 hour to be less than 100 ppmw but because of normal operating process variations the VO concentration of the hazardous waste determined by direct measurement for any given 1-hour period may be equal to or greater than 100 ppmw, information that was used by the owner or operator to determine the average VO concentration of the hazardous waste (e.g., test results, measurements, calculations, and other documentation) and recorded in the facility records in accordance with the requirements of § 264.1083(a) and § 264.1089 of this subpart shall be considered by the Regional Administrator together with the results of the waste determination performed or requested by the Regional Administrator in establishing compliance with this subpart.

§ 264.1083 Waste determination procedures.

(a) Waste determination procedure for average volatile organic (VO)

concentration of a hazardous waste at the point of waste origination.

(1) An owner or operator shall determine the average VO concentration at the point of waste origination for each hazardous waste placed in waste management units exempted under the provisions of § 264.1082(c)(1) of this subpart from using air emission controls in accordance with standards specified in § 264.1084 through § 264.1087 of this subpart, as applicable to the waste management unit.

(2) The VO concentration at the point of waste origination for a hazardous waste shall be determined in accordance with the procedures specified in 40 CFR 265.1084(a)(2) through (a)(6) of this chapter.

(b) Waste determination procedures for treated hazardous waste.

(1) An owner or operator shall perform the applicable waste determinations for each treated hazardous waste placed in waste management units exempted under the provisions of § 264.1082(c)(2) of this subpart from using air emission controls in accordance with standards specified in § 264.1084 through § 264.1087 of this subpart, as applicable to the waste management unit.

(2) The waste determination for a treated hazardous waste shall be performed in accordance with the procedures specified in 40 CFR 265.1084(b)(2) through (b)(10), as applicable to the treated hazardous waste.

(c) Procedure to determine the maximum organic vapor pressure of a hazardous waste in a tank.

(1) An owner or operator shall determine the maximum organic vapor pressure for each hazardous waste placed in tanks using air emission controls in accordance with standards specified in § 264.1084(c) of this subpart.

(2) The maximum organic vapor pressure of the hazardous waste shall be determined in accordance with the procedures specified in 40 CFR 265.1084(c)(2) through (c)(4).

§ 264.1084 Standards: Tanks.

(a) This section applies to owners and operators of tanks subject to this subpart into which any hazardous waste is placed except for the following tanks:

(1) A tank in which all hazardous waste entering the tank meets the conditions specified in § 264.1082(c) of this subpart; or

(2) A tank used for biological treatment of hazardous waste in accordance with the requirements of § 264.1082(c)(2)(iv) of this subpart.

(b) The owner or operator shall place the hazardous waste into one of the following tanks:

(1) A tank equipped with a cover (e.g., a fixed roof) that is vented through a closed-vent system to a control device in accordance with the requirements specified in paragraph (d) of this section;

(2) A tank equipped with a fixed roof and internal floating roof in accordance with the requirements of § 264.1091 of this subpart;

(3) A tank equipped with an external floating roof in accordance with the requirements of § 264.1091 of this subpart; or

(4) A pressure tank that is designed to operate as a closed system such that the tank operates with no detectable organic emissions at all times that hazardous waste is in the tank except as provided for in paragraph (g) of this section.

(c) As an alternative to complying with paragraph (b) of this section, an owner or operator may place hazardous waste in a tank equipped with a cover (e.g., a fixed roof) meeting the requirements specified in paragraph (d)(1) of this section when the hazardous waste is determined to meet all of the following conditions:

(1) The hazardous waste is neither mixed, stirred, agitated, nor circulated within the tank by the owner or operator using a process that results in splashing, frothing, or visible turbulent flow on the waste surface during normal process operations;

(2) The hazardous waste in the tank is not heated by the owner or operator except during conditions requiring that the waste be heated to prevent the waste from freezing or to maintain adequate waste flow conditions for continuing normal process operations;

(3) The hazardous waste in the tank is not treated by the owner or operator using a waste stabilization process or a process that produces an exothermic reaction; and

(4) The maximum organic vapor pressure of the hazardous waste in the tank as determined using the procedure specified in § 264.1083(c) of this subpart is less than the following applicable value:

(i) If the tank design capacity is equal to or greater than 151 m^3, then the maximum organic vapor pressure shall be less than 5.2 kPa;

(ii) If the tank design capacity is equal to or greater than 75 m^3 but less than 151 m^3, then the maximum organic vapor pressure shall be less than 27.6 kPa; or

(iii) If the tank design capacity is less than 75 m^3, then the maximum organic vapor pressure shall be less than 76.6 kPa.

(d) To comply with paragraph (b)(1) of this section, the owner or operator shall design, install, operate, and maintain a cover that vents the organic vapors emitted from hazardous waste in the tank through a closed-vent system connected to a control device.

(1) The cover shall be designed and operated to meet the following requirements:

(i) The cover and all cover openings (e.g., access hatches, sampling ports, and gauge wells) shall be designed to operate with no detectable organic emissions when all cover openings are secured in a closed, sealed position.

(ii) Each cover opening shall be secured in a closed, sealed position (e.g., covered by a gasketed lid or cap) at all times that hazardous waste is in the tank except as provided for in paragraph (f) of this section.

(2) The closed-vent system and control device shall be designed and operated in accordance with the requirements of § 264.1087 of this subpart.

(e) The owner and operator shall install, operate, and maintain enclosed pipes or other closed-systems. EPA considers a drain system that meets the requirements of 40 CFR 61.346(a)(1) or 40 CFR 61.346(b)(1) through (b)(3) to be a "closed systems", to:

(1) Transfer all hazardous waste to the tank from another tank, surface impoundment, or container subject to this subpart except for those hazardous wastes that meet the conditions specified in § 264.1082(c) of this subpart; and

(2) Transfer all hazardous waste from the tank to another tank, surface impoundment, or container subject to this subpart except for those hazardous wastes that meet the conditions specified in § 264.1082(c) of this subpart.

(f) Each cover opening shall be secured in a closed, sealed position (e.g., covered by a gasketed lid) at all times that hazardous waste is in the tank except when it is necessary to use the cover opening to:

(1) Add, remove, inspect, or sample the material in the tank;

(2) Inspect, maintain, repair, or replace equipment located inside the tank; or

(3) Vent gases or vapors from the tank to a closed-vent system connected to a control device that is designed and operated in accordance with the requirements of § 264.1087 of this subpart.

(g) One or more safety devices which vent directly to the atmosphere may be

used on the tank, cover, closed-vent system, or control device provided each safety device meets all of the following conditions:

(1) The safety device is not used for planned or routine venting of organic vapors from the tank or closed-vent system connected to a control device; and

(2) The safety device remains in a closed, sealed position at all times except when an unplanned event requires that the device open for the purpose of preventing physical damage or permanent deformation of the tank, cover, closed-vent system, or control device in accordance with good engineering and safety practices for handling flammable, combustible, explosive, or other hazardous materials. An example of an unplanned event is a sudden power outage.

§ 264.1085 Standards: Surface impoundments.

(a) This section applies to owners and operators of surface impoundments subject to this subpart into which any hazardous waste is placed except for the following surface impoundments:

(1) A surface impoundment in which all hazardous waste entering the surface impoundment meets the conditions specified in § 264.1082(c) of this subpart; or

(2) A surface impoundment used for biological treatment of hazardous waste in accordance with the requirements of § 264.1082(c)(2)(iv) of this subpart.

(b) The owner or operator shall place the hazardous waste into a surface impoundment equipped with a cover (e.g., an air-supported structure or a rigid cover) that is vented through a closed-vent system to a control device meeting the requirements specified in paragraph (d) of this section.

(c) As an alternative to complying with paragraph (b) of this section, an owner or operator may place hazardous waste in a surface impoundment equipped with a floating membrane cover meeting the requirements specified in paragraph (e) of this section when the hazardous waste is determined to meet all of the following conditions:

(1) The hazardous waste is neither mixed, stirred, agitated, nor circulated within the surface impoundment by the owner or operator using a process that results in splashing, frothing, or visible turbulent flow on the waste surface during normal process operations;

(2) The hazardous waste in the surface impoundment is not heated by the owner or operator; and

(3) The hazardous waste is not treated by the owner or operator using a waste stabilization process or a process that produces an exothermic reaction.

(d) To comply with paragraph (b)(1) of this section, the owner or operator shall design, install, operate, and maintain a cover that vents the organic vapors emitted from hazardous waste in the surface impoundment through a closed-vent system connected to a control device.

(1) The cover shall be designed and operated to meet the following requirements:

(i) The cover and all cover openings (e.g., access hatches, sampling ports, and gauge wells) shall be designed to operate with no detectable organic emissions when all cover openings are secured in a closed, sealed position.

(ii) Each cover opening shall be secured in the closed, sealed position (e.g., covered by a gasketed lid or cap) at all times that hazardous waste is in the surface impoundment except as provided for in paragraph (g) of this section.

(iii) The closed-vent system and control device shall be designed and operated in accordance with § 264.1087 of this subpart.

(e) To comply with paragraph (c) of this section, the owner or operator shall design, install, operate, and maintain a floating membrane cover that meets all of the requirements specified in 40 CFR 265.1086(e)(1) through (e)(4).

(f) The owner or operator shall install, operate, and maintain enclosed pipes or other closed-systems, EPA considers a drain system that meets the requirements of 40 CFR 61.346(a)(1) or 40 CFR 61.346(b)(1) through (b)(3) to be a "closed system", to:

(1) Transfer all hazardous waste to the surface impoundment from another tank, surface impoundment, or container subject to this subpart except for those hazardous wastes that meet the conditions specified in § 264.1082(c) of this subpart; and

(2) Transfer all hazardous waste from the surface impoundment to another tank, surface impoundment, or container subject to this subpart except for those hazardous wastes that meet the conditions specified in § 264.1082(c) of this subpart.

(g) Each cover opening shall be secured in the closed, sealed position (e.g., a cover by a gasketed lid or cap) at all times that hazardous waste is in the surface impoundment except when it is necessary to use the cover opening to:

(1) Add, remove, inspect, or sample the material in the surface impoundment;

(2) Inspect, maintain, repair, or replace equipment located underneath the cover;

(3) Remove treatment residues from the surface impoundment in accordance with the requirements of 40 CFR 268.4; or

(4) Vent gases or vapors from the surface impoundment to a closed-vent system connected to a control device that is designed and operated in accordance with the requirements of § 264.1087 of this subpart.

(h) One or more safety devices that vent directly to the atmosphere may be installed on the cover, closed-vent system, or control device provided each device meets all of the following conditions:

(1) The safety device is not used for planned or routine venting of organic vapors from the surface impoundment or the closed-vent system connected to a control device; and

(2) The safety device remains in a closed, sealed position at all times except when an unplanned event requires that the device open for the purpose of preventing physical damage or permanent deformation of the cover, closed-vent system, or control device in accordance with good engineering and safety practices for handling flammable, combustible, explosive, or other hazardous materials. An example of an unplanned event is a sudden power outage.

§ 264.1086 Standards: Containers.

(a) This section applies to the owners and operators of containers having design capacities greater than 0.1 m^3 subject to this subpart into which any hazardous waste is placed except for a container in which all hazardous waste entering the container meets the conditions specified in § 264.1082(c) of this subpart.

(b) An owner or operator shall manage hazardous waste in containers using the following procedures:

(1) The owner or operator shall place the hazardous waste into one of the following containers except when a container is used for hazardous waste treatment as required by paragraph (b)(2) of this section:

(i) A container that is equipped with a cover which operates with no detectable organic emissions when all container openings (e.g., lids, bungs, hatches, and sampling ports) are secured in a closed, sealed position. The owner or operator shall determine that a container operates with no detectable emissions by testing each opening on the container for leaks in accordance with Method 21 in 40 CFR part 60, appendix A the first time any portion of

the hazardous waste is placed into the container. If a leak is detected and cannot be repaired immediately, the hazardous waste shall be removed from the container and the container not used to meet the requirements of this paragraph until the leak is repaired and the container is retested.

(ii) A container having a design capacity less than or equal to 0.46 m^3 that is equipped with a cover and complies with all applicable Department of Transportation regulations on packaging hazardous waste for transport under 49 CFR part 178.

(A) A container that is managed in accordance with the requirements of 49 CFR part 178 for the purpose of complying with this subpart is not subject to any exceptions to the 49 CFR part 178 regulations, except as noted in paragraph (b)(1)(ii)(B) of this section.

(B) A lab pack that is managed in accordance with the requirements of 49 CFR part 178 for the purpose of complying with this subpart may comply with the exceptions for combination packagings specified in 49 CFR 173.12(b).

(iii) A container that is attached to or forms a part of any truck, trailer, or railcar; and that has been demonstrated within the preceding 12 months to be organic vapor tight when all container openings are in a closed, sealed position (e.g., the container hatches or lids are gasketed and latched). For the purpose of meeting the requirements of this paragraph, a container is organic vapor tight if the container sustains a pressure change of not more than 750 pascals within 5 minutes after it is pressurized to a minimum of 4,500 pascals. This condition is to be demonstrated using the pressure test specified in Method 27 of 40 CFR part 60, appendix A, and a pressure measurement device which has a precision of ±2.5 mm water and which is capable of measuring above the pressure at which the container is to be tested for vapor tightness.

(2) An owner or operator treating hazardous waste in a container by either a waste stabilization process, any process that requires the addition of heat to the waste, or any process that produces an exothermic reaction shall meet the following requirements:

(i) Whenever it is necessary for the container to be open during the treatment process, the container shall be located inside an enclosure that is vented through a closed-vent system to a control device.

(ii) The enclosure shall be a structure that is designed and operated in accordance with the following requirements:

(A) The enclosure shall be a structure that is designed and operated with sufficient airflow into the structure to capture the organic vapors emitted from the hazardous waste in the container and vent the vapors through the closed-vent system to the control device.

(B) The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or to direct airflow into the enclosure. The pressure drop across each opening in the enclosure shall be maintained at a pressure below atmospheric pressure such that whenever an open container is placed inside the enclosure no organic vapors released from the container exit the enclosure through the opening. The owner or operator shall determine that an enclosure achieves this condition by measuring the pressure drop across each opening in the enclosure. If the pressure within the enclosure is equal to or greater than atmospheric pressure then the enclosure does not meet the requirements of this section.

(iii) The closed-vent system and control device shall be designed and operated in accordance with the requirements of § 264.1087 of this subpart.

(3) An owner or operator transferring hazardous waste into a container having a design capacity greater than 0.46 m^3 shall meet the following requirements:

(i) Hazardous waste transfer by pumping shall be performed using a conveyance system that uses a tube (e.g., pipe, hose) to add the waste into the container. During transfer of the waste into the container, the cover shall remain in place and all container openings shall be maintained in a closed, sealed position except for those openings through which the tube enters the container and as provided for in paragraph (c) of this section. The tube shall be positioned in a manner such that either the:

(A) Tube outlet continuously remains submerged below the waste surface at all times waste is flowing through the tube;

(B) Lower bottom edge of the tube outlet is located at a distance no greater than two inside diameters of the tube or 15.25 cm, whichever distance is greater, from the bottom of the container at all times waste is flowing through the tube; or

(C) Tube is connected to a permanent port mounted on the bottom of the container so that the lower edge of the port opening inside the container is located at a distance equal to or less than 15.25 cm from the container bottom.

(ii) Hazardous waste transferred by a means other than pumping shall be performed such that during transfer of the waste into the container, the cover remains in place and all container openings are maintained in a closed, sealed position except for those openings through which the hazardous waste is added and as provided for in paragraph (d) of this section.

(c) Each container opening shall be maintained in a closed, sealed position (e.g., covered by a gasketed lid) at all times that hazardous waste is in the container except when it is necessary to use the opening to:

(1) Add, remove, inspect, or sample the material in the container;

(2) Inspect, maintain, repair, or replace equipment located inside the container; or

(3) Vent gases or vapors from a cover located over or enclosing an open container to a closed-vent system connected to a control device that is designed and operated in accordance with the requirements of § 264.1087 of this subpart.

(d) One or more safety devices that vent directly to the atmosphere may be used on the container, cover, enclosure, closed-vent system, or control device provided each device meets all of the following conditions:

(1) The safety device is not used for planned or routine venting of organic vapors from the container, cover, enclosure, or closed-vent system connected to a control device; and

(2) The safety device remains in a closed, sealed position at all times except when an unplanned event requires that the device open for the purpose of preventing physical damage or permanent deformation of the container, cover, enclosure, closed-vent system, or control device in accordance with good engineering and safety practices for handling flammable, combustible, explosive, or other hazardous materials. An example of an unplanned event is a sudden power outage.

§ 264.1087 Standards: Closed-vent systems and control devices.

(a) This section applies to each closed-vent system and control device installed and operated by the owner or operator to control air emissions in accordance with standards of this subpart.

(b) The closed-vent system shall meet the following requirements:

(1) The closed-vent system shall route the gases, vapors, and fumes emitted from the hazardous waste in the waste

management unit to a control device that meets the requirements specified in paragraph (c) of this section.

(2) The closed-vent system shall be designed and operated in accordance with the requirements specified in § 264.1033(k) of this part.

(3) If the closed-vent system contains one or more bypass devices that could be used to divert all or a portion of the gases, vapors, or fumes from entering the control device, the owner or operator shall meet the following requirements:

(i) For each bypass device except as provided for in paragraph (b)(3)(ii) of this section, the owner or operator shall either:

(A) Install, calibrate, maintain, and operate a flow indicator at the inlet to the bypass device that indicates at least once every 15 minutes whether gas, vapor, or fume flow is present in the bypass device; or

(B) Secure a valve installed at the inlet to the bypass device in the closed position using a car-seal or a lock-and-key type configuration. The owner or operator shall visually inspect the seal or closure mechanism at least once every month to verify that the valve is maintained in the closed position.

(ii) Low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and safety devices are not subject to the requirements of paragraph (b)(3)(i) of this section.

(c) The control device shall meet the following requirements:

(1) The control device shall be one of the following devices:

(i) A control device designed and operated to reduce the total organic content of the inlet vapor stream vented to the control device by at least 95 percent by weight;

(ii) An enclosed combustion device designed and operated in accordance with the requirements of § 264.1033(c) of this part; or

(iii) A flare designed and operated in accordance with the requirements of § 264.1033(d) of this part.

(2) The control device shall be operating at all times when gases, vapors, or fumes are vented from the waste management unit through the closed-vent system to the control device.

(3) The owner or operator using a carbon adsorption system to comply with paragraph (c)(1) of this section shall operate and maintain the control device in accordance with the following requirements:

(i) Following the initial startup of the control device, all activated carbon in the control device shall be replaced with fresh carbon on a regular basis in accordance with the requirements of § 264.1033(g) or § 264.1033(h) of this part.

(ii) All carbon removed from the control device shall be managed in accordance with the requirements of § 264.1033(m) of this part.

(4) An owner or operator using a control device other than a thermal vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with paragraph (c)(1) of this section shall operate and maintain the control device in accordance with the requirements of § 264.1033(j) of this part.

(5) The owner or operator shall demonstrate that a control device achieves the performance requirements of paragraph (c)(1) of this section as follows:

(i) An owner or operator shall demonstrate using either a performance test as specified in paragraph (c)(5)(iii) of this section or a design analysis as specified in paragraph (c)(5)(iv) of this section the performance of each control device except for the following:

(A) A flare;

(B) A boiler or process heater with a design heat input capacity of 44 megawatts or greater;

(C) A boiler or process heater into which the vent stream is introduced with the primary fuel;

(D) A boiler or process heater burning hazardous waste for which the owner or operator has been issued a final permit under 40 CFR part 270 and designs and operates the unit in accordance with the requirements of 40 CFR part 266, subpart H; or

(E) A boiler or process heater burning hazardous waste for which the owner or operator has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(ii) An owner or operator shall demonstrate the performance of each flare in accordance with the requirements specified in § 264.1033(e).

(iii) For a performance test conducted to meet the requirements of paragraph (c)(5)(i) of this section, the owner or operator shall use the test methods and procedures specified in § 264.1034(c)(1) through (c)(4).

(iv) For a design analysis conducted to meet the requirements of paragraph (c)(5)(i) of this section, the design analysis shall meet the requirements specified in § 264.1035(b)(4)(iii).

(v) The owner or operator shall demonstrate that a carbon adsorption system achieves the performance requirements of paragraph (c)(1) of this section based on the total quantity of organics vented to the atmosphere from all carbon adsorption system equipment that is used for organic adsorption, organic desorption or carbon regeneration, organic recovery, and carbon disposal.

(6) If the owner or operator and the Regional Administrator do not agree on a demonstration of control device performance using a design analysis then the disagreement shall be resolved using the results of a performance test performed by the owner or operator in accordance with the requirements of paragraph (c)(5)(iii) of this section. The Regional Administrator may choose to have an authorized representative observe the performance test.

§ 264.1088 Inspection and monitoring requirements.

(a) This section applies to an owner or operator using air emission controls in accordance with the requirements of § 264.1084 through § 264.1087 of this subpart.

(b) Each cover used in accordance with requirements of § 264.1084 through § 264.1086 of this subpart shall be visually inspected and monitored for detectable organic emissions by the owner or operator using the procedure specified in 40 CFR 265.1089(f)(1) through (f)(7) except as follows:

(1) An owner or operator is exempted from performing the cover inspection and monitoring requirements specified in 40 CFR 265.1089(f)(1) through (f)(7) for the following tank covers:

(i) A tank internal floating roof that is inspected and monitored in accordance with the requirements of § 264.1091 of this subpart; or

(ii) A tank external floating roof that is inspected and monitored in accordance with the requirements of § 264.1091 of this subpart.

(2) If a tank is buried partially or entirely underground, an owner or operator is required to perform the cover inspection and monitoring requirements specified in 40 CFR 265.1089(f)(1) through (f)(7) only for those portions of the tank cover and those connections to the tank cover or tank body (e.g. fill ports, access hatches, gauge wells, etc.) that extend to or above the ground surface and can be opened to the atmosphere.

(3) An owner or operator is exempted from performing the cover inspection and monitoring requirements specified in 40 CFR 265.1089(f)(1) through (f)(7) for a container that meets all requirements specified in either § 264.1086(b)(1)(ii) or § 264.1086(b)(1)(iii) of this subpart.

(4) An owner or operator is exempted from performing the cover inspection and monitoring requirements specified in 40 CFR 265.1089(f)(1) through (f)(7)

for an enclosure used to control air emissions from containers in accordance with the requirements of § 264.1086(b)(2) of this subpart.

(c) Each closed-vent system used in accordance with the requirements of § 264.1087 shall be inspected and monitored by the owner or operator in accordance with the procedure specified in § 264.1033(k).

(d) Each control device used in accordance with the requirements of § 264.1087 of this subpart shall be inspected and monitored by the owner or operator in accordance with the procedures specified in § 264.1033(f) and § 264.1033(i).

(e) The owner or operator shall develop and implement a written plan and schedule to perform all inspection and monitoring requirements of this section. The owner or operator shall incorporate this plan and schedule into the facility inspection plan required under § 264.15.

§ 264.1089 Recordkeeping requirements.

(a) Each owner or operator of a facility subject to requirements in this subpart shall record and maintain the following information as applicable:

(1) Documentation for each cover installed on a tank in accordance with the requirements of § 264.1084(b)(2) or § 264.1084(b)(3) of this subpart that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the applicable design specifications as listed in 40 CFR 265.1091(c).

(2) Documentation for each floating membrane cover installed on a surface impoundment in accordance with the requirements of § 264.1085(c) of this subpart that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the specifications listed in 40 CFR 265.1086(e).

(3) Documentation for each enclosure used to control air emissions from containers in accordance with the requirements of § 264.1086(b)(2)(i) of this subpart that includes information prepared by the owner or operator or provided by the manufacturer or vendor describing the enclosure design, and certification by the owner or operator that the enclosure meets the specifications listed in § 264.1086(b)(2)(ii) of this subpart.

(4) Documentation for each closed-vent system and control device installed in accordance with the requirements of § 264.1087 of this subpart that includes:

(i) Certification that is signed and dated by the owner or operator stating that the control device is designed to operate at the performance level documented by a design analysis as specified in paragraph (a)(4)(ii) of this section or by performance tests as specified in paragraph (a)(4)(iii) of this section when the tank, surface impoundment, or container is or would be operating at capacity or the highest level reasonably expected to occur.

(ii) If a design analysis is used, then design documentation as specified in § 264.1035(b)(4). The documentation shall include information prepared by the owner or operator or provided by the control device manufacturer or vendor that describes the control device design in accordance with § 264.1035(b)(4)(iii) and certification by the owner or operator that the control equipment meets the applicable specifications.

(iii) If performance tests are used, then a performance test plan as specified in § 264.1035(b)(3) and all test results.

(iv) Information as required by § 264.1035(c)(1) and (c)(2).

(5) Records for all Method 27 tests performed by the owner or operator for each container used to meet the requirements of § 264.1086(b)(1)(iii) of this subpart.

(6) Records for all visual inspections conducted in accordance with the requirements of § 264.1088 of this subpart.

(7) Records for all monitoring for detectable organic emissions conducted in accordance with the requirements of § 264.1088 of this subpart.

(8) Records of the date of each attempt to repair a leak, repair methods applied, and the date of successful repair.

(9) Records for all continuous monitoring conducted in accordance with the requirements of § 264.1088 of this subpart.

(10) Records of the management of carbon removed from a carbon adsorption system conducted in accordance with § 264.1087(c)(3)(ii) of this subpart.

(11) Records for all inspections of each cover installed on a tank in accordance with the requirements of § 264.1084(b)(2) or § 264.1084(b)(3) of this subpart that includes information as listed in 40 CFR 265.1091(c).

(b) An owner or operator electing to use air emission controls for a tank in accordance with the conditions specified in § 264.1084(c) of this subpart shall record the following information:

(1) Date and time each waste sample is collected for direct measurement of maximum organic vapor pressure in accordance with § 264.1083(c) of this subpart.

(2) Results of each determination of the maximum organic vapor pressure of the waste in a tank performed in accordance with § 264.1083(c) of this subpart.

(3) Records specifying the tank dimensions and design capacity.

(c) An owner or operator electing to use air emission controls for a tank in accordance with the requirements of § 264.1091 of this subpart shall record the information required by § 264.1091(c) of this subpart.

(d) An owner or operator electing not to use air emission controls for a particular tank, surface impoundment, or container subject to this subpart in accordance with the conditions specified in § 264.1082(c) of this subpart shall record the information used by the owner or operator for each waste determination (e.g., test results, measurements, calculations, and other documentation) in the facility operating log. If analysis results for waste samples are used for the waste determination, then the owner or operator shall record the date, time, and location that each waste sample is collected in accordance with applicable requirements of § 264.1083 of this subpart.

(e) An owner or operator electing to comply with requirements in accordance with § 264.1082(c)(2)(v) or § 264.1082(c)(2)(vi) of this subpart shall record the identification number for the incinerator, boiler, or industrial furnace in which the hazardous waste is treated.

(f) An owner or operator designating a cover as unsafe to inspect and monitor pursuant to 40 CFR 265.1089(f)(5) or difficult to inspect and monitor pursuant to 40 CFR 265.1089(f)(6) shall record in a log that is kept in the facility operating record the following information:

(1) A list of identification numbers for tanks with covers that are designated as unsafe to inspect and monitor in accordance with the requirements of 40 CFR 265.1089(f)(5), an explanation for each cover stating why the cover is unsafe to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

(2) A list of identification numbers for tanks with covers that are designated as difficult to inspect and monitor in accordance with the requirements of 40 CFR 265.1089(f)(6), an explanation for each cover stating why the cover is difficult to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

(g) All records required by paragraphs (a) through (f) of this section except as required in paragraphs (a)(1) through (a)(4) of this section shall be maintained in the operating record for a minimum of 3 years. All records required by paragraphs (a)(1) through (a)(4) of this section shall be maintained in the operating record until the air emission control equipment is replaced or otherwise no longer in service.

(h) The owner or operator of a facility that is subject to this subpart and to the control device standards in 40 CFR part 60, subpart VV or 40 CFR part 61, subpart V may elect to demonstrate compliance with the applicable sections of this subpart by documentation either pursuant to this subpart, or pursuant to the provisions of 40 CFR part 60, subpart VV or 40 CFR part 61, subpart V, to the extent that the documentation required by 40 CFR parts 60 or 61 duplicates the documentation required by this section.

§ 264.1090 Reporting requirements.

(a) Each owner or operator managing hazardous waste in a tank, surface impoundment, or container exempted from using air emission controls under the provisions of § 264.1082(c) shall report to the Regional Administrator each occurrence when hazardous waste is placed in the waste management unit in noncompliance with the conditions specified in § 264.1082(c)(1) or (c)(2) of this subpart, as applicable. Examples of such occurrences include placing in the waste management unit a hazardous waste having an average VO concentration equal to or greater than 100 ppmw at the point of waste origination; or placing in the waste management unit a treated hazardous waste which fails to meet the applicable conditions specified in § 264.1082(c)(2)(i) through (c)(2)(v) of this subpart. The owner or operator shall submit a written report within 15 calendar days of the time that the owner or operator becomes aware of the occurrence. The written report shall contain the EPA identification number, facility name and address, a description of the noncompliance event and the cause, the dates of the noncompliance, and the actions taken to correct the noncompliance and prevent reoccurrence of the noncompliance. The report shall be signed and dated by an authorized representative of the owner or operator.

(b) Each owner or operator using air emission controls on a tank in accordance with the requirements § 264.1084(c) of this subpart shall report to the Regional Administrator each occurrence when hazardous waste is managed in the tank in noncompliance with the conditions specified in § 264.1084(c)(1) through (c)(4) of this subpart. The owner or operator shall submit a written report within 15 calendar days of the time that the owner or operator becomes aware of the occurrence. The written report shall contain the EPA identification number, facility name and address, a description of the noncompliance event and the cause, the dates of the noncompliance, and the actions taken to correct the noncompliance and prevent reoccurrence of the noncompliance. The report shall be signed and dated by an authorized representative of the owner or operator.

(c) Each owner or operator using a control device in accordance with the requirements of § 264.1087 of this subpart shall submit a semiannual written report to the Regional Administrator excepted as provided for in paragraph (d) of this section. The report shall describe each occurrence during the previous 6-month period when a control device is operated continuously for 24 hours or longer in noncompliance with the applicable operating values defined in § 264.1035(c)(4) or when a flare is operated with visible emissions as defined in § 264.1033(d). The written report shall include the EPA identification number, facility name and address, and an explanation why the control device could not be returned to compliance within 24 hours, and actions taken to correct the noncompliance. The report shall be signed and dated by an authorized representative of the owner or operator.

(d) A report to the Regional Administrator in accordance with the requirements of paragraph (c) of this section is not required for a 6-month period during which all control devices subject to this subpart are operated by the owner or operator such that during no period of 24 hours or longer did a control device operate continuously in noncompliance with the applicable operating values defined in § 264.1035(c)(4) or a flare operate with visible emissions as defined in § 264.1033(d).

§ 264.1091 Alternative control requirements for tanks.

(a) This section applies to owners and operators of tanks electing to comply with § 264.1084(b)(2) or § 264.1084(b)(3) of this subpart.

(1) The owner or operator electing to comply with § 264.1084(b)(2) of this subpart shall design, install, operate, and maintain a fixed roof and internal floating roof that meet the requirements specified in 40 CFR 265.1091(a)(1)(i) through (a)(1)(ix).

(2) The owner or operator electing to comply with § 264.1084(b)(3) of this subpart shall design, install, operate, and maintain an external floating roof that meets the requirements specified in 40 CFR 265.1091(a)(2)(i) through (a)(2)(iii).

(b) The owner or operator shall inspect and monitor the control equipment in accordance with the following requirements:

(1) For a tank equipped with a fixed roof and internal floating roof in accordance with the requirements of paragraph (a)(1) of this section, the owner or operator shall perform the inspection and monitoring requirements specified in 40 CFR 265.1091(b)(1).

(2) For a tank equipped with an external floating roof in accordance with the requirements of paragraph (a)(2) of this section, the owner or operator shall perform the inspection and monitoring requirements specified in 40 CFR 265.1091(b)(2).

(c) The owner or operator shall record the following information in the operating record in accordance with the requirements of § 264.1089(a)(1) and (a)(11) of this subpart:

(1) For a tank equipped with a fixed roof and internal floating roof in accordance with the requirements of paragraph (a)(1) of this section, the owner or operator shall record the information listed in 40 CFR 265.1091(c)(1).

(2) For a tank equipped with an external floating roof in accordance with the requirements of paragraph (a)(1) of this section, the owner or operator shall record the information listed in 40 CFR 265.1091(c)(2).

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

21. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

Subpart A—General

22. Section 265.1(b) is amended by revising the first sentence to read as follows:

§ 265.1 Purpose, scope, and applicability.

* * * * *

(b) Except as provided in § 265.1080(b), the standards of this part, and of 40 CFR 264.552 and 40 CFR 264.553, apply to owners and operators of facilities that treat, store or dispose of

hazardous waste who have fully complied with the requirements for interim status under section 3005(e) of RCRA and § 270.10 of this chapter until either a permit is issued under section 3005 of RCRA or until applicable part 265 closure and post-closure responsibilities are fulfilled, and to those owners and operators of facilities in existence on November 19, 1980 who have failed to provide timely notification as required by section 3010(a) of RCRA and/or failed to file Part A of the permit application as required by 40 CFR 270.10 (e) and (g). * * *

* * * * *

Subpart B—General Facility Standards

§ 265.13 [Amended]

23. In § 265.13, paragraph (b)(6) is amended by adding "265.1084," after the phrase "as specified in §§ 265.200, 265.225, 265.252, 265.273, 265.314, 265.341, 265.375, 265.402, 265.1034(d), 265.1063(d),".

24. In § 265.13, paragraph (b)(8) is added to read as follows:

§ 265.13 General waste analysis.

* * * * *

(b) * * *

(8) For owners and operators seeking an exemption to the air emission standards of Subpart CC of this part in accordance with § 265.1083—

(i) The procedures and schedules for waste sampling and analysis, and the analysis of test data to verify the exemption.

(ii) Each generator's notice and certification of the volatile organic concentration in the waste if the waste is received from offsite.

* * * * *

§ 265.15 [Amended]

25. In § 265.15, paragraph (b)(4) is amended by removing the word "and" after the phrase "frequencies called for in §§ 265.174, 265.193, 265.195, 265.226, 265.260, 265.278, 265.304, 265.347, 265.377, 265.403, 265.1033, 265.1052, 265.1053," and adding "265.1089, and 265.1091(b)," after "265.1058,".

Subpart E—Manifest System, Recordkeeping, and Reporting

26. Section 265.73 is amended by revising paragraphs (b)(3) and (b)(6) to read as follows:

§ 265.73 Operating record.

* * * * *

(b) * * *

(3) Records and results of waste analysis, waste determinations, and trial tests performed as specified in §§ 265.13, 265.200, 265.225, 265.252, 265.273, 265.314, 265.341, 265.375, 265.402, 265.1034, 265.1063, 265.1084, 268.4(a), and 268.7 of this chapter.

* * * * *

(6) Monitoring, testing or analytical data when required by §§ 265.19, 265.90, 265.94, 265.191, 265.193, 265.195, 265.222, 265.223, 265.226, 265.255, 265.259, 265.260, 265.276, 265.278, 265.280(d)(1), 265.302 through 265.304, 265.347, 265.377, 265.1034(c) through 265.1034(f), 265.1035, 265.1063(d) through 265.1063(i), 265.1064, 265.1089, 265.1090, and 265.1091.

* * * * *

27. Section 265.77 is amended by revising paragraph (d) to read as follows:

§ 265.77 Additional reports.

* * * * *

(d) As otherwise required by Subparts AA, BB, and CC of this part.

Subpart I—Use and Management of Containers

28. Section 265.178 is added to read as follows:

§ 265.178 Air emission standards.

The owner or operator shall manage all hazardous waste placed in a container in accordance with the requirements of subpart CC of this part.

Subpart J—Tank Systems

29. Section 265.202 is added to read as follows:

§ 265.202 Air emission standards.

The owner or operator shall manage all hazardous waste placed in a tank in accordance with the requirements of subparts AA, BB, and CC of this part.

Subpart K—Surface Impoundments

30. Section 265.231 is added to read as follows:

§ 265.231 Air emission standards.

The owner or operator shall manage all hazardous waste placed in a surface impoundment in accordance with the requirements of subpart CC of this part.

Subpart AA—Air Emission Standards for Process Vents

31. Section 265.1033 is amended by revising paragraph (j)(2) and adding paragraph (l) to read as follows:

§ 265.1033 Standards: Closed-vent systems and control devices.

* * * * *

(j) * * *

(2) Closed-vent systems shall be monitored to determine compliance with this section during the initial leak detection monitoring, which shall be conducted by the date that the facility becomes subject to the provisions of this section, annually, and at other times as requested by the Regional Administrator. For the annual leak detection monitoring after the initial leak detection monitoring, the owner or operator is not required to monitor those closed-vent system components which continuously operate in vacuum service or those closed-vent system joints, seams, or other connections that are permanently or semi-permanently sealed (e.g., a welded joint between two sections of metal pipe or a bolted and gasketed pipe flange).

* * * * *

(l) The owner or operator using a carbon adsorption system shall document that all carbon removed from the control device is managed in one of the following manners:

(1) Regenerated or reactivated in a thermal treatment unit that is permitted under subpart X of 40 CFR part 264 or subpart P of this part;

(2) Incinerated by a process that is permitted under subpart O of 40 CFR part 264 or subpart O of this part; or

(3) Burned in a boiler or industrial furnace that is permitted under subpart H of part 266 of this chapter.

32. In 40 CFR part 265, subpart CC is added to read as follows:

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

Sec.

265.1080 Applicability.
265.1081 Definitions.
265.1082 Schedule for implementation of air emission standards.
265.1083 Standards: General.
265.1084 Waste determination procedures.
265.1085 Standards: Tanks.
265.1086 Standards: Surface impoundments.
265.1087 Standards: Containers.
265.1088 Standards: Closed-vent systems and control devices.
265.1089 Inspection and monitoring requirements.
265.1090 Recordkeeping requirements.
265.1091 Alternative tank emission control requirements.

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

§ 265.1080 Applicability.

(a) The requirements of this subpart apply to owners and operators of all facilities that treat, store, or dispose of hazardous waste in tanks, surface impoundments, or containers subject to

either subparts I, J, or K of this part except as § 265.1 and paragraph (b) of this section provide otherwise.

(b) The requirements of this subpart do not apply to the following waste management units at the facility:

(1) A waste management unit that holds hazardous waste placed in the unit before June 5, 1995, and in which no hazardous waste is added to the unit on or after June 5, 1995.

(2) A container that has a design capacity less than or equal to 0.1 m^3.

(3) A tank in which an owner or operator has stopped adding hazardous waste and the owner or operator has begun implementing or completed closure pursuant to an approved closure plan.

(4) A surface impoundment in which an owner or operator has stopped adding hazardous waste (except to implement an approved closure plan) and the owner or operator has begun implementing or completed closure pursuant to an approved closure plan.

(5) A waste management unit that is used solely for on-site treatment or storage of hazardous waste that is generated as the result of implementing remedial activities required under the RCRA corrective action authorities of 3004(u), 3004(v) or 3008(h), CERCLA authorities, or similar Federal or State authorities.

(6) A waste management unit that is used solely for the management of radioactive mixed waste in accordance with all applicable regulations under the authority of the Atomic Energy Act and the Nuclear Waste Policy Act.

(c) For the owner and operator of a facility subject to this subpart who has received a final permit under RCRA section 3005 prior to June 5, 1995, the following requirements apply:

(1) The requirements of 40 CFR part 264, subpart CC shall be incorporated into the permit when the permit is reissued in accordance with the requirements of 40 CFR 124.15 or reviewed in accordance with the requirements of 40 CFR 270.50(d).

(2) Until the date when the permit is reissued in accordance with the requirements of 40 CFR 124.15 or reviewed in accordance with the requirements of 40 CFR 270.50(d), the owner and operator is subject to the requirements of this subpart.

§ 265.1081 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given to them in the Act and parts 260 through 266 of this chapter.

Average volatile organic concentration or *average VO concentration* means the mass-weighted average volatile organic concentration of a hazardous waste as determined in accordance with the requirements of § 265.1084 of this subpart.

Cover means a device or system which is placed on or over a hazardous waste such that the entire hazardous waste surface area is enclosed and sealed to reduce air emissions to the atmosphere. A cover may have openings such as access hatches, sampling ports, and gauge wells that are necessary for operation, inspection, maintenance, or repair of the unit on which the cover is installed provided that each opening is closed and sealed when not in use. Examples of covers include a fixed roof installed on a tank, a floating membrane cover installed on a surface impoundment, a lid installed on a drum, and an enclosure in which an open container is placed during waste treatment.

External floating roof means a pontoon or double-deck type floating roof that rests on the surface of a hazardous waste being managed in a tank that has no fixed roof.

Fixed roof means a rigid cover that is installed in a stationary position so that it does not move with fluctuations in the level of the hazardous waste placed in a tank.

Floating membrane cover means a cover consisting of a synthetic flexible membrane material that rests upon and is supported by the hazardous waste being managed in a surface impoundment.

Floating roof means a pontoon-type or double-deck type cover that rests upon and is supported by the hazardous waste being managed in a tank, and is equipped with a closure seal or seals to close the space between the cover edge and the tank wall.

Internal floating roof means a floating roof that rests or floats on the surface (but not necessarily in complete contact with it) of a hazardous waste being managed in a tank that has a fixed roof.

Liquid-mounted seal means a foam or liquid-filled primary seal mounted in contact with the hazardous waste between the tank wall and the floating roof continuously around the circumference of the tank.

Maximum organic vapor pressure means the equilibrium partial pressure exerted by the hazardous waste contained in a tank determined at the temperature equal to either: (1) the local maximum monthly average temperature as reported by the National Weather Service when the hazardous waste is stored or treated at ambient temperature; or (2) the highest calendar-month average temperature of the hazardous waste when the hazardous waste is stored at temperatures above the ambient temperature or when the hazardous waste is stored or treated at temperatures below the ambient temperature.

No detectable organic emissions means no escape of organics from a device or system to the atmosphere as determined by an instrument reading less than 500 parts per million by volume (ppmv) above the background level at each joint, fitting, and seal when measured in accordance with the requirements of Method 21 in 40 CFR part 60, appendix A, and by no visible openings or defects in the device or system such as rips, tears, or gaps.

Point of waste origination means as follows:

(1) When the facility owner or operator is the generator of the hazardous waste, the point of waste origination means the point where a solid waste produced by a system, process, or waste management unit is determined to be a hazardous waste as defined in 40 CFR part 261.

[Note: In this case, this term is being used in a manner similar to the use of the term "point of generation" in air standards established for waste management operations under authority of the Clean Air Act in 40 CFR parts 60, 61, and 63].

(2) When the facility owner and operator are not the generator of the hazardous waste, point of waste origination means the point where the owner or operator accepts delivery or takes possession of the hazardous waste.

Point of waste treatment means the point where a hazardous waste exits a waste management unit used to destroy, degrade, or remove organics in the hazardous waste.

Vapor-mounted seal means a foam-filled primary seal mounted continuously around the circumference of the tank so that there is an annular vapor space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the hazardous waste surface, and the floating roof.

Volatile organic concentration or *VO concentration* means the fraction by weight of organic compounds in a hazardous waste expressed in terms of parts per million (ppmw) as determined by direct measurement using Method 25D or by knowledge of the waste in accordance with the requirements of § 265.1084 of this subpart.

Waste determination means performing all applicable procedures in accordance with the requirements of § 265.1084 of this subpart to determine whether a hazardous waste meets standards specified in this subpart.

Examples of a waste determination include performing the procedures in accordance with the requirements of § 265.1084 of this subpart to determine the average VO concentration of a hazardous waste at the point of waste origination; the average VO concentration of a hazardous waste at the point of waste treatment and comparing the results to the exit concentration limit specified for the process used to treat the hazardous waste; determining the organic reduction efficiency and the organic biodegradation efficiency for a biological process used to treat a hazardous waste and comparing the results to the applicable standards; or the maximum volatile organic vapor pressure for a hazardous waste in a tank and comparing the results to the applicable standards.

Waste stabilization process means any physical or chemical process used to either reduce the mobility of hazardous constituents in a hazardous waste or eliminate free liquids as determined by Test Method 9095 (Paint Filter Liquids Test) in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, Third Edition, September 1986, as amended by Update I, November 15, 1992 (incorporated by reference—refer to § 260.11 of this chapter). A waste stabilization process includes mixing the hazardous waste with binders or other materials, and curing the resulting hazardous waste and binder mixture. Other synonymous terms used to refer to this process are "waste fixation" or "waste solidification."

§ 265.1082 Schedule for implementation of air emission standards.

(a) Owners or operators of facilities existing on June 5, 1995, and subject to subparts I, J, and K of this part shall meet the following requirements:

(1) Install and begin operation of all control equipment required by this subpart by June 5, 1995, except as provided for in paragraph (a)(2) of this section.

(2) When control equipment required by this subpart cannot be installed and in operation by June 5, 1995, the owner or operator shall:

(i) Install and begin operation of the control equipment as soon as possible but no later than December 8, 1997.

(ii) Prepare an implementation schedule that includes the following information: specific calendar dates for award of contracts or issuance of purchase orders for the control equipment, initiation of on-site installation of the control equipment, completion of the control equipment installation, and performance of any testing to demonstrate that the installed equipment meets the applicable standards of this subpart.

(iii) For facilities subject to the recordkeeping requirements of § 265.73 of this part, the owner or operator shall enter the implementation schedule specified in paragraph (a)(2)(ii) of this section in the operating record no later than June 5, 1995.

(iv) For facilities not subject to § 265.73 of this part, the owner or operator shall enter the implementation schedule specified in paragraph (a)(2)(ii) of this section in a permanent, readily available file located at the facility no later than June 5, 1995.

(b) Owners or operators of facilities in existence on the effective date of statutory or regulatory amendments under the Act that render the facility subject to subparts I, J, or K of this part shall meet the following requirements:

(1) Install and begin operation of all control equipment required by this subpart by the effective date of the amendment except as provided for in paragraph (b)(2) of this section.

(2) When control equipment required by this subpart cannot be installed and begin operation by the effective date of the amendment, the owner or operator shall:

(i) Install and operate the control equipment as soon as possible but no later than 30 months after the effective date of the amendment.

(ii) For facilities subject to the recordkeeping requirements of § 265.73, enter and maintain the implementation schedule specified in paragraph (a)(2)(ii) of this section in the operating record no later than the effective date of the amendment, or

(iii) For facilities not subject to § 265.73, the owner or operator shall enter and maintain the implementation schedule specified in paragraph (a)(2)(ii) of this section in a permanent, readily available file located at the facility site no later than the effective date of the amendment.

(c) The Regional Administrator may elect to extend the implementation date for control equipment at a facility, on a case by case basis, to a date later than December 8, 1997, when special circumstances that are beyond the facility owner's or operator's control delay installation or operation of control equipment and the owner or operator has made all reasonable and prudent attempts to comply with the requirements of this subpart.

§ 265.1083 Standards: General.

(a) This section applies to the management of hazardous waste in tanks, surface impoundments, and containers subject to this subpart.

(b) The owner or operator shall control air emissions from each waste management unit in accordance with standards specified in § 265.1085 through § 265.1088 of this subpart, as applicable to the waste management unit, except as provided for in paragraph (c) of this section.

(c) A waste management unit is exempted from standards specified in § 265.1085 through § 265.1088 of this subpart provided that all hazardous waste placed in the waste management unit is determined by the owner or operator to meet either of the following conditions:

(1) The average VO concentration of the hazardous waste at the point of waste origination is less than 100 parts per million by weight (ppmw). The average VO concentration shall be determined by the procedures specified in § 265.1084(a) of this subpart.

(2) The organic content of the hazardous waste has been reduced by an organic destruction or removal process that achieves any one of the following conditions:

(i) A process that removes or destroys the organics contained in the hazardous waste to a level such that the average VO concentration of the hazardous waste at the point of waste treatment is less than the exit concentration limit (C_t) established for the process. The average VO concentration of the hazardous waste at the point of waste treatment and the exit concentration limit for the process shall be determined using the procedures specified in § 265.1084(b) of this subpart.

(ii) A process that removes or destroys the organics contained in the hazardous waste to a level such that the organic reduction efficiency (R) for the process is equal to or greater than 95 percent, and the average VO concentration of the hazardous waste at the point of waste treatment is less than 50 ppmw. The organic reduction efficiency for the process and the average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedures specified in § 265.1084(b) of this subpart.

(iii) A process that removes or destroys the organics contained in the hazardous waste to a level such that the actual organic mass removal rate (MR) for the process is greater than the required organic mass removal rate (RMR) established for the process. The required organic mass removal rate and the actual organic mass removal rate for the process shall be determined using

the procedures specified in § 265.1084(b) of this subpart.

(iv) A biological process that destroys or degrades the organics contained in the hazardous waste, such that either of the following conditions is met:

(A) The organic reduction efficiency (R) for the process is equal to or greater than 95 percent, and the organic biodegradation efficiency (R_{bio}) for the process is equal to or greater than 95 percent. The organic reduction efficiency and the organic biodegradation efficiency for the process shall be determined in accordance with the procedures specified in § 265.1084(b) of this subpart.

(B) The total actual organic mass biodegradation rate (MR_{bio}) for all hazardous waste treated by the process is equal to or greater than the required organic mass removal rate (RMR). The required organic mass removal rate and the actual organic mass biodegradation rate for the process shall be determined using the procedures specified in § 265.1084(b) of this subpart.

(v) A process that removes or destroys the organics contained in the hazardous waste and meets all of the following conditions:

(A) All of the materials entering the process are hazardous wastes.

(B) From the point of waste origination through the point where the hazardous waste enters the process, the hazardous waste is continuously managed in waste management units which use air emission controls in accordance with the standards specified in § 265.1085 through § 265.1088 of this subpart, as applicable to the waste management unit.

(C) The average VO concentration of the hazardous waste at the point of waste treatment is less than the lowest average VO concentration at the point of waste origination determined for each of the individual hazardous waste streams entering the process or 100 ppmw, whichever value is lower. The average VO concentration of each individual hazardous waste stream at the point of waste origination shall be determined using the procedure specified in § 265.1084(a) of this subpart. The average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the procedure specified in § 265.1084(b) of this subpart.

(vi) A hazardous waste incinerator for which the owner or operator has either:

(A) Been issued a final permit under 40 CFR part 270, and designs and operates the unit in accordance with the requirements of 40 CFR part 264, subpart O; or

(B) Has certified compliance with the interim status requirements of subpart O of this part.

(vii) A boiler or industrial furnace for which the owner or operator has either:

(A) Been issued a final permit under 40 CFR part 270, and designs and operates the unit in accordance with the requirements of 40 CFR part 266, subpart H, or

(B) Has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(d) When a process is used for the purpose of treating a hazardous waste to meet one of the sets of conditions specified in paragraphs (c)(2)(i) through (c)(2)(v) of this section, each material removed from or exiting the process that is not a hazardous waste but has an average VO concentration equal to or greater than 100 ppmw shall be managed in a waste management unit in accordance with the requirements of paragraph (b) of this section.

(e) The Regional Administrator may at any time perform or request that the owner or operator perform a waste determination for a hazardous waste managed in a tank, surface impoundment, or container exempted from using air emission controls under the provisions of this section as follows:

(1) The waste determination for average VO concentration of a hazardous waste at the point of waste origination shall be performed using direct measurement in accordance with the applicable requirements of § 265.1084(a) of this subpart. The waste determination for a hazardous waste at the point of waste treatment shall be performed in accordance with the applicable requirements of § 265.1084(b) of this subpart.

(2) In a case when the owner or operator is requested to perform the waste determination, the Regional Administrator may elect to have an authorized representative observe the collection of the hazardous waste samples used for the analysis.

(3) In a case when the results of the waste determination performed or requested by the Regional Administrator do not agree with the results of a waste determination performed by the owner or operator using knowledge of the waste, then the results of the waste determination performed in accordance with the requirements of paragraph (e)(1) of this section shall be used to establish compliance with the requirements of this subpart.

(4) In a case when the owner or operator has used an averaging period greater than 1 hour for determining the average VO concentration of a hazardous waste at the point of waste origination, the Regional Administrator may elect to establish compliance with this subpart by performing or requesting that the owner or operator perform a waste determination using direct measurement based on waste samples collected within a 1-hour period as follows:

(i) The average VO concentration of the hazardous waste at the point of waste origination shall be determined by direct measurement in accordance with the requirements of § 265.1084(a) of this subpart.

(ii) Results of the waste determination performed or requested by the Regional Administrator showing that the average VO concentration of the hazardous waste at the point of waste origination is equal to or greater than 100 ppmw shall constitute noncompliance with this subpart except in a case as provided for in paragraph (e)(4)(iii) of this section.

(iii) For the case when the average VO concentration of the hazardous waste at the point of waste origination previously has been determined by the owner or operator using an averaging period greater than 1 hour to be less than 100 ppmw but because of normal operating process variations the VO concentration of the hazardous waste determined by direct measurement for any given 1-hour period may be equal to or greater than 100 ppmw, information that was used by the owner or operator to determine the average VO concentration of the hazardous waste (e.g., test results, measurements, calculations, and other documentation) and recorded in the facility records in accordance with the requirements of § 265.1084(a) and § 265.1090 of this subpart shall be considered by the Regional Administrator together with the results of the waste determination performed or requested by the Regional Administrator in establishing compliance with this subpart.

§ 265.1084 Waste determination procedures.

(a) Waste determination procedure for volatile organic (VO) concentration of a hazardous waste at the point of waste origination.

(1) An owner or operator shall determine the average VO concentration at the point of waste origination for each hazardous waste placed in a waste management unit exempted under the provisions of § 265.1083(c)(1) of this subpart from using air emission controls in accordance with standards specified in § 265.1085 through § 265.1088 of this subpart, as applicable to the waste management unit.

(2) When the facility owner or operator is the generator of the hazardous waste, the owner or operator shall determine the average VO concentration of the hazardous waste using either direct measurement as specified in paragraph (a)(5) of this section or knowledge of the waste as specified in paragraph (a)(6) of this section for each hazardous waste generated as follows:

(i) When the hazardous waste is generated as part of a continuous process, the owner or operator shall:

(A) Perform an initial waste determination of the average VO concentration of the waste stream before the first time any portion of the material in the waste stream is placed in a waste management unit subject to this subpart, and thereafter update the information used for the waste determination at least once every 12 months following the date of the initial waste determination; and

(B) Perform a new waste determination whenever changes to the source generating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the applicable VO concentration limits specified in § 265.1083 of this subpart.

(ii) When the hazardous waste is generated as part of a batch process that is performed repeatedly but not necessarily continuously, the owner or operator shall:

(A) Perform an initial waste determination of the average VO concentration for one or more representative waste batches generated by the process before the first time any portion of the material in the batches is placed in a waste management unit subject to this subpart, and thereafter update the information used for the waste determination at least once every 12 months following the date of the initial waste determination; and

(B) Perform a new waste determination whenever changes to the process generating the waste batches are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the applicable VO concentration limits specified in § 265.1083 of this subpart.

(3) When the facility owner and operator is not the generator of the hazardous waste, the owner or operator shall determine the average VO concentration of the hazardous waste using either direct measurement as specified in paragraph (a)(5) of this section or knowledge of the waste as specified in paragraph (a)(6) of this section for each hazardous waste entering the facility as follows:

(i) When the hazardous waste enters the facility as a continuous flow of material through a pipeline or other means (e.g., wastewater stream), the owner or operator shall:

(A) Perform an initial waste determination of the waste stream before the first time any portion of the material in the waste stream is placed in a waste management unit subject to this subpart, and thereafter update the information used for the waste determination at least once every 12 months following the date of the initial waste determination; and

(B) Perform a new waste determination whenever changes to the source generating the waste stream are reasonably likely to cause the average VO concentration of the hazardous waste to increase to a level that is equal to or greater than the applicable VO concentration limits specified in § 265.1083 of this subpart.

(ii) When the hazardous waste enters the facility in a container, the owner or operator shall perform a waste determination for the material held in each container.

(4) For the case when the average VO concentration of the hazardous waste is determined by the owner or operator to be less than 100 ppmw, but because of normal operating variations in the source or process generating the hazardous waste the VO concentration of the hazardous waste may be equal to or greater than 100 ppmw at any given time during the averaging period, the owner or operator shall prepare and enter in the facility operating record information that specifies the following:

(i) The maximum and minimum VO concentration values for the hazardous waste that occur during that averaging period used for the waste determination;

(ii) The operating conditions or circumstances under which the VO concentration of the hazardous waste will be equal to or greater than 100 ppmw, and;

(iii) The information and calculations used by the owner or operator to determine the average VO concentration of the hazardous waste.

(5) Procedure for using direct measurement to determine average VO concentration of a hazardous waste at the point of waste origination.

(i) The owner or operator shall identify and record the point of waste origination for the hazardous waste. All waste samples used to determine the average VO concentration of the hazardous waste shall be collected at this point.

(ii) The owner or operator shall designate and record the averaging period to be used for determining the average VO concentration for the hazardous waste. The averaging period shall not exceed 1 year. An initial waste determination shall be performed for each averaging period.

(iii) The owner or operator shall identify each discrete quantity of the material composing the hazardous waste represented by the averaging period designated in paragraph (a)(5)(ii) of this section. An example of a discrete quantity of material composing a hazardous waste generated as part of a continuous process is the quantity of material generated during a process operating mode defined by a specific set of operating conditions which are normal for the process. An example of a discrete quantity of material composing a hazardous waste generated as part of a batch process that is performed repeatedly but not necessarily continuously is the total quantity of material composing a single batch generated by the process. An example of a discrete quantity of material composing a hazardous waste delivered to a facility in a container is the total quantity of material held in the container.

(iv) The following procedure shall be used measure the VO concentration for each discrete quantity of material identified in paragraph (a)(5)(iii) of this section:

(A) A sufficient number of samples, but no less than four samples, shall be collected to represent the organic composition for the entire discrete quantity of hazardous waste being tested. All of the samples shall be collected within a 1-hour period. Sufficient information shall be prepared and recorded to document the waste quantity represented by the samples and, as applicable, the operating conditions for the source or process generating the hazardous waste represented by the samples.

(B) Each sample shall be collected in accordance with the requirements specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW–846, Third Edition, September 1986, as amended by Update I, November 15, 1992 (incorporated by reference—refer to § 260.11 of this chapter).

(C) Each collected sample shall be prepared and analyzed in accordance with the requirements of Method 25D in 40 CFR part 60, appendix A.

(D) The measured VO concentration for the discrete quantity of hazardous waste shall be determined by using the

results for all samples analyzed in accordance with paragraph (a)(5)(iv)(C) of this section and the following equation:

$$C = \frac{1}{n} \times \sum_{i=1}^{n} C_i$$

where:

C=Measured VO concentration of the discrete quantity of hazardous waste, ppmw.

i=Individual sample "i" of the hazardous waste collected in accordance with the requirements of SW-846.

n=Total number of samples of hazardous waste collected (at least 4) within a 1-hour period.

C_i=VO concentration measured by Method 25D for sample "i", ppmw.

(v) The average VO concentration of the hazardous waste shall be determined using the following procedure:

(A) When the facility owner or operator is the generator of the hazardous waste, a sufficient number of VO concentration measurements for the hazardous waste shall be performed in accordance with the requirements of paragraph (a)(5)(iv) of this section to represent the complete range of hazardous waste organic compositions and quantities that occur during the entire averaging period due to normal variations in the operating conditions for each process operating mode identified for the source or process generating the hazardous waste.

(B) When the facility owner or operator is not the generator of the hazardous waste, a sufficient number of VO concentration measurements for the hazardous waste shall be performed in accordance with the requirements of paragraph (a)(5)(iv) of this section to represent the complete range of hazardous waste organic compositions and quantities that occur in the hazardous waste as received at the facility during the entire averaging period.

(C) The average VO concentration of the hazardous waste at the point of waste origination shall be calculated by using the results for all VO measurements performed in accordance with paragraph (a)(5)(iv) of this section and the following equation:

$$C_{ave} = \frac{1}{Q_T} \times \sum_{j=1}^{m} \left(Q_j \times C_j\right)$$

where:

C_{ave}=Average VO concentration of the hazardous waste at the point of waste origination, ppmw.

j=Individual discrete quantity "j" of the hazardous waste for which a VO concentration measurement is determined in accordance with the requirements of paragraph (a)(5)(iv) of this section.

m=Total number of VO concentration measurements determined in accordance with the requirements of paragraph (a)(5)(iv) of this section for the averaging period.

Q_j=Mass of the discrete quantity of the hazardous waste represented by C_j, kg.

Q_T=Total mass of the hazardous waste for the averaging period, kg.

C_j=Measured VO concentration of discrete quantity "j" for the hazardous waste determined in accordance with the requirements of paragraph (a)(5)(iv) of this section, ppmw.

(6) Procedure for using knowledge of the waste to determine the average VO concentration of a hazardous waste at the point of waste origination.

(i) The owner or operator shall identify and record the point of waste origination for the hazardous waste. All information used to determine the average VO concentration of the hazardous waste shall be based on the hazardous waste composition at this point.

(ii) The owner or operator shall designate and record the averaging period to be used for determining the average VO concentration for the hazardous waste. The averaging period shall not exceed 1 year. An initial waste determination shall be performed for each averaging period.

(iii) The owner or operator shall prepare and record sufficient information that documents the average VO concentration for the hazardous waste. Information may be used that is prepared by either the facility owner or operator or by the generator of the hazardous waste. Examples of information that may be used as the basis for knowledge of the waste include: organic material balances for the source or process generating the waste; VO concentration measurements for the same type of waste performed in accordance with the procedure specified in paragraph (a)(5)(iv) of this section; previous individual organic constituent test data for the waste that are still applicable to the current waste management practices; documentation that the waste is generated by a process for which no organics-containing materials are used; previous test data for other locations managing the same type of waste; or other knowledge based on manifests, shipping papers, or waste certification notices.

(iv) If test data other than VO concentration measurements performed in accordance with the procedure specified in paragraph (a)(5)(iv) of this section are used as the basis for knowledge of the waste, then the owner or operator shall document the test method, sampling protocol, and the means by which sampling variability and analytical variability are accounted for in the determination of the average VO concentration. For example, an owner or operator may use individual organic constituent concentration test data that are validated in accordance with Method 301 in appendix A of 40 CFR part 63 as the basis for knowledge of the waste.

(b) Waste determination procedures for treated hazardous waste.

(1) An owner or operator shall perform the applicable waste determination for each treated hazardous waste placed in a waste management unit exempted under the provisions of § 265.1083(c)(2) of this subpart from using air emission controls in accordance with standards specified in § 265.1085 through § 265.1088 of this subpart, as applicable to the waste management unit.

(2) The owner or operator shall perform a waste determination for each discrete quantity of treated hazardous waste as follows:

(i) When the hazardous waste is treated by a continuous process, the owner or operator shall:

(A) Perform an initial waste determination for the treated waste stream before the first time any portion of the material in the waste stream is placed in a waste management unit subject to this subpart, and thereafter update the information used for the waste determination at least once every 12 months following the date of the initial waste determination; and

(B) Perform a new waste determination whenever changes to the hazardous waste streams fed to the process are reasonably likely to cause the characteristics of the hazardous waste at the point of waste treatment to change to levels that fail to achieve the applicable conditions specified in § 265.1083(c)(2) of this subpart.

(ii) When the hazardous waste is treated by a batch process that is performed repeatedly but not necessarily continuously, the owner or operator shall:

(A) Perform an initial waste determination for the treated hazardous waste in one or more representative batches treated by the process, and thereafter update the information used for the waste determination at least once

every 12 months following the date of the initial waste determination; and

(B) Perform a new waste determination whenever changes to the hazardous waste treated by the process are reasonably likely to cause the characteristics of the hazardous waste at the point of waste treatment to change to levels that fail to achieve the applicable conditions specified in § 265.1083(c)(2) of this subpart.

(3) The owner or operator shall designate and record the specific provision in § 265.1083(c)(2) of this subpart for which the waste determination is being performed. The waste determination for the treated hazardous waste shall be performed using the applicable procedures specified in paragraphs (b)(4) through (b)(10) of this section.

(4) Procedure to determine the average VO concentration of a hazardous waste at the point of waste treatment.

(i) The owner or operator shall identify and record the point of waste treatment for the hazardous waste. All waste samples used to determine the average VO concentration of the hazardous waste shall be collected at this point.

(ii) The owner or operator shall designate and record the averaging period to be used for determining the average VO concentration for the hazardous waste. The averaging period shall not exceed 1 year. An initial waste determination shall be performed for each averaging period.

(iii) The owner or operator shall identify each discrete quantity of the material composing the hazardous waste represented by the averaging period designated in paragraph (b)(4)(ii) of this section.

(iv) The following procedure shall be used measure the VO concentration for each discrete quantity of material identified in paragraph (b)(4)(iii) of this section:

(A) A sufficient number of samples, but no less than four samples, shall be collected to represent the organic composition for the entire discrete quantity of hazardous waste being tested. All of the samples shall be collected within a 1-hour period. Sufficient information shall be prepared and recorded to document the waste quantity represented by the samples and, as applicable, the operating conditions for the process treating the hazardous waste represented by the samples.

(B) Each sample shall be collected in accordance with the requirements specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, Third Edition, September 1986, as amended by Update I, November 15, 1992 (incorporated by reference—refer to § 260.11 of this chapter).

(C) Each collected sample shall be prepared and analyzed in accordance with the requirements of Method 25D in 40 CFR part 60, appendix A.

(D) The measured VO concentration for the discrete quantity of hazardous waste shall be determined by using the results for all samples analyzed in accordance with paragraph (b)(4)(iv)(C) of this section and the following equation:

$$C = \frac{1}{n} \times \sum_{i=1}^{n} C_i$$

where:

C = Measured VO concentration of the discrete quantity of hazardous waste, ppmw.

i = Individual sample "i" of the hazardous waste collected in accordance with the requirements of SW-846.

n = Total number of samples of hazardous waste collected (at least 4) within a 1-hour period.

C_i = VO concentration measured by Method 25D for sample "i", ppmw.

(v) The average VO concentration of the hazardous waste at the point of waste treatment shall be determined using the following procedure:

(A) When the facility owner or operator is the generator of the hazardous waste, a sufficient number of VO concentration measurements for the hazardous waste shall be performed in accordance with the requirements of paragraph (b)(4)(iv) of this section to represent the complete range of hazardous waste organic compositions and quantities treated by the process during the entire averaging period.

(B) The average VO concentration of the hazardous waste at the point of waste treatment shall be calculated by using the results for all VO measurements performed in accordance with paragraph (b)(4)(iv) of this section and the following equation:

$$C_{ave} = \frac{1}{Q_T} \times \sum_{j=1}^{m} \left(Q_j \times C_j\right)$$

where:

C_{ave} = Average VO concentration of the hazardous waste at the point of waste treatment, ppmw.

j = Individual discrete quantity "j" of the hazardous waste for which a VO concentration measurement is determined in accordance with the requirements of paragraph (b)(4)(iv) of this section.

m = Total number of VO concentration measurements determined in accordance with the requirements of paragraph (b)(4)(iv) of this section for the averaging period.

Q_j = Mass of the discrete quantity of the hazardous waste represented by C_j, kg.

Q_T = Total mass of the hazardous waste for the averaging period, kg.

C_j = Measured VO concentration of discrete quantity "j" for the hazardous waste determined in accordance with the requirements of paragraph (b)(4)(iv) of this section, ppmw.

(5) Procedure to determine the exit concentration limit (C_t) for a treated hazardous waste.

(i) The point of waste origination for each hazardous waste treated by the process at the same time shall be identified.

(ii) If a single hazardous waste stream is identified in paragraph (b)(5)(i) of this section, then the exit concentration limit (C_t) shall be 100 ppmw.

(iii) If more than one hazardous waste stream is identified in paragraph (b)(5)(i) of this section, then the VO concentration of each hazardous waste stream at the point of waste origination shall be determined in accordance with the requirements of paragraph (a) of this section. The exit concentration limit (C_t) shall be calculated by using the results determined for each individual hazardous waste stream and the following equation:

$$C_t = \frac{\sum_{x=1}^{m}\left(Q_x \times \overline{C}_x\right) + \sum_{y=1}^{n}\left(Q_y \times 100\,\text{ppmw}\right)}{\sum_{x=1}^{m} Q_x + \sum_{y=1}^{n} Q_y}$$

where:

C_t = Exit concentration limit for treated hazardous waste, ppmw.

x = Individual hazardous waste stream "x" that has a VO concentration less than 100 ppmw at the point of waste origination as determined in accordance with the requirements of § 265.1084(a).

y = Individual hazardous waste stream "y" that has a VO concentration equal to or greater than 100 ppmw at the point of waste origination as determined in accordance with the requirements of § 265.1084(a).

m = Total number of "x" hazardous waste streams treated by process.

n = Total number of "y" hazardous waste streams treated by process.

Q_x = Annual mass quantity of hazardous waste stream "x", kg/yr.

Q_y = Annual mass quantity of hazardous waste stream "y", kg/yr.

$\bar{C}_x$ = Average VO concentration of hazardous waste stream "x" at the point of waste origination as determined in accordance with the requirements of § 265.1084(a), ppmw.

(6) Procedure to determine the organic reduction efficiency (R) for a treated hazardous waste.

(i) The organic reduction efficiency for a treatment process shall be determined based on results for a minimum of three consecutive runs. The sampling time for each run shall be 1 hour.

(ii) The point of each hazardous waste stream entering the process and each hazardous waste stream exiting the process that is to be included in the calculation of the organic reduction efficiency for the process shall be identified.

(iii) For each run, the following information shall be determined for each hazardous waste stream identified in paragraph (b)(6)(ii) of this section using the following procedures:

(A) The mass quantity of each hazardous waste stream entering the process (Q_b) and the mass quantity of each hazardous waste stream exiting the process (Q_a) shall be determined.

(B) The VO concentration of each hazardous waste stream entering the process (C_b) during the run shall be measured in accordance with the requirements of paragraphs (a)(5)(iv)(A) through (a)(5)(iv)(D) of this section. The VO concentration of each hazardous waste stream exiting the process (C_a) during the run shall be determined in accordance with the requirements of paragraph (b)(4)(iv) of this section. Samples shall be collected as follows:

(1) For a continuous process, the samples of the hazardous waste entering and samples of the hazardous waste exiting the process shall be collected concurrently.

(2) For a batch process, the samples of the hazardous waste entering the process shall be collected at the time that the hazardous waste is placed in the process. The samples of the hazardous waste exiting the process shall be collected as soon as practicable after the time when the process stops operation or the final treatment cycle ends.

(iv) The waste volatile organic mass flow entering the process (E_b) and the waste volatile organic mass flow exiting the process (E_a) shall be calculated by using the results determined in accordance with paragraph (b)(6)(iii) of this section and the following equations:

$$E_b = \frac{1}{10^6}\sum_{j=1}^{m}\left(Q_{bj} \times C_{bj}\right)$$

$$E_a = \frac{1}{10^6}\sum_{j=1}^{m}\left(Q_{aj} \times C_{aj}\right)$$

where:

E_a = Waste volatile organic mass flow exiting process, kg/hr.

E_b = Waste volatile organic mass flow entering process, kg/hr.

m = Total number of runs (at least 3)

j = Individual run "j"

Q_{bj} = Mass quantity of hazardous waste entering process during run "j", kg/hr.

Q_{aj} = Average mass quantity of waste exiting process during run "j", kg/hr.

C_{aj} = Measured VO concentration of hazardous waste exiting process during run "j" as determined in accordance with the requirements of § 265.1084(b)(4)(iv), ppmw.

C_{bj} = Measured VO concentration of hazardous waste entering process during run "j" as determined in accordance with the requirements of § 265.1084 (a)(5)(iv)(A) through (a)(5)(iv)(D), ppmw.

(v) The organic reduction efficiency of the process shall be calculated by using the results determined in accordance with paragraph (b)(6)(iv) of this section and the following equation:

$$R = \frac{E_b - E_a}{E_b} \times 100\%$$

where:

R = Organic reduction efficiency, percent.

E_b = Waste volatile organic mass flow entering process as determined in accordance with the requirements of paragraph (b)(6)(iv) of this section, kg/hr.

E_a = Waste volatile organic mass flow exiting process as determined in accordance with the requirements of paragraph (b)(6)(iv) of this section, kg/hr.

(7) Procedure to determine the organic biodegradation efficiency (R_{bio}) for a treated hazardous waste.

(i) The fraction of organics biodegraded (F_{bio}) shall be determined using the procedure specified in 40 CFR part 63, appendix C of this chapter.

(ii) The organic biodegradation efficiency shall be calculated by using the following equation:

$R_{bio} = F_{bio} \times 100\%$

where:

R_{bio} = Organic biodegradation efficiency, percent.

F_{bio} = Fraction of organic biodegraded as determined in accordance with the requirements of paragraph (b)(7)(i) of this section.

(8) Procedure to determine the required organic mass removal rate (RMR) for a treated hazardous waste.

(i) The point of waste origination for each hazardous waste treated by the process at the same time shall be identified.

(ii) For each hazardous waste stream identified in paragraph (b)(8)(i) of this section, the VO concentration of the hazardous waste stream at the point of waste origination shall be determined in accordance with the requirements of paragraph (a) of this section.

(iii) For each individual hazardous waste stream that has a volatile organic concentration equal to or greater than 100 ppmw at the point of waste origination as determined in accordance with the requirements of paragraph (b)(8)(ii) of this section, the average volumetric flow rate of hazardous waste at the point of waste origination and the density of the hazardous waste stream shall be determined.

(iv) The required organic mass removal rate for the hazardous waste shall be calculated by using the results determined for each individual hazardous waste stream in accordance with the requirements of paragraphs (b)(8)(ii) and (b)(8)(iii) of this section and the following equation:

$$RMR = \sum_{y=1}^{n}\left[V_y \times k_y \times \frac{\left(\bar{C}_y - 100\text{ ppmw}\right)}{10^6}\right]$$

where:

RMR = Required organic mass removal rate, kg/hr.

y = Individual hazardous waste stream "y" that has a volatile organic concentration equal to or greater than 100 ppmw at the point of waste origination as determined in accordance with the requirements of § 265.1084(a).

n = Total number of "y" hazardous waste streams treated by process.

V_y = Average volumetric flow rate of hazardous waste stream "y" at the point of waste origination, m^3/hr.

k_y = Density of hazardous waste stream "y", kg/m^3

$\bar{C}_y$ = Average VO concentration of hazardous waste stream "y" at the point of waste origination as determined in accordance with the requirements of § 265.1084(a), ppmw.

(9) Procedure to determine the actual organic mass removal rate (MR) for a treated hazardous waste.

(i) The actual organic mass removal rate shall be determined based on results for a minimum of three consecutive runs. The sampling time for each run shall be 1 hour.

(ii) The waste volatile organic mass flow entering the process (E_b) and the waste volatile organic mass flow exiting the process (E_a) shall be determined in accordance with the requirements of paragraph (b)(6)(iv) of this section.

(iii) The actual organic mass removal rate shall be calculated by using the results determined in accordance with the requirements of paragraph (b)(9)(ii) of this section and the following equation:

$$MR = E_b - E_a$$

where:

MR = Actual organic mass removal rate, kg/hr.

E_b = Waste volatile organic mass flow entering process as determined in accordance with the requirements of paragraph (b)(6)(iv) of this section, kg/hr.

E_a = Waste volatile organic mass flow exiting process as determined in accordance with the requirements of paragraph (b)(6)(iv) of this section, kg/hr.

(10) Procedure to determine the actual organic mass biodegradation rate (MR_{bio}) for a treated hazardous waste.

(i) The actual organic mass biodegradation rate shall be determined based on results for a minimum of three consecutive runs. The sampling time for each run shall be 1 hour.

(ii) The waste organic mass flow entering the process (E_b) shall be determined in accordance with the requirements of paragraph (b)(6)(iv) of this section.

(iii) The fraction of organic biodegraded (F_{bio}) shall be determined using the procedure specified in 40 CFR part 63, appendix C.

(iv) The actual organic mass biodegradation rate shall be calculated by using the mass flow rates and fraction of organic biodegraded determined in accordance with the requirements of paragraphs (b)(10)(ii) and (b)(10)(iii) of this section and the following equation:

$$MR_{bio} = E_b \times F_{bio}$$

where:

MR_{bio} = Actual organic mass biodegradation rate, kg/hr.

E_b = Waste organic mass flow entering process as determined in accordance with the requirements of paragraph (b)(6)(iv) of this section, kg/hr.

F_{bio} = Fraction of organic biodegraded as determined in accordance with the requirements of paragraph (b)(10)(iii) of this section.

(c) Procedure to determine the maximum organic vapor pressure of a hazardous waste in a tank.

(1) An owner or operator shall determine the maximum organic vapor pressure for each hazardous waste placed in a tank using air emission controls in accordance with standards specified in § 265.1085(c) of this subpart.

(2) An owner or operator shall use either direct measurement as specified in paragraph (c)(3) of this section or knowledge of the waste as specified by paragraph (c)(4) of this section to determine the maximum organic vapor pressure which is representative of the hazardous waste composition stored or treated in the tank.

(3) To determine the maximum organic vapor pressure of the hazardous waste by direct measurement, the following procedure shall be used:

(i) Representative samples of the waste contained in the tank shall be collected. Sampling shall be conducted in accordance with the requirements specified in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication No. SW-846, Third Edition, September 1986, as amended by Update I, November 15, 1992 (incorporated by reference—refer to § 260.11 of this chapter).

(ii) Any appropriate one of the following methods may be used to analyze the samples and compute the maximum organic vapor pressure:

(A) Method 25E in 40 CFR part 60, appendix A;

(B) Methods described in American Petroleum Institute Publication 2517, Third Edition, February 1989, "Evaporative Loss from External Floating-Roof Tanks," (incorporated by reference—refer to § 260.11 of this chapter);

(C) Methods obtained from standard reference texts;

(D) ASTM Method 2879-92 (incorporated by reference—refer to § 260.11 of this chapter); or

(E) Any other method approved by the Regional Administrator.

(4) To determine the maximum organic vapor pressure of the hazardous waste by knowledge, sufficient information shall be prepared and recorded that documents the maximum organic vapor pressure of the hazardous waste in the tank. Examples of information that may be used include: documentation that the waste is generated by a process for which no organics-containing materials are used; or that the waste is generated by a process for which at other locations it previously has been determined by direct measurement that the waste maximum organic vapor pressure is less than the maximum vapor pressure limit for the appropriate design capacity category specified for the tank.

§ 265.1085 Standards: Tanks.

(a) This section applies to owners and operators of tanks subject to this subpart into which any hazardous waste is placed except for the following tanks:

(1) A tank in which all hazardous waste entering the tank meets the conditions specified in § 265.1083(c) of this subpart; or

(2) A tank used for biological treatment of hazardous waste in accordance with the requirements of § 265.1083(c)(2)(iv) of this subpart.

(b) The owner or operator shall place the hazardous waste into one of the following tanks:

(1) A tank equipped with a cover (e.g., a fixed roof) that is vented through a closed-vent system to a control device in accordance with the requirements specified in paragraph (d) of this section;

(2) A tank equipped with a fixed roof and internal floating roof in accordance with the requirements of § 265.1091 of this subpart;

(3) A tank equipped with an external floating roof in accordance with the requirements of § 265.1091 of this subpart; or

(4) A pressure tank that is designed to operate as a closed system such that the tank operates with no detectable organic emissions at all times that hazardous waste is in the tank except as provided for in paragraph (g) of this section.

(c) As an alternative to complying with paragraph (b) of this section, an owner or operator may place hazardous waste in a tank equipped with a cover (e.g., a fixed roof) meeting the requirements specified in paragraph (d)(1) of this section when the hazardous waste is determined to meet all of the following conditions:

(1) The hazardous waste is neither mixed, stirred, agitated, nor circulated within the tank by the owner or operator using a process that results in splashing, frothing, or visible turbulent flow on the waste surface during normal process operations;

(2) The hazardous waste in the tank is not heated by the owner or operator except during conditions requiring that the waste be heated to prevent the waste from freezing or to maintain adequate

waste flow conditions for continuing normal process operations;

(3) The hazardous waste in the tank is not treated by the owner or operator using a waste stabilization process or a process that produces an exothermic reaction; and

(4) The maximum organic vapor pressure of the hazardous waste in the tank as determined using the procedure specified in § 265.1084(c) of this subpart is less than the following applicable value:

(i) If the tank design capacity is equal to or greater than 151 m^3, then the maximum organic vapor pressure shall be less than 5.2 kPa;

(ii) If the tank design capacity is equal to or greater than 75 m^3 but less than 151 m^3, then the maximum organic vapor pressure shall be less than 27.6 kPa; or

(iii) If the tank design capacity is less than 75 m^3, then the maximum organic vapor pressure shall be less than 76.6 kPa.

(d) To comply with paragraph (b)(1) of this section, the owner or operator shall design, install, operate, and maintain a cover that vents the organic vapors emitted from hazardous waste in the tank through a closed-vent system connected to a control device.

(1) The cover shall be designed and operated to meet the following requirements:

(i) The cover and all cover openings (e.g., access hatches, sampling ports, and gauge wells) shall be designed to operate with no detectable organic emissions when all cover openings are secured in a closed, sealed position.

(ii) Each cover opening shall be secured in a closed, sealed position (e.g., covered by a gasketed lid or cap) at all times that hazardous waste is in the tank except as provided for in paragraph (f) of this section.

(2) The closed-vent system and control device shall be designed and operated in accordance with the requirements of § 265.1088 of this subpart.

(e) The owner and operator shall install, operate, and maintain enclosed pipes or other closed systems for the transfer of hazardous waste as described in paragraph (e)(1) or (e)(2) of this section. The EPA considers a drain system that meets the requirements of 40 CFR 61.346(a)(1) or 40 CFR 61.346(b)(1) through (b)(3) to be a closed system.

(1) Transfer all hazardous waste to the tank from another tank, surface impoundment, or container subject to this subpart except for those hazardous wastes that meet the conditions specified in § 265.1083(c) of this subpart; and

(2) Transfer all hazardous waste from the tank to another tank, surface impoundment, or container subject to this subpart except for those hazardous wastes that meet the conditions specified in § 265.1083(c) of this subpart.

(f) Each cover opening shall be secured in a closed, sealed position (e.g., covered by a gasketed lid) at all times that hazardous waste is in the tank except when it is necessary to use the cover opening to:

(1) Add, remove, inspect, or sample the material in the tank;

(2) Inspect, maintain, repair, or replace equipment located inside the tank; or

(3) Vent gases or vapors from the tank to a closed-vent system connected to a control device that is designed and operated in accordance with the requirements of § 265.1088 of this subpart.

(g) One or more safety devices which vent directly to the atmosphere may be used on the tank, cover, closed-vent system, or control device provided each safety device meets all of the following conditions:

(1) The safety device is not used for planned or routine venting of organic vapors from the tank or the closed-vent system connected to a control device; and

(2) The safety device remains in a closed, sealed position at all times except when an unplanned event requires that the device open for the purpose of preventing physical damage or permanent deformation of the tank, cover, closed-vent system, or control device in accordance with good engineering and safety practices for handling flammable, combustible, explosive, or other hazardous materials. An example of an unplanned event is a sudden power outage.

§ 265.1086 Standards: surface impoundments.

(a) This section applies to owners and operators of surface impoundments subject to this subpart into which any hazardous waste is placed except for the following surface impoundments:

(1) A surface impoundment in which all hazardous waste entering the surface impoundment meets the conditions specified in § 265.1083(c) of this subpart; or

(2) A surface impoundment used for biological treatment of hazardous waste in accordance with the requirements of § 265.1083(c)(2)(iv) of this subpart.

(b) The owner or operator shall place the hazardous waste into a surface impoundment equipped with a cover (e.g., an air-supported structure or a rigid cover) that is vented through a closed-vent system to a control device meeting the requirements specified in paragraph (d) of this section.

(c) As an alternative to complying with paragraph (b) of this section, an owner or operator may place hazardous waste in a surface impoundment equipped with a floating membrane cover meeting the requirements specified in paragraph (e) of this section when the hazardous waste is determined to meet all of the following conditions:

(1) The hazardous waste is neither mixed, stirred, agitated, nor circulated within the surface impoundment by the owner or operator using a process that results in splashing, frothing, or visible turbulent flow on the waste surface during normal process operations;

(2) The hazardous waste in the surface impoundment is not heated by the owner or operator; and

(3) The hazardous waste in the surface impoundment is not treated by the owner or operator using a waste stabilization process or a process that produces an exothermic reaction.

(d) To comply with paragraph (b)(1) of this section, the owner or operator shall design, install, operate, and maintain a cover that vents the organic vapors emitted from hazardous waste in the surface impoundment through a closed-vent system connected to a control device.

(1) The cover shall be designed, installed, operated, and maintained to meet the following requirements:

(i) The cover and all cover openings (e.g., access hatches, sampling ports, and gauge wells) shall be designed to operate with no detectable organic emissions when all cover openings are secured in a closed, sealed position.

(ii) Each cover opening shall be secured in the closed, sealed position (e.g., covered by a gasketed lid or cap) at all times that hazardous waste is in the surface impoundment except as provided for in paragraph (g) of this section.

(iii) The closed-vent system and control device shall be designed and operated in accordance with § 265.1088 of this subpart.

(e) To comply with paragraph (c) of this section, the owner or operator shall design, install, operate, and maintain a floating membrane cover that meets all of the following requirements:

(1) The floating membrane cover shall be designed, installed, and operated such that at all times when hazardous waste is in the surface impoundment, the entire surface area of the hazardous

waste is enclosed by the cover, and any air spaces underneath the cover are not vented to the atmosphere except during conditions specified in paragraph (h) of this section.

(2) The floating membrane cover and all cover openings (e.g., access hatches, sampling ports, and gauge wells) shall be designed to operate with no detectable organic emissions when all cover openings are secured in a closed, sealed position.

(3) Each cover opening shall be secured in a closed, sealed position (e.g., covered by a gasketed lid or cap) at all times that hazardous waste is in the surface impoundment except as provided for in paragraphs (g)(1) through (g)(3) of this section; and

(4) The synthetic membrane material used for the floating membrane cover shall be either:

(i) High density polyethylene with a thickness no less than 2.5 mm; or

(ii) A material or a composite of different materials determined to have the following properties:

(A) Organic permeability properties that are equivalent to those of the material specified in paragraph (e)(4)(i) of this section; and

(B) Chemical and physical properties that maintain the material integrity for as long as the cover is in use. Factors that shall be considered in selecting the material include: the effects of contact with the waste managed in the impoundment, weather exposure, and cover installation and operation practices.

(f) The owner or operator shall install, operate, and maintain enclosed pipes or other closed systems for the transfer of hazardous waste as described in paragraph (f)(1) or (f)(2) of this section. The EPA considers a drain system that meets the requirements of 40 CFR 61.346(a)(1) or 40 CFR 61.346(b)(1) through (b)(3) to be a closed system.

(1) Transfer all hazardous waste to the surface impoundment from another tank, surface impoundment, or container subject to this subpart except for those hazardous wastes that meet the conditions specified in § 265.1083(c) of this subpart; and

(2) Transfer all hazardous waste from the surface impoundment to another tank, surface impoundment, or container subject to this subpart except for those hazardous wastes that meet the conditions specified in § 265.1083(c) of this subpart.

(g) Each cover opening shall be secured in the closed, sealed position (e.g., covered by a gasketed lid or cap) at all times that hazardous waste is in the surface impoundment except when it is necessary to use the cover opening to:

(1) Add, remove, inspect, or sample the material in the surface impoundment;

(2) Inspect, maintain, repair, or replace equipment located underneath the cover;

(3) Remove treatment residues from the surface impoundment in accordance with the requirements of 40 CFR 268.4; or

(4) Vent gases or vapors from the surface impoundment to a closed-vent system connected to a control device that is designed and operated in accordance with the requirements of § 265.1088 of this subpart.

(h) One or more safety devices that vent directly to the atmosphere may be installed on the cover, closed-vent system, or control device provided each device meets all of the following conditions:

(1) The safety device is not used for planned or routine venting of organic vapors from the surface impoundment or the closed-vent system connected to a control device; and

(2) The safety device remains in a closed, sealed position at all times except when an unplanned event requires that the device open for the purpose of preventing physical damage or permanent deformation of the cover, closed-vent system, or control device in accordance with good engineering and safety practices for handling flammable, combustible, explosive, or other hazardous materials. An example of an unplanned event is a sudden power outage.

§ 265.1087 Standards: Containers.

(a) This section applies to the owners and operators of containers having design capacities greater than 0.1 m^3 subject to this subpart into which any hazardous waste is placed except for a container in which all hazardous waste entering the container meets the conditions specified in § 265.1083(c) of this subpart.

(b) An owner or operator shall manage hazardous waste in containers using the following procedures:

(1) The owner or operator shall place the hazardous waste into one of the following containers except when a container is used for hazardous waste treatment as required by paragraph (b)(2) of this section:

(i) A container that is equipped with a cover which operates with no detectable organic emissions when all container openings (e.g., lids, bungs, hatches, and sampling ports) are secured in a closed, sealed position. The owner or operator shall determine that a container operates with no detectable emissions by testing each opening on the container for leaks in accordance with Method 21 in 40 CFR part 60, appendix A the first time any portion of the hazardous waste is placed into the container. If a leak is detected and cannot be repaired immediately, the hazardous waste shall be removed from the container and the container not used to meet the requirements of this paragraph until the leak is repaired and the container is retested.

(ii) A container having a design capacity less than or equal to 0.46 m^3 that is equipped with a cover and complies with all applicable Department of Transportation regulations on packaging hazardous waste for transport under 49 CFR part 178.

(A) A container that is managed in accordance with the requirements of 49 CFR part 178 for the purpose of complying with this subpart is not subject to any exceptions to the 49 CFR part 178 regulations, except as noted in paragraph (b)(1)(ii)(B) of this section.

(B) A lab pack that is managed in accordance with the requirements of 49 CFR part 178 for the purpose of complying with this subpart may comply with the exceptions for combination packagings specified in 49 CFR 173.12(b).

(iii) A container that is attached to or forms a part of any truck, trailer, or railcar; and that has been demonstrated within the preceding 12 months to be organic vapor tight when all container openings are in a closed, sealed position (e.g., the container hatches or lids are gasketed and latched). For the purpose of meeting the requirements of this paragraph, a container is organic vapor tight if the container sustains a pressure change of not more than 750 pascals within 5 minutes after it is pressurized to a minimum of 4,500 pascals. This condition is to be demonstrated using the pressure test specified in Method 27 of 40 CFR part 60, appendix A, and a pressure measurement device which has a precision of ± 2.5 mm water and which is capable of measuring above the pressure at which the container is to be tested for vapor tightness.

(2) An owner or operator treating hazardous waste in a container by either a waste stabilization process, any process that requires the addition of heat to the waste, or any process that produces an exothermic reaction shall meet the following requirements:

(i) Whenever it is necessary for the container to be open during the treatment process, the container shall be located inside an enclosure that is

vented through a closed-vent system to a control device.

(ii) The enclosure shall be a structure that is designed and operated in accordance with the following requirements:

(A) The enclosure shall be a structure that is designed and operated with sufficient airflow into the structure to capture the organic vapors emitted from the hazardous waste in the container and vent the vapors through the closed-vent system to the control device.

(B) The enclosure may have permanent or temporary openings to allow worker access; passage of containers through the enclosure by conveyor or other mechanical means; entry of permanent mechanical or electrical equipment; or to direct airflow into the enclosure. The pressure drop across each opening in the enclosure shall be maintained at a pressure below atmospheric pressure such that whenever an open container is placed inside the enclosure no organic vapors released from the container exit the enclosure through the opening. The owner or operator shall determine that an enclosure achieves this condition by measuring the pressure drop across each opening in the enclosure. If the pressure within the enclosure is equal to or greater than atmospheric pressure then the enclosure does not meet the requirements of this section.

(iii) The closed-vent system and control device shall be designed and operated in accordance with the requirements of § 265.1088 of this subpart.

(3) An owner or operator transferring hazardous waste into a container having a design capacity greater than 0.46 m^3 shall meet the following requirements:

(i) Hazardous waste transfer by pumping shall be performed using a conveyance system that uses a tube (e.g., pipe, hose) to add the waste into the container. During transfer of the waste into the container, the cover shall remain in place and all container openings shall be maintained in a closed, sealed position except for those openings through which the tube enters the container and as provided for in paragraph (c) of this section. The tube shall be positioned in a manner such that either the:

(A) Tube outlet continuously remains submerged below the waste surface at all times waste is flowing through the tube;

(B) Lower bottom edge of the tube outlet is located at a distance no greater than two inside diameters of the tube or 15.25 cm, whichever distance is greater, from the bottom of the container at all times waste is flowing through the tube; or

(C) Tube is connected to a permanent port mounted on the bottom of the container so that the lower edge of the port opening inside the container is located at a distance equal to or less than 15.25 cm from the container bottom.

(ii) Hazardous waste transferred by a means other than pumping shall be performed such that during transfer of the waste into the container, the cover remains in place and all container openings are maintained in a closed, sealed position except for those openings through which the hazardous waste is added and as provided for in paragraph (d) of this section.

(c) Each container opening shall be maintained in a closed, sealed position (e.g., covered by a gasketed lid) at all times that hazardous waste is in the container except when it is necessary to use the opening to:

(1) Add, remove, inspect, or sample the material in the container;

(2) Inspect, maintain, repair, or replace equipment located inside the container; or

(3) Vent gases or vapors from a cover located over or enclosing an open container to a closed-vent system connected to a control device that is designed and operated in accordance with the requirements of § 265.1088 of this subpart.

(d) One or more safety devices that vent directly to the atmosphere may be used on the container, cover, enclosure, closed-vent system, or control device provided each device meets all of the following conditions:

(1) The safety device is not used for planned or routine venting of organic vapors from the container, cover, enclosure, or closed-vent system connected to a control device; and

(2) The safety device remains in a closed, sealed position at all times except when an unplanned event requires that the device open for the purpose of preventing physical damage or permanent deformation of the container, cover, enclosure, closed-vent system, or control device in accordance with good engineering and safety practices for handling flammable, combustible, explosive, or other hazardous materials. An example of an unplanned event is a sudden power outage.

§ 265.1088 Standards: Closed-vent systems and control devices.

(a) This section applies to each closed-vent system and control device installed and operated by the owner or operator to control air emissions in accordance with standards of this subpart.

(b) The closed-vent system shall meet the following requirements:

(1) The closed-vent system shall route the gases, vapors, and fumes emitted from the hazardous waste in the waste management unit to a control device that meets the requirements specified in paragraph (c) of this section.

(2) The closed-vent system shall be designed and operated in accordance with the requirements specified in § 265.1033(j) of this part.

(3) If the closed-vent system contains one or more bypass devices that could be used to divert all or a portion of the gases, vapors, or fumes from entering the control device, the owner or operator shall meet the following requirements:

(i) For each bypass device except as provided for in paragraph (b)(3)(ii) of this section, the owner or operator shall either:

(A) Install, calibrate, maintain, and operate a flow indicator at the inlet to the bypass device that indicates at least once every 15 minutes whether gas, vapor, or fume flow is present in the bypass device; or

(B) Secure the valve installed at the inlet to the bypass device in the closed position using a car-seal or a lock-and-key type configuration. The owner or operator shall visually inspect the seal or closure mechanism at least once every month to verify that the valve is maintained in the closed position.

(ii) Low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and safety devices are not subject to the requirements of paragraph (b)(3)(i) of this section.

(c) The control device shall meet the following requirements:

(1) The control device shall be one of the following devices:

(i) A control device designed and operated to reduce the total organic content of the inlet vapor stream vented to the control device by at least 95 percent by weight;

(ii) An enclosed combustion device designed and operated in accordance with the requirements of § 265.1033(c); or

(iii) A flare designed and operated in accordance with the requirements of § 265.1033(d).

(2) The control device shall be operating at all times when gases, vapors, or fumes are vented from the waste management unit through the closed-vent system to the control device.

(3) The owner or operator using a carbon adsorption system to comply with paragraph (c)(1) of this section

shall operate and maintain the control device in accordance with the following requirements:

(i) Following the initial startup of the control device, all activated carbon in the control device shall be replaced with fresh carbon on a regular basis in accordance with the requirements of § 265.1033(g) or § 265.1033(h).

(ii) All carbon removed from the control device shall be managed in accordance with the requirements of § 265.1033(l).

(4) An owner or operator using a control device other than a thermal vapor incinerator, flare, boiler, process heater, condenser, or carbon adsorption system to comply with paragraph (c)(1) of this section shall operate and maintain the control device in accordance with the requirements of § 265.1033(i).

(5) The owner or operator shall demonstrate that a control device achieves the performance requirements of paragraph (c)(1) of this section as follows:

(i) An owner or operator shall demonstrate using either a performance test as specified in paragraph (c)(5)(iii) of this section or a design analysis as specified in paragraph (c)(5)(iv) of this section the performance of each control device except for the following:

(A) A flare;

(B) A boiler or process heater with a design heat input capacity of 44 megawatts or greater;

(C) A boiler or process heater into which the vent stream is introduced with the primary fuel;

(D) A boiler or process heater burning hazardous waste for which the owner or operator has been issued a final permit under 40 CFR part 270 and designs and operates the unit in accordance with the requirements of 40 CFR part 266, subpart H; or

(E) A boiler or process heater burning hazardous waste for which the owner or operator has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(ii) An owner or operator shall demonstrate the performance of each flare in accordance with the requirements specified in § 265.1033(e).

(iii) For a performance test conducted to meet the requirements of paragraph (c)(5)(i) of this section, the owner or operator shall use the test methods and procedures specified in § 265.1034(c)(1) through (c)(4).

(iv) For a design analysis conducted to meet the requirements of paragraph (c)(5)(i) of this section, the design analysis shall meet the requirements specified in § 265.1035(b)(4)(iii).

(v) The owner or operator shall demonstrate that a carbon adsorption system achieves the performance requirements of paragraph (c)(1) of this section based on the total quantity of organics vented to the atmosphere from all carbon adsorption system equipment that is used for organic adsorption, organic desorption or carbon regeneration, organic recovery, and carbon disposal.

(6) If the owner or operator and the Regional Administrator do not agree on a demonstration of control device performance using a design analysis then the disagreement shall be resolved using the results of a performance test performed by the owner or operator in accordance with the requirements of paragraph (c)(5)(iii) of this section. The Regional Administrator may choose to have an authorized representative observe the performance test.

§ 265.1089 Inspection and monitoring requirements.

(a) This section applies to an owner or operator using air emission controls in accordance with the requirements of § 265.1085 through § 265.1088 of this subpart.

(b) Each cover used in accordance with requirements of § 265.1085 through § 265.1087 of this subpart shall be visually inspected and monitored for detectable organic emissions by the owner or operator using the procedure specified in paragraph (f) of this section except as follows:

(1) An owner or operator is exempted from performing the cover inspection and monitoring requirements specified in paragraph (f) of this section for the following tank covers:

(i) A tank internal floating roof that is inspected and monitored in accordance with the requirements of § 265.1091 of this subpart; or

(ii) A tank external floating roof that is inspected and monitored in accordance with the requirements of § 265.1091 of this subpart.

(2) If a tank is buried partially or entirely underground, an owner or operator is required to perform the cover inspection and monitoring requirements specified in paragraph (f) of this section only for those portions of the tank cover and those connections to the tank cover or tank body (e.g. fill ports, access hatches, gauge wells, etc.) that extend to or above the ground surface and can be opened to the atmosphere.

(3) An owner or operator is exempted from performing the cover inspection and monitoring requirements specified in paragraph (f) of this section for a container that meets all requirements specified in either § 265.1087(b)(1)(ii) or § 265.1087(b)(1)(iii) of this subpart.

(4) An owner or operator is exempted from performing the cover inspection and monitoring requirements specified in paragraph (f) of this section for an enclosure used to control air emissions from containers in accordance with the requirements of § 265.1087(b)(2) of this subpart.

(c) Each closed-vent system used in accordance with the requirements of § 265.1088 of this subpart shall be inspected and monitored by the owner or operator in accordance with the procedure specified in § 265.1033(j).

(d) Each control device used in accordance with the requirements of § 265.1088 of this subpart shall be inspected and monitored by the owner or operator in accordance with the procedure specified in § 265.1033(f).

(e) The owner or operator shall develop and implement a written plan and schedule to perform all inspection and monitoring requirements of this section. The owner or operator shall incorporate this plan and schedule into the facility inspection plan required under 40 CFR 265.15.

(f) Inspection and monitoring of a cover in accordance with the requirements of paragraph (b) of this section shall performed as follows:

(1) The cover and all cover openings shall be initially visually inspected and monitored for detectable organic emissions on or before the date that the tank, surface impoundment, or container using the cover becomes subject to the provisions of this subpart and at other times as requested by the Regional Administrator.

(2) At least once every 6 months following the initial visual inspection and monitoring for detectable organic emissions required under paragraph (f)(1) of this section, the owner and operator shall visually inspect and monitor the cover and each cover opening except for following cover openings:

(i) A cover opening that has continuously remained in a closed, sealed position for the entire period since the last time the cover opening was visually inspected and monitored for detectable emissions;

(ii) A cover opening that is designated as unsafe to inspect and monitor in accordance with paragraph (f)(5) of this section;

(iii) A cover opening on a cover installed and placed in operation before December 6, 1994, that is designated as difficult to inspect and monitor in accordance with paragraph (f)(6) of this section.

(3) To visually inspect a cover, the owner or operator shall view the entire cover surface and each cover opening in a closed, sealed position for evidence of any defect that may affect the ability of the cover or cover opening to continue to operate with no detectable organic emissions. A visible hole, gap, tear, or split in the cover surface or a cover opening is defined as a leak which shall be repaired in accordance with paragraph (f)(7) of this section.

(4) To monitor a cover for detectable organic emissions, the owner or operator shall use the following procedure:

(i) Method 21 in 40 CFR part 60, appendix A to test each cover seal and cover connection for detectable organic emissions. Seals on floating membrane covers shall be monitored around the entire perimeter of the cover at locations spaced no greater than 3 meters apart.

(ii) For all cover connections and seals except for the seals around a rotating shaft that passes through a cover opening, if the monitoring instrument indicates detectable organic emissions (i.e., an instrument concentration reading greater than 500 ppmv plus the background level), then a leak is detected. Each detected leak shall be repaired in accordance with paragraph (f)(7) of this section.

(iii) For the seals around a rotating shaft that passes through a cover opening, if the monitoring instrument indicates a concentration reading greater than 10,000 ppmv, then a leak is detected. Each detected leak shall be repaired in accordance with paragraph (f)(7) of this section.

(5) An owner or operator may designate a cover as an unsafe to inspect and monitor cover if all of the following conditions are met:

(i) The owner or operator determines that inspection or monitoring of the cover would expose a worker to dangerous, hazardous, or other unsafe conditions.

(ii) The owner or operator develops and implements a written plan and schedule to inspect the cover using the procedure specified in paragraph (f)(3) of this section and monitor the cover using the procedure specified in paragraph (f)(4) of this section as frequently as practicable during those times when a worker can safely access the cover.

(6) An owner or operator may designate a cover installed and placed in operation before December 6, 1994, as a difficult to inspect and monitor cover if all of the following conditions are met:

(i) The owner or operator determines that inspection or monitoring the cover requires elevating a worker to a height greater than 2 meters above a support surface; and

(ii) The owner and operator develops and implements a written plan and schedule to inspect the cover using the procedure specified in paragraph (f)(3) of this section, and to monitor the cover using the procedure specified in paragraph (f)(4) of this section at least once per calendar year.

(7) When a leak is detected by either of the methods specified in paragraph (f)(3) or (f)(4) of this section, the owner or operator shall repair the leak in the following manner:

(i) The owner or operator shall make a first attempt at repairing the leak no later than 5 calendar days after the leak is detected. Repair of the leak shall be completed as soon as practicable, but no later than 15 calendar days after the leak is detected. If repair of the leak cannot be completed within the 15-day period, except as provided in paragraph (f)(7)(ii) of this section, then the owner or operator shall not add hazardous waste to the tank, surface impoundment, or container on which the cover is installed until the repair of the leak is completed.

(ii) Repair of a leak detected on a cover installed on a tank or surface impoundment may be delayed beyond 15 calendar days if the owner or operator determines that both of the following conditions occur:

(A) Repair of the leak requires first emptying the contents of the tank or surface impoundment; and

(B) Temporary removal of the tank or surface impoundment from service will result in the unscheduled cessation of production from the process unit or operation of the waste management unit that is generating the hazardous waste managed in the tank or surface impoundment.

(iii) Repair of a leak determined by the owner or operator to meet the conditions specified in paragraph (f)(7)(ii) of this section shall be performed at the next time the process, system, or waste management unit that is generating the hazardous waste managed in the tank or surface impoundment stops operation for any reason.

§ 265.1090 Recordkeeping requirements.

(a) Each owner or operator of a facility subject to requirements in this subpart shall record and maintain the following information as applicable:

(1) Documentation for each cover installed on a tank in accordance with the requirements of § 265.1085(b)(2) or § 265.1085(b)(3) of this subpart that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the applicable design specifications as listed in § 265.1091(c) of this subpart.

(2) Documentation for each floating membrane cover installed on a surface impoundment in accordance with the requirements of § 265.1086(c) of this subpart that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the specifications listed in § 265.1086(e) of this subpart.

(3) Documentation for each enclosure used to control air emissions from containers in accordance with the requirements of § 265.1087(b)(2)(i) of this subpart that includes information prepared by the owner or operator or provided by the manufacturer or vendor describing the enclosure design, and certification by the owner or operator that the enclosure meets the specifications listed in § 265.1087(b)(2)(ii) of this subpart.

(4) Documentation for each closed-vent system and control device installed in accordance with the requirements of § 265.1088 of this subpart that includes:

(i) Certification that is signed and dated by the owner or operator stating that the control device is designed to operate at the performance level documented by a design analysis as specified in paragraph (a)(4)(ii) of this section or by performance tests as specified in paragraph (a)(4)(iii) of this section when the tank, surface impoundment, or container is or would be operating at capacity or the highest level reasonably expected to occur.

(ii) If a design analysis is used, then design documentation as specified in § 265.1035(b)(4). The documentation shall include information prepared by the owner or operator or provided by the control device manufacturer or vendor that describes the control device design in accordance with § 265.1035(b)(4)(iii) and certification by the owner or operator that the control equipment meets the applicable specifications.

(iii) If performance tests are used, then a performance test plan as specified in § 265.1035(b)(3) and all test results.

(iv) Information as required by § 265.1035(c)(1) and § 265.1035(c)(2).

(5) Records for all Method 27 tests performed by the owner or operator for each container used to meet the requirements of § 265.1087(b)(1)(iii) of this subpart.

(6) Records for all visual inspections conducted in accordance with the requirements of § 265.1089 of this subpart.

(7) Records for all monitoring for detectable organic emissions conducted in accordance with the requirements of § 265.1089 of this subpart.

(8) Records of the date of each attempt to repair a leak, repair methods applied, and the date of successful repair.

(9) Records for all continuous monitoring conducted in accordance with the requirements of § 265.1089 of this subpart.

(10) Records of the management of carbon removed from a carbon adsorption system conducted in accordance with § 265.1088(c)(3)(ii) of this subpart.

(11) Records for all inspections of each cover installed on a tank in accordance with the requirements of § 265.1085(b)(2) or § 265.1085(b)(3) of this subpart that includes information as listed in § 265.1091(c) of this subpart.

(b) An owner or operator electing to use air emission controls for a tank in accordance with the conditions specified in § 265.1085(c) of this subpart shall record the following information:

(1) Date and time each waste sample is collected for direct measurement of maximum organic vapor pressure in accordance with § 265.1084(c) of this subpart.

(2) Results of each determination for the maximum organic vapor pressure of the waste in the tank performed in accordance with § 265.1084(c) of this subpart.

(3) Records specifying the tank dimensions and design capacity.

(c) An owner or operator electing to use air emission controls for a tank in accordance with the requirements of § 265.1091 of this subpart shall record the information required by § 265.1091(c) of this subpart.

(d) An owner or operator electing not to use air emission controls for a particular tank, surface impoundment, or container subject to this subpart in accordance with the conditions specified in § 265.1083(c) of this subpart shall record the information used by the owner or operator for each waste determination (e.g., test results, measurements, calculations, and other documentation) in the facility operating log. If analysis results for waste samples are used for the waste determination, then the owner or operator shall record the date, time, and location that each waste sample is collected in accordance with applicable requirements of § 265.1084 of this subpart.

(e) An owner or operator electing to comply with requirements in accordance with § 265.1083(c)(2)(vi) or § 265.1083(c)(2)(v) of this subpart shall record the identification number for the incinerator, boiler, or industrial furnace in which the hazardous waste is treated.

(f) An owner or operator designating a cover as unsafe to inspect and monitor pursuant to § 265.1089(f)(5) of this subpart or difficult to inspect and monitor pursuant to § 265.1089(f)(6) of this subpart shall record in a log that is kept in the facility operating record the following information:

(1) A list of identification numbers for tanks with covers that are designated as unsafe to inspect and monitor in accordance with the requirements of § 265.1089(f)(5) of this subpart, an explanation for each cover stating why the cover is unsafe to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

(2) A list of identification numbers for tanks with covers that are designated as difficult to inspect and monitor in accordance with the requirements of § 265.1089(f)(6) of this subpart, an explanation for each cover stating why the cover is difficult to inspect and monitor, and the plan and schedule for inspecting and monitoring each cover.

(g) All records required by paragraphs (a) through (f) of this section except as required in paragraphs (a)(1) through (a)(4) of this section shall be maintained in the operating record for a minimum of 3 years. All records required by paragraphs (a)(1) through (a)(4) of this section shall be maintained in the operating record until the air emission control equipment is replaced or otherwise no longer in service.

(h) The owner or operator of a facility that is subject to this subpart and to the control device standards in 40 CFR part 60, subpart VV, or 40 CFR part 61, subpart V, may elect to demonstrate compliance with the applicable sections of this subpart by documentation either pursuant to this subpart, or pursuant to the provisions of 40 CFR part 60, subpart VV or 40 CFR part 61, subpart V, to the extent that the documentation required by 40 CFR parts 60 or 61 duplicates the documentation required by this section.

§ 265.1091 Alternative tank emissions control requirements.

(a) This section applies to owners and operators of tanks electing to comply with § 265.1085(b)(2) or (b)(3) of this subpart.

(1) The owner or operator electing to comply with § 265.1085(b)(2) of this subpart shall design, install, operate, and maintain a fixed roof and internal floating roof that meet the following requirements.

(i) The fixed roof shall comply with the requirements of § 265.1085(d)(1) of this subpart. The internal floating roof shall rest or float on the waste surface (but not necessarily in complete contact with it) inside a tank that has a fixed roof. The internal floating roof shall be floating on the waste surface at all times, except during initial fill and during those intervals when the tank is completely emptied or subsequently emptied and refilled. When the roof is resting on the leg supports, the process of filling, emptying, or refilling shall be continuous and shall be accomplished as rapidly as possible.

(ii) Each internal floating roof shall be equipped with one of the following closure devices between the wall of the tank and the edge of the internal floating roof:

(A) A foam- or liquid-filled seal mounted in contact with the waste (liquid-mounted seal). A liquid-mounted seal means a foam- or liquid-filled seal mounted in contact with the waste between the wall of the tank and the floating roof continuously around the circumference of the tank.

(B) Two seals mounted one above the other so that each forms a continuous closure that completely covers the space between the wall of the tank and the edge of the internal floating roof. The lower seal may be vapor-mounted, but both shall be continuous.

(C) A mechanical shoe seal. A mechanical shoe seal is a metal sheet held vertically against the wall of the tank by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

(iii) Each opening in a noncontact internal floating roof except for automatic bleeder vents (vacuum breaker vents) and the rim space vents is to provide a projection below the waste surface.

(iv) Each opening in the internal floating roof except for leg sleeves, automatic bleeder vents, rim space vents, column wells, ladder wells, sample wells, and stub drains is to be equipped with a cover or lid which is to be maintained in a closed position at all times (i.e., no visible gap) except when the device is in actual use. The cover or lid shall be equipped with a gasket. Covers on each access hatch and automatic gauge float well shall be bolted except when they are in use.

(v) Automatic bleeder vents shall be equipped with a gasket and are to be closed at all times when the roof is floating except when the roof is being floated off or is being landed on the roof leg supports.

(vi) Rim space vents shall be equipped with a gasket and are to be set to open only when the internal floating roof is not floating or at the manufacturer's recommended setting.

(vii) Each penetration of the internal floating roof for the purpose of sampling shall be a sample well. The sample well shall have a slit fabric cover that covers at least 90 percent of the opening.

(viii) Each penetration of the internal floating roof that allows for passage of a column supporting the fixed roof shall have a flexible fabric sleeve seal or a gasketed sliding cover.

(ix) Each penetration of the internal floating roof that allows for passage of a ladder shall have a gasketed sliding cover.

(2) The owner or operator electing to comply with § 265.1085(b)(3) of this subpart shall design, install, operate, and maintain an external floating roof that meets the following requirements:

(i) Each external floating roof shall be equipped with a closure device between the wall of the tank and the roof edge. The closure device is to consist of two seals, one above the other. The lower seal is referred to as the primary seal, and the upper seal is referred to as the secondary seal.

(A) The primary seal shall be either a mechanical shoe seal or a liquid-mounted seal. Except as provided in paragraph (b)(2)(iv) of this section, the seal shall completely cover the annular space between the edge of the floating roof and tank wall.

(B) The secondary seal shall completely cover the annular space between the external floating roof and the wall of the tank in a continuous fashion except as allowed in paragraph (b)(2)(iv) of this section.

(ii) Except for automatic bleeder vents and rim space vents, each opening in a noncontact external floating roof shall provide a projection below the waste surface. Except for automatic bleeder vents, rim space vents, roof drains, and leg sleeves, each opening in the roof is to be equipped with a gasketed cover, seal, or lid that is to be maintained in a closed position at all times (i.e., no visible gap) except when the device is in actual use. Automatic bleeder vents are to be closed at all times when the roof is floating except when the roof is being floated off or is being landed on the roof leg supports. Rim vents are to be set to open when the roof is being floated off the roof leg supports or at the manufacturer's recommended setting. Automatic bleeder vents and rim space vents are to be gasketed. Each emergency roof drain is to be provided with a slotted membrane fabric cover that covers at least 90 percent of the area of the opening.

(iii) The roof shall be floating on the waste at all times (i.e., off the roof leg supports) except during initial fill until the roof is lifted off leg supports and when the tank is completely emptied and subsequently refilled. The process of filling, emptying, or refilling when the roof is resting on the leg supports shall be continuous and shall be accomplished as rapidly as possible.

(3) The owner or operator may elect to comply with § 265.1085(b)(2) or (b)(3) of this subpart using an alternative means of emission limitation for which a **Federal Register** notice has been published in accordance with the requirements of 40 CFR 60.114b permitting its use as an alternative means for the purpose of compliance with 40 CFR 60.112b.

(b) Monitoring and inspection of the control equipment described in paragraph (a) of this section shall be conducted as follows:

(1) After installation, owners and operators of internal floating roofs shall:

(i) Visually inspect the internal floating roof, the primary seal, and the secondary seal (if one is in service), prior to filling the tank with waste. If there are holes, tears, or other openings in the primary seal, the secondary seal, or the seal fabric, or defects in the internal floating roof, or both, the owner or operator shall repair the items before filling the tank.

(ii) For tanks equipped with a liquid-mounted or mechanical shoe primary seal, visually inspect the internal floating roof and the primary seal or the secondary seal (if one is in service) through manholes and roof hatches on the fixed roof at least once every 12 months after initial fill. If the internal floating roof is not resting on the surface of the waste inside the tank, or there is liquid accumulated on the roof, or the seal is detached, or there are holes or tears in the seal fabric, the owner or operator shall repair the items or empty and remove the tank from service within 45 days. If a failure that is detected during inspections required in this paragraph cannot be repaired within 45 days and if the tank cannot be emptied within 45 days, a 30-day extension may be requested from the Regional Administrator. Such a request for an extension shall document that alternate capacity is unavailable and specify a schedule of actions the owner or operator will take that will assure that the control equipment will be repaired or the tank will be emptied as soon as possible.

(iii) For tanks equipped with a double-seal system as specified in paragraph (a)(1)(i)(B) of this section:

(A) Visually inspect the tank as specified in paragraph (b)(1)(iv) of this section at least every 5 years; or

(B) Visually inspect the tank as specified in paragraph (b)(1)(ii) of this section.

(iv) Visually inspect the internal floating roof, the primary seal, the secondary seal (if one is in service), gaskets, slotted membranes, and sleeve seals (if any) each time the tank is emptied and degassed. If the internal floating roof has defects; the primary seal has holes, tears, or other openings in the seal or the seal fabric; or the secondary seal has holes, tears, or other openings in the seal or the seal fabric; or the gaskets no longer close off the waste surfaces from the atmosphere; or the slotted membrane has more than 10 percent open area, the owner or operator shall repair the items as necessary so that none of the conditions specified in this paragraph exist before refilling the tank with waste. In no event shall inspections conducted in accordance with this provision occur at intervals greater than 10 years in the case of tanks conducting the annual visual inspection as specified in paragraph (b)(1)(ii) of this section, and at intervals no greater than 5 years in the case of tanks specified in paragraph (b)(1)(iii) of this section.

(v) Notify the Regional Administrator in writing at least 30 days prior to the filling or refilling of each tank for which an inspection is required by paragraphs (b)(1)(i) and (b)(1)(iv) of this section to afford the Regional Administrator the opportunity to have an observer present. If the inspection required by paragraph (b)(1)(iv) of this section is not planned and the owner or operator could not have known about the inspection 30 days in advance of refilling the tank, the owner or operator shall notify the Regional Administrator at least 7 days prior to the refilling of the tank. Notification shall be made by telephone immediately followed by written documentation demonstrating why the inspection was unplanned. Alternatively, this notification, including the written documentation, may be made in writing and sent by express mail so that it is received by the Regional Administrator at least 7 days prior to the refilling.

(2) After installation, the owner or operator of an external floating roof shall:

(i) Determine the gap areas and maximum gap widths between the primary seal and the wall of the tank and between the secondary seal and the

wall of the tank according to the following frequency:

(A) Measurements of gaps between the tank wall and the primary seal (seal gaps) shall be performed during the hydrostatic testing of the tank or within 60 days of the initial fill with waste and at least once every 5 years thereafter.

(B) Measurements of gaps between the tank wall and the secondary seal shall be performed within 60 days of the initial fill with waste and at least once per year thereafter.

(C) If any tank ceases to hold waste for a period of 1 year or more, subsequent introduction of waste into the tank shall be considered an initial fill for the purposes of paragraphs (b)(2)(i)(A) and (b)(2)(i)(B) of this section.

(ii) Determine the gap widths and areas in the primary and secondary seals individually by the following procedures:

(A) Measure seal gaps, if any, at one or more floating roof levels when the roof is floating off the roof leg supports.

(B) Measure seal gaps around the entire circumference of the tank in each place where a 0.32-cm diameter uniform probe passes freely (without forcing or binding against the seal) between the seal and the wall of the tank and measure the circumferential distance of each such location.

(C) Determine the total surface area of each gap described in paragraph (b)(2)(ii)(B) of this section by using probes of various widths to measure accurately the actual distance from the tank wall to the seal and multiplying each such width by its respective circumferential distance.

(iii) Add the gap surface area of each gap location for the primary seal and the secondary seal individually and divide the sum for each seal by the nominal diameter of the tank and compare each ratio to the respective standards in paragraph (b)(2)(iv) of this section.

(iv) Make necessary repairs or empty the tank within 45 days of identification in any inspection for seals not meeting the following requirements:

(A) The accumulated area of gaps between the tank wall and the mechanical shoe or liquid-mounted primary seal shall not exceed 212 cm^2 per meter of tank diameter, and the width of any portion of any gap shall not exceed 3.81 cm.

(*1*) One end of the mechanical shoe is to extend into the waste contained in the tank, and the other end is to extend a minimum vertical distance of 61 cm above the waste surface.

(*2*) There are to be no holes, tears, or other openings in the shoe, seal fabric, or seal envelope.

(B) The secondary seal is to meet the following requirements:

(*1*) The secondary seal is to be installed above the primary seal so that it completely covers the space between the roof edge and the tank wall except as provided in paragraph (b)(2)(ii)(C) of this section.

(*2*) The accumulated area of gaps between the tank wall and the secondary seal shall not exceed 21.2 cm^2 per meter of tank diameter, and the width of any portion of any gap shall not exceed 1.27 cm.

(*3*) There are to be no holes, tears, or other openings in the seal or seal fabric.

(v) If a failure that is detected during inspections required in paragraph (b)(2)(i) of this section cannot be repaired within 45 days and if the tank cannot be emptied within 45 days, a 30-day extension may be requested from the Regional Administrator. Such extension request shall include a demonstration of the unavailability of alternate capacity and a specification of a schedule that will assure that the control equipment will be repaired or the tank will be emptied as soon as possible.

(vi) Notify the Regional Administrator 30 days in advance of any gap measurements required by paragraph (b)(2)(i) of this section to afford the Regional Administrator the opportunity to have an observer present.

(vii) Visually inspect the external floating roof, the primary seal, secondary seal, and fittings each time the vessel is emptied and degassed.

(A) If the external floating roof has defects, the primary seal has holes, tears, or other openings in the seal or the seal fabric, or the secondary seal has holes, tears, or other openings in the seal or the seal fabric, the owner or operator shall repair the items as necessary so that none of the conditions specified in this paragraph exist before filling or refilling the tank with waste.

(B) For all the inspections required by paragraph (b)(2)(vii) of this section, the owner or operator shall notify the Regional Administrator in writing at least 30 days prior to the filling or refilling of each tank to afford the Regional Administrator the opportunity to inspect the tank prior to refilling. If the inspection required by paragraph (b)(2)(vii) of this section is not planned and the owner or operator could not have known about the inspection 30 days in advance of refilling the tank, the owner or operator shall notify the Regional Administrator at least 7 days prior to the refilling of the tank. Notification shall be made by telephone immediately followed by written documentation demonstrating why the inspection was unplanned. Alternatively, this notification, including the written documentation, may be made in writing and sent by express mail so that it is received by the Regional Administrator at least 7 days prior to the refilling.

(c) Owners and operators who elect to install and operate the control equipment in paragraph (a) of this section shall include the following information in the operating record in accordance with the requirements of § 265.1090(a)(1) and (a)(11) of this subpart:

(1) Internal floating roof.

(i) Documentation that describes the control equipment design and certifies that the control equipment meets the specifications of paragraphs (a)(1) and (b)(1) of this section.

(ii) Records of each inspection performed as required by paragraphs (b)(1)(i) through (b)(1)(iv) of this section. Each record shall identify the tank on which the inspection was performed and shall contain the date the tank was inspected and the observed condition of each component of the control equipment (seals, internal floating roof, and fittings).

(iii) If any of the conditions described in paragraph (b)(1)(ii) of this section are detected during the annual visual inspection required by paragraph (b)(1)(ii) of this section, the records shall identify the tank, the nature of the defects, and the date the tank was emptied or the nature of and date the repair was made.

(iv) After each inspection required by paragraph (b)(1)(iii) of this section that finds holes or tears in the seal or seal fabric, or defects in the internal floating roof, or other control equipment defects listed in paragraph (b)(1)(ii) of this section, the records shall identify the tank and the reason it did not meet the specifications of paragraph (a)(1) or (b)(1)(iii) of this section and describe each repair made.

(2) External floating roof.

(i) Documentation that describes the control equipment design and certifies that the control equipment meets the specifications of paragraphs (a)(2) and (b)(2)(ii) through (b)(2)(iv) of this section.

(ii) Records of each gap measurement performed as required by paragraph (b)(2) of this section. Each record shall identify the tank in which the measurement was performed, the date of measurement, the raw data obtained in the measurement, and the calculations described in paragraphs (b)(2)(ii) and (b)(2)(iii) of this section.

(iii) Records for each seal gap measurement that detects gaps

exceeding the limitations specified by paragraph (b)(2)(iv) of this section that identifies the tank, the date the tank was emptied or the repairs made, and the nature of the repair.

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE MANAGEMENT PROGRAM

33. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6925, 6927, 6939, and 6974.

Subpart A—General Information

34. Section 270.4 is amended by revising paragraphs (a)(2), and (a)(3) and by adding paragraph (a)(4) to read as follows:

§ 270.4 Effect of a permit.

(a) * * *

(2) Are promulgated under part 268 of this chapter restricting the placement of hazardous wastes in or on the land;

(3) Are promulgated under part 264 of this chapter regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, CQA programs, monitoring, action leakage rates, and response action plans, and will be implemented through the procedures of § 270.42 Class 1 permit modifications; or

(4) Are promulgated under subparts AA, BB, or CC of part 265 of this chapter limiting air emissions.

* * * * *

Subpart B—Permit Application

35. Section 270.14 is amended by revising paragraph (b)(5) to read as follows:

§ 270.14 Contents of Part B: General requirements.

* * * * *

(b) * * *

(5) A copy of the general inspection schedule required by § 264.15(b). Include where applicable, as part of the inspection schedule, specific requirements in §§ 264.174, 245.193(i), 264.195, 264.226, 264.254, 264.273, 264.303, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, 264.1088, and 264.1091.

* * * * *

36. Section 270.15 is amended by adding paragraph (e) to read as follows:

§ 270.15 Specific Part B information requirements for containers.

* * * * *

(e) Information on air emission control equipment as required in § 270.27.

37. Section 270.16 is amended by adding paragraph (k) to read as follows:

§ 270.16 Specific Part B information requirements for tank systems.

* * * * *

(k) Information on air emission control equipment as required in § 270.27.

38. Section 270.17 is amended by adding paragraph (j) to read as follows:

§ 270.17 Specific Part B information requirements for surface impoundments.

* * * * *

(j) Information on air emission control equipment as required in § 270.27.

39. Part 270 subpart B is amended by adding § 270.27 to read as follows:

§ 270.27 Specific Part B information requirements for air emission controls for tanks, surface impoundments, and containers.

(a) Except as otherwise provided in § 264.1 of this chapter, owners and operators of tanks, surface impoundments, or containers that use air emission controls in accordance with the requirements of 40 CFR part 264, subpart CC shall provide the following additional information:

(1) Documentation for each cover installed on a tank subject to § 264.1084(b)(2) or § 264.1084(b)(3) of this chapter that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the applicable design specifications as listed in § 265.1091(c) of this chapter.

(2) Identification of each container area subject to the requirements of 40 CFR part 264, subpart CC and certification by the owner or operator that the requirements of this subpart are met.

(3) Documentation for each enclosure used to control air emissions from containers in accordance with the requirements of § 264.1086(b)(2)(i) of this chapter that includes information prepared by the owner or operator or provided by the manufacturer or vendor describing the enclosure design, and certification by the owner or operator that the enclosure meets the specifications listed in § 265.1087(b)(2)(ii) of this chapter.

(4) Documentation for each floating membrane cover installed on a surface impoundment in accordance with the requirements of § 264.1085(c) of this chapter that includes information prepared by the owner or operator or provided by the cover manufacturer or vendor describing the cover design, and certification by the owner or operator that the cover meets the specifications listed in § 265.1086(e) of this chapter.

(5) Documentation for each closed-vent system and control device installed in accordance with the requirements of § 264.1087 of this chapter that includes design and performance information as specified in § 270.24 (c) and (d).

(6) An emission monitoring plan for both Method 21 and control device monitoring methods. This plan shall include the following information: monitoring point(s), monitoring methods for control devices, monitoring frequency, procedures for documenting exceedances, and procedures for mitigating noncompliances.

(7) When an owner or operator of a facility subject to 40 CFR part 265, subpart CC cannot comply with 40 CFR part 264, subpart CC by the date of permit issuance, the schedule of implementation required under § 265.1082 of this chapter.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

40. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

Subpart A—Requirements for Final Authorization

41. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date

TABLE 1—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984—Continued

Promulgation date	Title of regulation	Federal Register reference	Effective date
* * *	* * *	*	*
[insert date of publication in the Federal Register].	Air Emission Standards for Tanks, Surface Impoundments, and Containers.	[Insert Federal Register reference to final rule].	[insert date 180 days after date of publication in the Federal Register].

* * * * *

42. Section 271.1(j) is amended by adding the following entry to Table 2 in chronological order by date of publication:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 2—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	FEDERAL REGISTER reference
* *	* *	*	* *
June 5, 1995	Air Emission Standards for Tanks, Surface Impoundments, and Containers.	3004(n)	[Insert Federal Register reference to final rule]

* * * * *

[FR Doc. 94–29693 Filed 12–5–94; 8:45 am]
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federal register

Tuesday
December 6, 1994

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 107, et al.
Sensitive Security Information; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 107, 108, 109, 129, 191

[Docket No. 27965; Notice No. 94–32]

RIN 2120–AF49

Sensitive Security Information

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The FAA proposes to strengthen the rules protecting information from release to unauthorized persons. The current rules fail to: Require individuals to protect security sensitive information that is in their control; and specify all sensitive security information that should be protected from public disclosure. This proposed rule would specify all sensitive security information that must be protected and would require air carriers, airport operators, indirect air carriers, foreign air carriers, and individuals to be responsible for protecting it from disclosure to unauthorized persons.

DATES: Comments must be received on or before February 6, 1995.

ADDRESSES: Comments on this notice may be delivered or mailed, in triplicate, to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 27965, 800 Independence Avenue, SW., Room 915G, Washington, DC 20591. Comments submitted must be marked: "Docket No. 27965." Comments may be inspected in Room 915G between 8:30 a.m. and 5 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Eugene Cunningham or Don Cotton, Office of Civil Aviation Security Policy and Planning, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8701.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to environmental, energy, federalism, or international trade impacts that might result from adopting the proposals in this notice are also invited. Comments must include the regulatory docket or notice number and be submitted in triplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection both before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Late-filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. 27965." The postcard will be date-stamped by the FAA and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA–200), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Requests must include the notice or docket number.

Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The Security Regulatory Scheme

Sections 315 and 316 of the Federal Aviation Act of 1958, as amended (FAAct) (49 U.S.C. app. 1356, 1357), require the FAA to prescribe rules, as needed, to protect persons and property aboard aircraft against acts of criminal violence and aircraft piracy, and to prescribe rules for screening passengers for weapons. To carry out the provisions of the FAAct, the FAA has adopted rules requiring airport operators, air carriers, indirect air carriers, and foreign air carriers to carry out various duties for civil aviation security. Part 107 of the Federal Aviation Regulations (FAR) (14 CFR part 107) applies to certain airport operators; part 108 (14 CFR part 108) governs certain air carriers. Part 109 (14 CFR part 109) applies to indirect air carriers, such as freight forwarders, who engage indirectly in air transportation of property. Part 129 (14 CFR part 129) applies to the operation of foreign air carriers within the United States.

Parts 107, 108, 109, and 129 contain general requirements for promoting civil aviation security. Each airport operator, air carrier, indirect air carrier, and foreign air carrier covered by these parts also has a security program that is approved or accepted by the Administrator, containing information that specifies how airport operators and air carriers perform their regulatory and statutory responsibilities. The security programs are available only to persons with the need to know, as described more fully below.

Each air carrier's security program is a comprehensive document that details the full range of security procedures and countermeasures that air carriers are required to perform under § 108.5 of the FAR. This program includes procedures for: (1) screening of passengers, carry-on baggage, checked baggage, and cargo; (2) using screening devices (such as X-ray systems and metal detectors); (3) controlling access to aircraft and air carrier facilities; (4) reporting and responding to bomb threats, hijackings, and weapons discovered during screening; (5) reporting and protecting bomb threat information; (6) identifying special procedures required at airports with special security needs; and (7) training and testing standards for crewmembers and security personnel.

The airport security program is a comprehensive document that details the full range of security procedures and countermeasures that airport operators are required to perform under § 107.3. Most programs include the: (1) Description of the air operations area (AOA), each area on or adjacent to the airport that affects the security of the AOA, and air carrier exclusive areas; (2) procedures to control access to the AOA; (3) alternate security procedures for use in emergency and other unusual conditions; and (4) law enforcement support training and record maintenance programs in furtherance of part 107. Programs for some airports include a description of the law enforcement support training program and the system for maintaining records.

The indirect air carrier security program covers security procedures for cargo that is accepted for transport on air carrier aircraft. In general, it requires indirect air carriers to carry out security procedures for handling cargo that will be carried on air carrier aircraft.

Foreign air carrier's security programs provide security procedures for foreign air carriers while operating to and from the United States, which is a

counterpart to the procedures required under part 108.

Security programs of individual companies largely are based on standard security programs and amendments developed by the FAA and industry. As new threats are identified, and as improved countermeasures are developed, the FAA develops standard means to respond to the threats and improve security.

Other sources of information and countermeasures are in Security Directives and Information Circulars, described in § 108.18. They address threats to civil aviation security and countermeasures to respond to those threats. In addition, there is information concerning various security devices, such as metal detectors and X-ray machines, that is sensitive.

The Need to Protect Security Information

The FAA has, over the years, adopted security procedures to respond to the growing threat to civil aviation. The trend has been towards a more sophisticated and dangerous threat.

Until 1984, hijackings of U.S. air carriers primarily were conducted by single individuals who were asylum seekers, expatriates desiring to return to Cuba, mentally disturbed persons, or single individuals who were carrying out their criminal acts for personal motives. Beginning in 1985, however, there were a series of sophisticated hijackings and attempted hijackings of airliners of U.S. registry. These hijackings were conducted by relatively well-organized teams of trained individuals with political motives primarily connected to international affairs in the Middle East. The June 1985 hijacking of TWA 847 and intelligence reporting in subsequent years clearly indicated that U.S. air carriers were facing a higher level and type of threat. Similar incidents that occurred over the next few years routinely involved murder and extended hostage takings.

The change in the hijacking threat faced by U.S. air carriers was accompanied by increasingly sophisticated and deadly sabotage attacks against civil aviation. These attacks also were perpetrated by well-organized international terrorist groups with, in some cases, nation states also involved as supporters and facilitators, if not direct participants. These groups and countries repeatedly attempted to collect information concerning extant security countermeasures and to devise methods of attack to bypass or defeat those countermeasures.

With the 1985 terrorist attacks on the airport terminals in Rome and Vienna and the December 1988 explosion and crash of Pan American World Airways [Pan Am] Flight 103 in Lockerbie, Scotland, the FAA, along with the world civil aviation community, recognized that an entirely new phase of terrorism had opened. In response, the FAA issued new, detailed, amendments to the air carrier standard security program to counter the threat to U.S. carriers at foreign airports. The FAA also developed new procedures to decrease the vulnerability of airports to terrorist attacks. These procedures, both foreign and domestic, went into both the air carrier and airport security programs.

Because of the increasing sophistication of those who may pose a threat to civil aviation, it is increasingly important that information regarding the manner in which the FAA, the airport operators, and the air carriers may seek to guard against criminal threats be protected. The unauthorized disclosure of sensitive aviation security information could assist in the development of techniques to counter those measures.

The FAA is mindful of the public's legitimate interest in how the FAA operates and how it regulates the aviation industry. The FAA has a corresponding responsibility to prevent undue disclosure of information that could compromise public safety if it falls into the wrong hands. The proposals in this notice have been carefully considered to cover only information that could reasonably be anticipated to be damaging to the security of the traveling public if given to unauthorized persons.

Security programs are absolutely essential mechanisms through which the FAA regulates the air carriers' and airports' detailed obligations with respect to ensuring civil aviation security. Much of the effectiveness of the programs depends on strictly limiting access to such information to those persons who have a need to know. Unauthorized disclosure of the specific provisions of the air carrier and airport security programs or other aviation security information would allow potential attackers of civil aviation to devise methods to circumvent or otherwise defeat the security provisions. It would also discount the deterrent effect inherently provided in prohibiting disclosure of security measures that may or may not be in place.

There are sophisticated criminal elements who actively seek information on what seemingly are minor security points, with a view to accumulating a larger picture of the entire security program. Therefore, it is imperative that the entire security program be protected Similarly, it is critical to protect the information contained in Security Directives and Information Circulars. These documents contain detailed information on threats that the FAA has identified, and the measures to counter those threats. The unauthorized release of that information could compromise those countermeasures. In addition, particular information regarding FAA approved security devices, such as metal detectors, should also be protected to the extent possible.

Current Protection of Security Information

Currently, the FAA, airport operators, air carriers, indirect air carriers, and foreign air carriers are required to restrict the availability of information contained in security programs to those with a need to know, and to refer requests for such information to the FAA. These requirements are in §§ 107.3(e), 108.7(c) (4) and (5), 109.3(c), and foreign air carrier security programs. In addition, § 108.18(c)(1) specifically requires air carriers to restrict the availability of Security Directives and Information Circulars, and the information contained therein, to persons with a need to know. However, individuals who work for or perform activities in support of the air carriers are not required to protect the information, except for Security Directives and Information Circulars. Part 191 allows the FAA to withhold certain requested information, such as a request under the Freedom of Information Act (FOIA) (5 U.S.C. 552) or in litigation. Part 191 currently applies only to the FAA. Section 191.3 identifies specific information, such as security programs and hijacker profiles, that the FAA withholds. Section 191.5 provides generally that the FAA prohibits disclosure of information when release would constitute an unwarranted invasion of privacy, reveal trade secrets or privileged or confidential information, or be detrimental to the safety of persons traveling in air transportation or in intrastate air transportation. However, it does not cover all of the potential sources of sensitive security information that should be covered.

Civil aviation security information protected under the Federal Aviation Regulations is different from National Security Information governed by Executive Order 12356 and related orders, statutes, and rules. The Executive Order provides for classifying information as Top Secret, Secret, and Confidential, and covers a wide range of

information affecting the national security. All persons with access to such information must have an appropriate security clearance, and there may be a criminal penalty for misuse of the information. While there is some "classified" civil aviation security information, these proposed rules are not directed to the handling of all classified information.

The FAA proposes to improve the protection of sensitive security information by amending parts 107, 108, 129 and 191 as described more fully below.

Part By Part Discussion of the Proposed Rule

The FAA currently is reformulating the authority citations of all parts in accordance with the recodification enacted in Public Law 103–272 on July 5, 1994. This process is not complete. Accordingly, the authority citations in this proposed rule are those in the current rules.

Part 191

Part 191 sets forth the rules that allow the FAA to withhold information from public disclosure. The FAA proposes to amend and reorganize part 191 as follows:

§ 191.1. The FAA proposes to expand part 191 to apply not only to the FAA, but also to air carriers, airport operators, indirect air carriers, foreign air carriers, and individuals. As discussed below, parts 107, 108, 109, and 129 still would contain some requirements regarding the protection of information, but part 191 would be the primary rule for withholding information from unauthorized public disclosure.

Section 191.1(a) would be amended to conform to the current statute. In 1976, the FAA promulgated part 191 to implement the Air Transportation Act of 1974, Pub. L. 93–366. Section 316(d)(2) of the FAAct provides, in part, that the Administrator shall prescribe regulations to "prohibit disclosure of any information obtained or developed in the conduct of research and development activities" if the disclosure meets certain conditions. This section is a major basis for the current rules in part 191 on withholding information from unauthorized disclosure.

In 1990, section 316(d)(2) was amended to provide that the Administrator shall adopt rules to prohibit disclosure of "any information obtained in the conduct of security *or* research and development activities * * *." Section 9121 of the Aviation Safety and Capacity Expansion Act of 1990 (Pub. L. 101–508) (emphasis added). The FAA proposes to amend § 191.1(a), to protect information obtained during the course of specified security activities.

The FAA also proposes to remove from the title of part 191 reference to the 1974 Act, to avoid any implication that it is the only source of statutory authority for the part.

Section 191.1(b) now defines "record," in part, as "documentary" material. The FAA proposes to delete the word "documentary." The FAA intends to address all methods of preserving information, including computer records. This would avoid any misunderstanding over whether such records were "documentary."

Part 191 now refers to the "Director of Civil Aviation Security" as the official who makes the determination on behalf of the Administrator to withhold information. Following a reorganization, the FAA official who makes such determinations now is the Assistant Administrator for Civil Aviation Security. The FAA proposes to amend part 191 accordingly. In addition, the Deputy Assistant Administrator for Civil Aviation Security, and any individual formally designated to act in the capacity of the Assistant Administrator or the Deputy, would have authority to make such determinations.

We also propose to state in more detail the extent to which the Assistant Administrator may further delegate the authority to make these decisions. For decisions involving information and records described in § 191.7(a) through (i), we propose to permit delegation below the Assistant Administrator level. The information that is described in (a) through (i) is well-defined, and decisions on release or withholding of the information involves relatively objective judgments.

Section 191.7(j) provides a "catch all" basis for determining that other information is sensitive security information. A decision to release or withhold information under § 191.7(j) requires a careful evaluation of, on the one hand, the need to provide the highest level of security to the traveling public by preventing sensitive security information from falling into the wrong hands, and on the other hand, an awareness of the public's strong interest in obtaining information about security in air transportation. These decisions require a careful evaluation of security threats as well as important policies of the agency. Therefore, the FAA proposes that such decisions be made by high policy-level officials, and not below the Assistant Administrator and Deputy Assistant Administrator level. The Assistant Administrator is responsible for carrying out the agency's civil aviation security program, and reports directly to the Administrator.

§ 191.3. Section 191.3 would continue to state generally that the FAA withholds certain information, but would be clarified to state that part 191 applies, notwithstanding FOIA and other disclosure statutes. For instance, the FAA may adopt certain security rules affecting air carriers and airports without disclosing the rules to unauthorized persons.

The FAA proposes to move the provisions currently in § 191.5 that describe the circumstances under which the FAA prohibits disclosure of information to § 191.3(b).

§ 191.5. Section 191.5 would contain the requirements that apply to persons other than the FAA. Such persons include air carriers, airport operators, indirect air carriers, and foreign air carriers, and individuals employed by, or contracted by, air carriers, airport operators, indirect air carriers, and foreign air carriers. This section is intended to be very inclusive.

A difficult aspect of protecting sensitive security information is that a large number of persons must be aware of at least portions of the information in order to carry out their duties. These include pilots, flight attendants, ticket agents, screeners, baggage handlers, and law enforcement officers. Frequently, some of these people are not direct employees of the air carrier or airport operator, but they do carry out duties for or on behalf of the air carrier or airport operator. For instance, in many cases, screeners and law enforcement officers are not directly employed by air carriers or airport operators, but do have important security responsibilities to carry out. This section is intended to cover all such persons who have access to sensitive security information. It should be emphasized, however, that airports and air carriers would continue to have the responsibility they now have to protect sensitive security information. If sensitive security information is released to unauthorized persons, depending upon the circumstances, the FAA may hold the airport or air carrier, as well as the individual, accountable.

Section 191.5(a) would state the general requirement that disclosure of and access to sensitive security information shall be restricted to persons with a "need to know." Section 191.5(b) would define "need to know" as the requirement to have knowledge of or access to the information to carry out FAA-approved or directed aviation security duties. Of course, in the case of foreign air carriers that are owned or operated, or closely regulated, by the

foreign government, various officials in that government have a "need to know."

In most cases, the air carrier or airport operator has the discretion to decide who in its organization has a need to know sensitive security information. There are times, however, when information is so sensitive that extra measures should be taken to protect it from release to those without a "need to know." The rule would, therefore, provide that for some specific information the Assistant Administrator may make a finding that only specific persons, or classes of persons, have an operational need to know.

Section 191.5(c) would require that, if sensitive security information is released to unauthorized persons, the FAA must be notified. This will permit the FAA to evaluate the risk presented by the release of the information, and to take whatever action may be needed to mitigate that risk.

Section 191.5(d) alerts persons that violations may result in a civil penalty or other action by the FAA. Under the FAAct, the FAA may take a broad range of enforcement action for violation of the regulations. The FAA anticipates that civil penalty action will be considered for a violation of part 191, as it is for violations of parts 107 and 108. However, the FAA may seek any enforcement action deemed appropriate based on individual circumstances of the case. Further, the FAA may take action to mitigate or correct the risk posed by the violation. Such actions may include requiring air carriers or airport operators to change their procedures for protecting security information, or change the security procedures in place that may have been compromised by unauthorized release of the information.

§ 191.7. Proposed 191.7 would incorporate and expand current § 191.3, which describes information that is protected from public disclosure. There is information not specifically mentioned in § 191.3 that should be protected. The FAA now withholds such information from public disclosure based on findings under § 191.5 that disclosure would be detrimental to the safety of persons traveling in air transportation or intrastate air transportation. Those findings are set forth in written denials of FOIA requests for such information, and in Declarations submitted to judges to seek protection of information in litigation cases. To better inform the public of the information prohibited from unauthorized release, the FAA proposes to add this information to § 191.7, as described below:

Section 191.7(a) would retain the current requirements to protect any approved or standard security program for an air carrier, indirect air carrier, airport operator, or foreign air carrier, and that portion of the security program of the United States Postal Service that relates to security of parcel mail to be transported by air. The FAA proposes to expand this provision to include any comments, instructions, or implementing guidance pertaining to these security programs. Generally, these materials reveal some or all of the sensitive information and must be protected the same as the security programs themselves.

Paragraph (b) would be revised to include any comments, instructions, or implementing guidance pertaining to Security Directives and Information Circulars.

Paragraph (c) would list any profile used in any security screening process, including persons, baggage, or cargo. Section 191.3(b) (1) and (2) currently cover any hijacker profile and profile used in baggage screening. This proposal makes that provision general to cover profiles for screening persons, because there are systems in place to protect against terrorists and others who might seek to commit criminal violence, not just hijackers. It would also cover profiles for cargo. Like baggage, cargo is a potential tool for criminal violence that the security rules cover.

Paragraph (d) would include any security contingency plan and comments, instructions, or implementing guidance pertaining thereto. These plans, when adopted, become part of the security program and are already covered by rules governing security programs. They are included in § 191.7 for emphasis.

The FAA proposes to delete the provisions currently in § 191.3(b)(6), pertaining to the technical specifications for devices for protection against, or detection of, cargo theft, from the rule. Such devices are not directly used to meet the requirements for civil aviation security under the FAA regulations. Any devices that serve a dual function of protecting cargo and security are protected under other provisions in this section.

Paragraph (e) would cover the technical specifications of any device used for the detection of any explosive, incendiary, or deadly or dangerous weapon. It is essentially the same as current § 191.3(b)(5), except that the current rule is worded "explosive or incendiary device or weapon." The proposed rule would use the same wording that is in § 108.9(a), which contains the requirements for air carriers to screen passengers and property for such items.

Paragraph (f) would address the specifications for objects used to test screening equipment, and equipment parameters, and paragraph (g) would address any security communications equipment and procedures. Knowledge of the devices used to perform various security functions could lead to a plan to defeat those devices. Accordingly, details of such devices should be protected.

Paragraph (h) would address any information pertaining to: (1) Threats of any criminal acts directed against air transportation; and (2) the details of an alleged violation of parts 107, 108, 109, or 129, and any information that could reasonably lead to the disclosure of such details, i.e., the airport name, the location of the gate or access point; the air carrier, indirect air carrier, or foreign air carrier. Paragraph (h) would apply only to the release of information by the FAA. There is less risk of harm from the casual disclosure of this information by individuals.

Paragraph (i) would include any draft, proposed, or recommended change to sensitive security information or records. The FAA frequently issues proposed revisions for sensitive security documents to air carriers and airport operators and requests comments on the proposals. These proposals contain sensitive security information that also should be protected.

Paragraph (j) would include any other information that the Administrator determines should not be disclosed under the criteria in § 191.3(b). While we have attempted to anticipate all sources of information that should be protected from unauthorized disclosure, additional information may be discovered in the future. As with the current rule, this paragraph would allow the Administrator to determine whether other information should be considered to be sensitive security information.

Parts 107, 108, 109, and 129

The FAA proposes to make changes to the specific parts that apply to airport operators, air carriers, indirect air carriers, and foreign air carriers, to correspond to the proposed changes to part 191. Parts 107, 108, 109, and 129 require these organizations to protect security information as required in part 191, and would require them to direct requests for such information to the administrator. These parts would be redundant with the proposed changes to part 191. These organizations currently refer to their specific parts of the FAR for security requirements. Including a cross-reference to part 191 in parts 107,

108, 109, and 129, alerts organization to the new requirements, and makes it clear that part 191 is part of their security duties.

Economic Evaluation

This section summarizes the regulatory evaluation prepared by the FAA. The regulatory evaluation provides more detailed discussion of the potential economic consequences of this proposal.

Executive Order 12866, dated September 30, 1993, directs Federal agencies to promulgate new regulations or modify existing regulations only if benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of an economic analysis of all "significant regulatory actions" except those responding to emergency situations or other narrowly-defined exigencies.

The FAA has determined that this proposed rule is not a "significant regulatory action" as defined by Executive Order 12866 (Regulatory Planning and Review). A synopsis of the costs and benefits associated with this rule are summarized below. (A more detailed discussion is contained in the full regulatory evaluation placed in the docket for this proposed rule.)

Costs and Benefits

This proposed rule would help protect persons and property at airports and aboard aircraft against terrorist and other criminal acts by strengthening the rules protecting sensitive security information from being released to unauthorized persons. It would require the affected entities to be responsible for safeguarding this security information from unauthorized disclosure. The accidental divulgence of such material could lead, directly or indirectly, to injuries, the loss of life, and/or the loss of an aircraft.

These rules could be implemented at no cost. Given the lack of cost and given the potential benefits of avoided fatalities and injuries, the FAA finds this proposed rule to be cost beneficial.

International Trade Impact Statement

In accordance with the Office of Management and Budget memorandum dated March 1983, federal agencies engaged in rulemaking activities are required to assess the effects of regulatory changes on international trade. The FAA finds that this proposed rule would not have an adverse impact on trade opportunities for either U.S. firms doing business overseas or foreign firms doing business in the United States. The proposed rule would impose no costs on both domestic and foreign air carriers, so neither would have a trade advantage over the other.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily burdened by government regulations. The RFA requires agencies to review rules that may have a "significant economic impact on a substantial number of small entities." There is no cost associated with this proposed rule; therefore, this proposal does not have a significant economic impact on a substantial number of small entities.

Federalism Impact

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this proposed rule.

Conclusion

For the reasons discussed above, and based on the findings in the initial Regulatory Flexibility Determination and the International Trade Impact Statement, the FAA certifies that this proposed regulation 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. This proposal is not considered a "significant regulatory action" under Executive Order 12866 and is not considered significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

List of Subjects

14 CFR Part 107

Airports, Arms and munitions, Federal Aviation Administration, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

14 CFR Part 108

Air carriers, Aircraft, Airmen, Airports, Arms and munitions, Explosives, Federal Aviation Administration, Law enforcement officers, Reporting and recordkeeping requirements, Security measures.

14 CFR Part 109

Air carriers, Aircraft, Federal Aviation Administration, Freight forwarders, Security measures.

14 CFR Part 129

Air carriers, Aircraft, Aviation safety, Federal Aviation Administration, Reporting and recordkeeping requirements, Security measures, Smoking.

14 CFR Part 191

Air transportation, Federal Aviation Administration, Telecommunications.

The Proposed Amendments

Accordingly, the Federal Aviation Administration proposes to amend parts 107, 108, 109, 129, and 191 (14 CFR parts 107, 108, 109, 129, and 191), as follows:

PART 107—AIRPORT SECURITY

1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. App. 1354, 1356, 1357, 1358, and 1421; 49 U.S.C. 106(g); Sec. 101, et seq., Pub. L. 101–604, 104 Stat. 3066.

2. Section 107.3 is amended by revising paragraph (e) to read as follows:

§ 107.3 Security program.

* * * * *

(e) Each airport operator shall—

(1) Restrict the distribution, disclosure, and availability of sensitive security information, as defined in part 191 of this chapter, to persons with a need to know; and

(2) Refer requests for security sensitive information by other persons to the Assistant Administrator for Civil Aviation Security.

* * * * *

PART 108—AIRPLANE OPERATOR SECURITY

3. The authority citation for part 108 continues to read as follows:

Authority: 49 U.S.C. App. 1354, 1356, 1357, 1421, 1424, and 1511; 49 U.S.C. 106(g); Sec. 101 et seq., Pub. L. 101–604, 104 Stat. 3066.

4. Section 108.7 is amended by revising paragraphs (c)(4) and (c)(5) to read as follows:

§ 108.7 Security program: Form, content, and availability.

* * * * *

(c) * * *

(4) Restrict the distribution, disclosure, and availability of sensitive security information, as defined in part 191 of this chapter, to persons with a need to know; and

(5) Refer requests for a sensitive security information by other persons to the Assistant Administrator for Civil Aviation Security.

PART 109—INDIRECT AIR CARRIER SECURITY

5. The authority citation for part 109 continues to read as follows:

Authority: Secs. 313(a), 316, 601, 1005, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1357, 1421, and 1485; and sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).

6. Section 109.3 is amended by revising paragraph (c) to read as follows:

§ 109.3 Security program.

* * * * *

(c) Each indirect air carrier shall—

(1) Restrict the distribution, disclosure, and availability of sensitive security information, as defined in part 191 of this chapter, to persons with a need to know; and

(2) Refer requests for sensitive security information by other persons to the Assistant Administrator for Civil Aviation Security.

PART 129—OPERATIONS: FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S.-REGISTERED AIRCRAFT ENGAGED IN COMMON CARRIAGE

7. The authority citation for part 129 continues to read as follows:

Authority: 49 U.S.C. app. 1346, 1354(a), 1356, 1357, 1421, 1502, 1511 and 1522; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983).

8. Part 129 is amended by adding a new § 129.31 to read as follows:

§ 129.31 Airplane security.

Each foreign air carrier required to adopt and use a security program pursuant to § 129.25(b) shall—

(a) Restrict the distribution, disclosure, and availability of sensitive security information, as defined in part 191 of this chapter, to persons with a need to know; and

(b) Refer requests for sensitive security information by other persons to the Assistant Administrator for Civil Aviation Security.

9. Part 191 is revised to read as follows:

PART 191—PROTECTION OF SENSITIVE SECURITY INFORMATION

Sec.
191.1 Applicability and definitions.
191.3 Records and information withheld by the Federal Aviation Administration.
191.5 Prohibition on release of sensitive security information.
191.7 Sensitive security information.

Authority: Secs. 313(a), 316(d)(2), 601, Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1357(d)(2), 1421); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).

§ 191.1 Applicability and definitions.

(a) This part governs the release, by the Federal Aviation Administration and by other persons, of records and information that has been obtained or developed during security activities or research and development activities.

(b) For purposes of this part, "record" includes any writing, drawing, map, tape, film, photograph, or other means by which information is preserved.

(c) The authority of the Administrator under this part is also exercised by the Assistant Administrator for Civil Aviation Security and the Deputy Assistant Administrator for Civil Aviation Security, and any individual formally designated to act in their capacity. For matters involving the release or withholding of information and records containing information described in § 191.7(a) through (i), the authority may be further delegated. For matters involving the release or withholding of information and records containing information described in § 191.7(j), the authority may not be further delegated.

§ 191.3 Records and information withheld by the Federal Aviation Administration.

(a) Except as provided in paragraph (c) of this section, and notwithstanding 5 U.S.C. 552 or other laws, the records and information described in paragraph (b) of this section are not available for public inspection or copying, nor is information contained in those records released to the public.

(b) The Administrator prohibits disclosure of information developed in the conduct of security or research and development activities under 49 U.S.C. App. Chapter 20, Subchapter III, if, in the opinion of the Administrator, the disclosure of such information would:

(1) Constitute an unwarranted invasion of privacy (including, but not limited to, information contained in any personnel, medical, or similar file);

(2) Reveal trade secrets or privileged or confidential information obtained from any person; or

(3) Be detrimental to the safety of persons traveling in air transportation.

(c) If a record contains information that the Administrator determines cannot be disclosed under this part, but also contains information that can be disclosed, the latter information, on proper FOIA request, will be provided for public inspection and copying. However, if it is impractical to redact the requested information from the document, the entire document will be withheld from public disclosure.

§ 191.5 Prohibition on release of sensitive security information.

(a) Each airport operator, air carrier, indirect air carrier, foreign air carrier, and each individual employed by, contracted to, or acting for an airport operator, air carrier, indirect air carrier, or foreign air carrier shall restrict disclosure of and access to sensitive security information to persons with a need to know, and shall refer requests from other persons for such information to the Administrator.

(b) A person has a need to know sensitive security information when the information is necessary to carry out FAA-approved or directed aviation security duties. For some specific information, the Administrator may specify which persons, or classes of persons, have a need to know.

(c) When sensitive security information is released to unauthorized persons, any air carrier, airport operator, indirect air carrier, foreign air carrier, or individual with knowledge of the release shall inform the Administrator.

(d) Violation of this section is grounds for a civil penalty or other enforcement or corrective action by the FAA.

§ 191.7 Sensitive security information.

Except as otherwise provided in writing by the Administrator, the following information and records containing such information constitute sensitive information:

(a) Any approved or standard security program for an air carrier, foreign air carrier, indirect air carrier, or airport operator, and that portion of the security program of the United States Postal Service that relates to security of parcel mail to be transported by air; and any comments, instructions, or implementing guidance pertaining thereto.

(b) Security Directives, Information Circulars, and any comments, instructions, or implementing guidance pertaining thereto.

(c) Any profile used in any security screening process, including for persons, baggage, or cargo.

(d) Any security contingency plan or information and any comments, instructions, or implementing guidance pertaining thereto.

(e) Technical specifications of any device used for the detection of any explosive, incendiary, or deadly or dangerous weapon.

(f) Technical specifications of objects used to test screening equipment and equipment parameters.

(g) Technical specifications of any security communications equipment and procedures.

(h) As to the release of information by the FAA only:

(1) Any information pertaining to threats of any criminal acts directed against air transportation.

(2) The details of an alleged violation of parts 107, 108, 109, or 129 of this chapter, including the airport name, the location of the gate or access point; the air carrier, indirect air carrier, or foreign air carrier, and any information that could reasonably lead to the disclosure of such details.

(i) Any draft, proposed, or recommended change to the information and records identified in this part.

(j) Any other information, the disclosure of which the Administrator has prohibited under the criteria in § 191.3(b).

Issued in Washington, DC, November 4, 1994.

Bruce R. Butterworth,

Director, Office of Civil Aviation Security Policy and Planning.

[FR Doc. 94–27912 Filed 12–5–94; 8:45 am]

BILLING CODE 4910–13–M

federal register

Tuesday
December 6, 1994

Part VI

Department of Education

Notice Inviting Applications for Designation as an Eligible Institution for Fiscal Year 1995 for the Strengthening Institutions and Endowment Challenge Grant Programs; Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.031A, CFDA No. 84.031G]

Notice Inviting Applications for Designation as an Eligible Institution for fiscal year 1995 for the Strengthening Institutions and Endowment Challenge Grant Programs

PURPOSE: Institutions of higher education must meet specific statutory and regulatory requirements to be designated eligible to receive funds under the Strengthening Institutions and Endowment Challenge Grant Programs authorized, respectively, under Parts A and C of Title III of the Higher Education Act of 1965, as amended (HEA).

In addition, section 316 of Title III of the HEA authorizes grants to Hispanic-serving institutions to enable them to improve and expand their capacity to serve Hispanic and other low-income students. Since Congress has provided funding for section 316 grants, the Department will hold a competition for new awards in Fiscal Year 1995. Hispanic-serving institutions should note that to receive a grant under section 316, a Hispanic-serving institution must satisfy the institutional eligibility requirements for the Strengthening Institutions and Endowment Challenge Grant Programs, as well as additional statutory eligibility criteria.

For Fiscal Years 1995 and 1996, the Department will conduct biennial grant award competitions under the Strengthening Institutions Program and under section 316 of the HEA for Hispanic-serving institutions. Under a biennial grant award competition, an institution submits a grant application that may be considered for funding under two successive fiscal year grant award competitions. Applications are evaluated and ranked by field readers for the first competition. If the institution's application is not selected for funding under the first fiscal year's award competition, it will be considered for funding under the second fiscal year's award competition for new awards based upon the score it received in the first competition. As part of this scheme, no new applications will be accepted for the second fiscal year competition for new awards. Accordingly, if an institution wishes to apply for a new grant award under the Strengthening Institutions Program for Fiscal Year 1995 or Fiscal Year 1996, it must submit an application for Fiscal Year 1995; and if an institution wishes to apply for a grant award under section 316 of the HEA, it must submit an application for Fiscal Year 1995. The Department will publish a separate closing date notice for those grant applications.

In making awards under the Strengthening Institutions Program, under section 313(b) of the HEA, the Secretary gives priority in funding to institutions that are not already receiving funding under a Strengthening Institutions Program grant. Therefore, in awarding grants in Fiscal Year 1995, the Secretary will fund in rank-order from those applicants that have a funding priority in Fiscal Year 1995. In awarding grants in Fiscal Year 1996, the Secretary will fund in rank-order from those applicants that have a funding priority in Fiscal Year 1996.

The biennial grant award competition has the following institutional eligibility implications. To receive a grant in Fiscal Year 1995, an institution must submit an institutional eligibility application to the Department by the deadline date set forth in this notice and must qualify as an eligible institution. To receive a grant in Fiscal Year 1996, an institution must submit an institutional eligibility application to the Department by the deadline date set forth in a notice that will be published for that year and must qualify as an eligible institution under that notice.

For purposes of awarding grants under section 316 of the HEA, if the Secretary selects an institution to receive a grant in Fiscal Year 1996, for purposes of determining whether the institution has an enrollment of undergraduate full-time equivalent students that is at least 25 percent Hispanic students, the Secretary will consider that the institution submitted its application in Fiscal Year 1996.

To receive a grant in Fiscal Year 1996, an institution does not have to submit an institutional eligibility application to the Department in Fiscal Year 1995. However, the failure to submit an eligibility application for Fiscal Year 1995 will preclude that institution from receiving any benefits that derive from being an eligible institution during that fiscal year.

Institutions that wish to be considered for waivers of certain non-Federal share requirements under the Federal Work-Study or Federal Supplemental Educational Opportunity Grant Programs authorized under Title IV of the HEA must be designated as eligible institutions under the Strengthening Institutions and Endowment Challenge Grant Programs.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: January 23, 1995 for institutions of higher education that anticipate competing for new awards under the Strengthening Institutions and Endowment Challenge Grant Programs, for Hispanic-serving institutions that anticipate competing for new awards authorized under section 316 of the HEA, and for institutions that plan to obtain non-Title III benefits from qualifying as an eligible institution under the Strengthening Institutions and Endowment Challenge Grant Programs.

APPLICATIONS AVAILABLE: December 21, 1994.

ELIGIBILITY INFORMATION: To qualify as an eligible institution under the Strengthening Institutions and Endowment Challenge Grant Programs, an applicant must (1) be accredited or preaccredited by a nationally recognized accrediting agency; (2) be legally authorized by the State in which it is located to be a junior or community college or to provide a bachelors degree program; and (3) have a high enrollment of needy students. In addition, its educational and general (E&G) expenditures per full-time equivalent (FTE) undergraduate student must be low in comparison with the average E&G expenditures per FTE undergraduate student of institutions that offer similar instruction. The complete eligibility requirements are found in the Strengthening Institutions Program regulations, 34 CFR 607.2–607.5, as revised in the **Federal Register** on August 15, 1994 (59 FR 41914, 41922).

ENROLLMENT OF NEEDY STUDENTS: Under 34 CFR 607.3(a), an institution is considered to have a high enrollment of needy students if—(1) at least 50 percent of its degree students received financial assistance under one or more of the following programs: Pell Grant, Supplemental Educational Opportunity Grant, College Work Study, or Perkins Loan Program; or (2) the percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Pell Grants at comparable institutions that offer similar instruction. To qualify under this latter criterion, an institution's Pell Grant percentage for base year 1992–93 must be more than the median for its category of comparable institutions provided on the table in this notice.

E&G EXPENDITURES PER FTE STUDENT: An institution should compare its average E&G expenditure/FTE student to the average E&G expenditure/FTE student for its category of comparable institutions contained in the table in

this notice. If the institution's average E&G expenditure for the 1992–93 base year is less than the average for its category of comparable institutions, it meets this eligibility requirement.

The institution's E&G expenditures are the total amount it expended during the base year for instruction, research, public service, academic support, student services, institutional support, operation and maintenance, scholarships and fellowships, and mandatory transfers.

The following table identifies the relevant median Pell Grant percentages and the average E&G expenditures per FTE student for the 1992–93 base year for the four categories of comparable institutions:

	Median Pell grant percentage	Average E&G per FTE student
2-year public institutions	30.20	$6,565
2-year non-profit private institutions	33.95	10,959
4-year public institutions	29.62	12,004
4-year non-profit private institutions	30.23	15,724

WAIVER INFORMATION: Institutions of higher education that are unable to meet the needy student enrollment requirement or the E&G expenditure requirement may apply to the Secretary for waivers of these requirements, as described in 34 CFR 607.3(b) and 607.4 (c) and (d). As discussed in the preamble to the final regulations published in the **Federal Register** on August 15, 1994 (59 FR 41914–41917), the Secretary has developed a set of more specific instructions relating to the waiver provisions for institutions unable to meet the needy student enrollment requirement. Institutions requesting a waiver of this requirement must include detailed information as set forth in the instructions for completing the application.

Under the waiver authority provided in 34 CFR 607.3(b)(2), an institution must demonstrate that at least 30 percent of the students it served in base year 1992–93 were from low-income families. The regulations define "low-income" as an amount that does not exceed 150 percent of the amount equal to the poverty level as established by the U.S. Bureau of the Census, 34 CFR 607.3(c). For the purposes of this waiver provision, the following table sets forth the low-income levels for the various sizes of families:

BASE YEAR LOW-INCOME LEVELS

Size of family unit	Contiguous 48 States, the District of Columbia, and outlying jurisdictions	Alaska	Hawaii
1	$10,215	$12,750	$11,745
2	13,785	17,220	15,855
3	17,355	21,690	19,965
4	20,925	26,160	24,075
5	24,495	30,630	28,185
6	28,065	35,100	32,295
7	31,635	39,570	36,405
8	35,250	44,040	40,515

For family units with more than eight members add the following amount for each additional family member: $3,570 for the contiguous 48 states, the District of Columbia and outlying jurisdictions; $4,470 for Alaska; and $4,110 for Hawaii.

The figures shown as low-income levels represent amounts equal to 150 percent of the family income levels established by the U.S. Bureau of the Census for determining poverty status. The Census levels were published by the U.S. Department of Health and Human Services in the **Federal Register** on February 14, 1992 (57 FR 5455–5457).

In reference to the waiver option specified in § 607.3(b)(4) of the regulations, information about "metropolitan statistical areas" may be obtained by requesting the *Metropolitan Statistical Areas, 1993*, order number PB93–192664, from the National Technical Information Services, Document Sales, 5285 Port Royal Road, Springfield, Virginia 22161, telephone number (703) 487–4650. There is a charge for this publication. For general information about "metropolitan statistical areas", institutions of higher education may contact the Strengthening Institutions Program Branch.

APPLICABLE REGULATIONS: Regulations applicable to the eligibility process include: (a) the Strengthening Institutions Program Regulations in 34 CFR Part 607, as revised in the **Federal Register** on August 15, 1994 (59 FR 41914); (b) the Endowment Challenge Grant Program Regulations in 34 CFR Part 628; and (c) the Education Department General Administrative Regulations in 34 CFR Parts 74, 75, 77, 82, 85, and 86.

FOR APPLICATIONS OR INFORMATION CONTACT: Strengthening Institutions Program Branch, Division of Institutional Development, U.S. Department of Education, 600 Independence Avenue, S.W., Room 3042 ROB–3, Washington, D.C. 20202–5335. Telephone: (202) 708–8839. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

PROGRAM AUTHORITY: 20 U.S.C. 1057, 1059c and 1065a.

Dated: November 30, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–29969 Filed 12–5–94; 8:45 am]

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federal register

Tuesday
December 6, 1994

Part VII

Department of Justice

Bureau of Prisons

28 CFR Part 548
Birth Control, Pregnancy, Child Placement, and Abortion; Interim Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 548

[BOP 1030–I]

RIN 1120–AA31

Birth Control, Pregnancy, Child Placement, and Abortion

AGENCY: Bureau of Prisons, Justice.

ACTION: Interim rule.

SUMMARY: In this interim rule, the Bureau of Prisons is amending its regulations on Birth Control, Pregnancy, Child Placement, and Abortion. This amendment removes references to restrictions on the Bureau of Prisons' funding of an elective abortion. Removing these references is necessary to conform to changes in legislative authority. This amendment also makes various editorial or organizational changes for the sake of clarity.

DATES: Effective December 6, 1994; comments due by February 6, 1995.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations in 28 CFR part 551, subpart C, on Birth Control, Pregnancy, Child Placement, and Abortion. A final rule on this subject was published in the **Federal Register** June 29, 1979 (44 FR 38252) and was amended December 30, 1986 (51 FR 47179).

Each year since 1987, Congress has included restrictions in the Department of Justice appropriations legislation on the funding of elective abortions. Section 551.23 had been revised to reflect the imposition of these restrictions. The appropriations bill for FY 1994 did not include such restrictions, and the Bureau of Prisons is adjusting its regulations accordingly.

Paragraph (a) of § 551.23, which states that it is the responsibility of the inmate to decide whether to have an abortion or to bear the child, is unchanged. The provisions formerly in paragraph (b) pertaining to the financing of an abortion have been removed. The provisions formerly contained in paragraph (c) pertaining to counseling have been retained in new paragraph (b). New paragraph (b) also contains requirements for written documentation previously required by former paragraph (d). The provisions in former paragraph (e) have been restated in new paragraph (c). New paragraph (c) has been further revised for the sake of clarity and to remove references to where an elective abortion was to take place.

Additional editorial or organizational amendments to the provisions for pregnancy and child placement include use of the word "ensure" in § 551.22(b), and the consolidation of the provisions formerly in § 551.24(b) and (c), along with the consequent redesignation of § 551.24(d).

Because this amendment, in response to Congressional action, essentially restores the regulations to the wording which was originally promulgated, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, and delay in effective date, and is implementing this change as an interim rule. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered before the rule is finalized.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 551

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 551 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 551—MISCELLANEOUS

1. The authority citation for 28 CFR part 551 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 1512, 3621, 3622, 3624, 4001, 4005, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; Pub. L. 99–500 (sec. 209); 28 CFR 0.95–0.99.

2. In § 551.22, paragraph (b) is revised to read as follows:

§ 551.22 Pregnancy.

* * * * *

(b) In order to ensure proper medical and social services, the inmate shall inform the institution medical staff as soon as she suspects she is pregnant.

* * * * *

3. In § 551.23, paragraphs (b) and (d) are removed, and paragraphs (c) and (e) are redesignated and revised as new paragraphs (b) and (c) to read as follows:

§ 551.23 Abortion.

* * * * *

(b) The Warden shall offer to provide each pregnant inmate with medical, religious, and social counseling to aid her in making the decision whether to carry the pregnancy to full term or to have an elective abortion. If an inmate chooses to have an abortion, she shall sign a statement to that effect. The inmate shall sign a written statement acknowledging that she has been provided the opportunity for the counseling and information called for in this policy.

(c) Upon receipt of the inmate's written statements required by paragraph (b) of this section, ordinarily submitted through the unit manager, the Clinical Director shall arrange for an abortion to take place.

4. In § 551.24, paragraph (b) is revised as follows, paragraph (c) is removed, and paragraph (d) is redesignated as paragraph (c):

§ 551.24 Child placement.

* * * * *

(b) Child placement is the inmate's responsibility. The Warden shall provide opportunities for counseling by institution staff and community social agencies to aid the inmate with placement.

* * * * *

[FR Doc. 94–29968 Filed 12–5–94; 8:45 am]

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Tuesday, December 6, 1994

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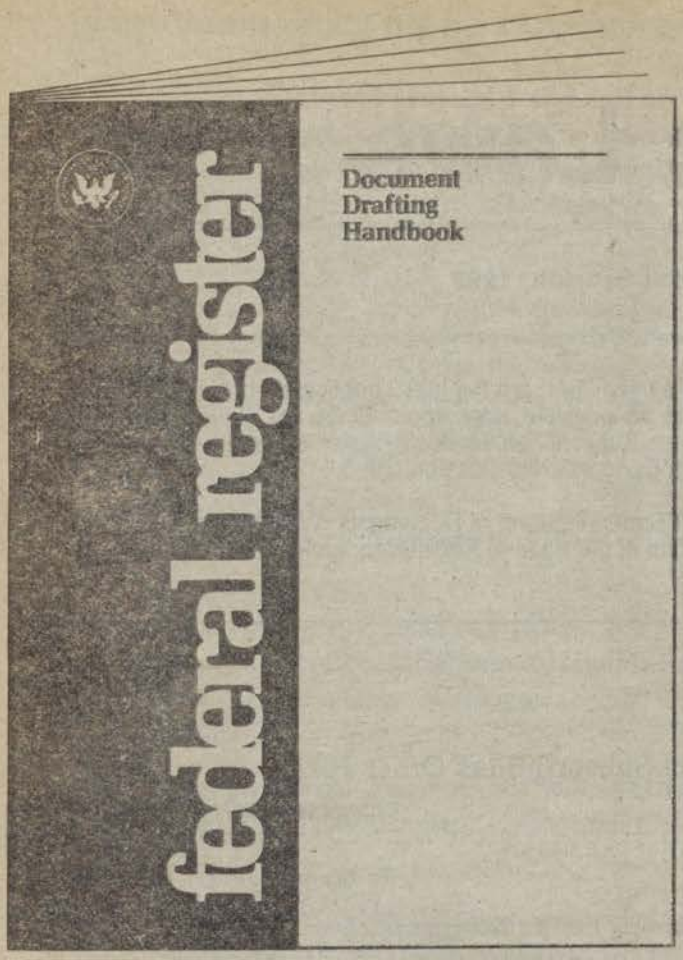

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