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Thursday
September 12, 1996

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Presidential Documents

Title 3—

The President

Proclamation 6915 of September 9, 1996

America Goes Back to School, 1996

By the President of the United States of America

A Proclamation

Education is the foundation of our economy and society as we stand at the dawn of the 21st century. Education provides every American with the tools to make the most of their own lives and to seize the tremendous opportunities of economic growth and change. Education also passes along to our young people the most fundamental American values: family, responsibility, and community. To make the next century another American century—and to help all of our communities to become prosperous and strong—more parents and community members must become involved in improving our local schools and colleges. Better education is everybody's business. When families, educators, and communities work together, we can truly build a bridge to a better, stronger 21st century.

The American people want the best for their children. Our schools should be safe, disciplined, and drug-free environments where parents are involved and children can learn. Our educators and administrators should continue to aim for the highest standards of academic excellence and professional accountability. Together we must rebuild the Nation's schools for the 21st century. We must make the investments needed to allow our children to learn about the computers and technology that are the building blocks of the future. We must make college more accessible. We must expand public school choice and competition. And we must make it easier to move from school to work.

Children are our greatest natural resource: Although they are only 20 percent of our population, they are 100 percent of our future. From safe schools to better training for our teachers, from raising standards in our schools to increasing financial aid for college for middle-income and working families, from literacy for children to retraining for adults, we must ensure that all of our children get a chance to fulfill the American Dream.

I urge all Americans to be meaningfully involved in their local schools and colleges and to make a commitment to support educational improvement throughout the year. I applaud the Partnership for Family Involvement in Education, a joint effort involving the Department of Education and more than 700 schools, family organizations, community groups, religious communities, family-oriented businesses, and the men and women of our Armed Forces, for sponsoring ''America Goes Back to School: Get Involved!'' I hope that this observance will foster grass-roots support for better education by engaging parents, educators, and community groups as active partners in strengthening schools and strengthening families. When Americans come together as a community, we can make real progress. By taking a more active role, we as a Nation will raise our expectations for both our children and ourselves.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 8 through September 14, 1996, as a time when America Goes Back to School. I invite parents, schools, community and State leaders, businesses, civic and religious organizations, and the people of the United States to observe this week

with appropriate ceremonies and activities expressing support for high academic standards and family and community involvement in schools and colleges, and to continue their active involvement on behalf of America's children throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of September, in the year of our Lord nineteen hundred and ninety-six, and of the Independence of the United States of America the two hundred and twenty-first.

William J. Clinton

[FR Doc. 96–23548
Filed 9–11–96; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 52

[FV–95–328]

United States Standards for Grades of Frozen Okra

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting as a final rule, with change, the provisions of the interim final rule that amends the existing U.S. standards for Frozen Okra by removing references to trimmed pods. This change will allow producers of frozen okra the option to pack whole and cut okra without trimming.

EFFECTIVE DATE: October 15, 1996.

FOR FURTHER INFORMATION CONTACT: James R. Rodeheaver, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 0709, South Building, P.O. Box 96456, Washington, D.C. 20090–6456, Telephone (2) 720–4693.

SUPPLEMENTARY INFORMATION: This rule is issued under the United States Standards for Grade of Frozen Okra (7 CFR Part 52) to improve grade standards.

The standards are effective under the Agricultural Marketing Act of 1946 as amended (7 U.S.C. 1621–1627), hereinafter referred to as the Act.

The USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, (5 U.S.C. 601 *et seq.*), because it reflects current marketing practices. In addition, these standards are voluntary. A small entity may avoid incurring any additional economic impact by not employing the standards.

Further, no additional costs are expected to result from this action for producers and benefits derived from this action may be passed on to consumers.

The American Frozen Food Institute (AFFI) petitioned for emergency relief from a requirement in the United States Standards for Grades of Frozen Okra.

AFFI is a trade association representing over 560 food industry companies that account for over 90 percent of frozen food production in the United States.

The frozen okra industry requested that USDA revise the grade standards for frozen okra so that producers of frozen okra will have the option to pack whole an cut okra without trimming and still meet the requirements of the United States Standards for Grades of Okra. The U.S. grade standards are voluntary standards. However, there is widespread use of the standards for frozen okra in contract requirements.

When the United States grade standards were first issued, okra was cut by hand. With the advent of mechanical harvesting, the techniques of harvesting have changed. Also processing equipment, including electronic sorters, has improved the quality such that the frozen okra industry can control quality more effectively without extensive handling.

Moreover, AFFI stated in its petition to revise the standards that since the frozen okra standards were last revised in 1969, new varieties have been established which leave the stems edible and tender when harvested with pods of the desirable length for freezing. AFFI noted that all other forms of whole okra including fresh, pickled, etc., are marketed untrimmed.

AFFI also stated that the cost associated with trimming frozen whole okra was approximately $.0625 per pound of okra. Based on 1994 United States production of 65,114,000 pounds of frozen okra sold, trimming okra costs U.S. processors of frozen okra approximately $4,069,625 each year.

AFFI claimed that in the time it takes to revise the frozen okra standard through ordinary channels, frozen okra processors could incur costs of more than $8 million.

Based on all the information received, USDA revised the grade standards by amending the product description in § 52.1511 and § 52.1512, Styles, in the United States Standards for Grades of Frozen Okra. Also, in § 52.1517(c)(5)(i), ''apparent untrimmed pods'' was removed from the standards as a defect since it no longer applies.

No additional costs are expected to result from this action for producers and benefits derived from this action may be passed on to consumers. This change is expected to facilitate marketing of frozen okra.

The interim final rule became effective when it was published in the Federal Register (60 FR 62708) on December 7, 1995, with a 30-day comment period. In response to the interim final rule the only comment received was from AFFI, which agreed with this revision.

This action will finalize the interim final rule. In addition, in the interim final rule, corrections are made to the authority citation.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and record keeping requirements, Vegetables.

Accordingly, the interim final rule amending 7 CFR part 52, which was published at 50 FR 62709 on December 7, 1995, is adopted as a final rule with the following change.

PART 52—[AMENDED]

The authority citation for part 52 is revised to read as follows:

Authority: 7 U.S.C. 1621–1627.

Dated: September 6, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–23317 Filed 9–11–96; 8:45 am]

BILLING CODE 3410–02–M

7 CFR Part 52

[FV–95–329]

United States Standards for Grades of Frozen Field Peas and Frozen Black-Eye Peas

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting as a final rule with change the provisions of an interim final rule amending U.S. grade standards for Frozen Field Peas and Frozen Black-Eye Peas. The change would allow producers of frozen field peas and frozen black-eye peas the option to pack black-eye peas and cream peas without the requirement that these peas have an ''obvious green color.'' In addition, this rule enables the frozen food industry to produce frozen black-eye peas and frozen field peas more efficiently.

EFFECTIVE DATE: October 15, 1996.

FOR FURTHER INFORMATION CONTACT: James R. Rodeheaver, Processed Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 0709, South Building, P.O. Box 96456, Washington, D.C. 20090–6456, Telephone (202) 720–4693.

SUPPLEMENTARY INFORMATION: This rule is issued under the United States Standards for Grades of Frozen Field Peas and Frozen Black-Eye Peas (7 CFR Part 52) to improve grade standards. The standards are effective under the Agricultural Marketing Act of 1946 as amended (7 U.S.C. 1621–1627), hereinafter referred to as the Act. The USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act, (5 U.S.C. 601 *et seq.*), because it reflects current marketing practices. In addition, these standards are voluntary. Therefore, a small entity may avoid incurring any additional economic impact by not employing the standards. Further, no additional costs are expected to result from this action for producers and benefits derived from this action may be passed on to consumers.

The American Frozen Food Institute (AFFI) petitioned for emergency relief from a requirement in the United States grade standards for frozen field peas and frozen black-eye peas. AFFI is a trade association representing over 560 food industry companies that account for over 90 percent of frozen food production in the United States. The frozen food industry requested USDA revise the grade standards to bring it in line with current harvesting and marketing practices. This would give economic relief to the frozen field pea and black-eye pea industry. The U.S. grade standards are voluntary standards. However, there is widespread use of the standards in contracts.

When these grade standards were promulgated in 1976, it included a ''Grade A'' color requirement for frozen black-eye peas and cream peas that approximately 14 percent of these type peas have an obvious green color.

This requirement was applicable when hand harvesting techniques forced growers to harvest their crops earlier in the growing season which allowed for a high percentage of immature peas. Today, modern mechanical harvesting techniques allow growers to harvest these types of peas with more mature pods that are easily shelled.

The requirement for these types of peas to have an obvious green color has caused undue economic stress on the industry.

Frozen field pea and black-eye pea processors must purchase imported, hand-harvested peas and blend them with domestic crops to meet the ''Grade A'' color requirement. AFFI estimates that 10 million pounds of imported peas must be purchased by U.S. processors per year at an approximate annual cost of more than $2 million.

Based on all the information received, USDA amended Section 52.1669 in the United States Standards for Grades of Frozen Field Peas and Frozen Black-Eye Peas by removing the color attribute requirements for frozen black-eye peas and frozen cream peas from the text and Table III of this section.

No additional costs are expected to result from this action for producers and benefits derived from this action may be passed on to consumers. This change is expected to facilitate marketing of frozen field peas and frozen black-eye peas.

The interim final rule became effective when it was published in the Federal Register (60 FR 62709) on December 7, 1995, with a 30-day comment period. In response to the interim final rule the only comment received was from AFFI, which agreed with this revision.

This action will finalize the interim final rule. An editorial change will be made for clarity in Section 52.1669 (b)(2) to specify that in the classification of color for ''field peas'' and ''mixed types'', ''black-eye peas'' and ''cream peas'' are not considered. In addition, in the interim final rule, corrections are made to the authority citation.

List of Subjects in 7 CFR Part 52

Food grades and standards, Food labeling, Frozen foods, Fruit juices, Fruits, Reporting and recordkeeping requirements, Vegetables.

Accordingly, the interim final rule amending 7 CFR part 52, which was published at 60 FR 62710 on December 7, 1995, is adopted as a final rule with the following change.

PART 52—[AMENDED]

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

Authority: 7 U.S.C. 1621–1627.

2. In § 52.1669, paragraph (b)(2) is revised to read as follows:

§ 52.1669 Classification of color and grade compliance.

* * * * *

(b) * * *

(2) *''Field peas'' and ''mixed types''.* Each unit with a color that is characteristic of very young peas (''black-eye peas'' and ''cream peas'' are not considered.)

Dated: September 6, 1996.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 96–23318 Filed 9–11–96; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–CE–10–AD; Amendment 39–9753; AD 96–19–05]

RIN 2120–AA64

Airworthiness Directives; Fairchild Aircraft SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 95–19–07, which currently requires the following on Fairchild Aircraft SA226 and SA227 series airplanes equipped with certain main landing gear (MLG) and nose landing gear (NLG): repetitively inspecting, using ultrasonic methods, the left-hand and right-hand MLG yokes and the NLG yokes for stress corrosion cracking, and, if any cracked yokes are found that exceed certain limits, replacing either the cracked yoke, the yoke/cylinder combination, or the affected MLG or NLG assembly. This action also supersedes priority letter AD 95–19–07 R1, which was issued to incorporate revised service information. Reports of landing gear failures on the affected airplanes prompted the original AD action. This action requires the same inspections, but requires replacing any MLG and NLG assembly with any cracks instead of allowing flight until certain crack limits are exceeded. The inability to determine or predict crack growth on areas where stress corrosion occurs on primary structure with a single-load path (MLG and NLG assemblies are considered such structure) prompted this action. The actions specified by this AD are intended to prevent MLG or NLG failure caused by stress corrosion cracking in the yokes, which could result in loss of control of the airplane during landing operations.

DATES: Effective October 1, 1996.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 1, 1996.

Comments for inclusion in the Rules Docket must be received on or before November 7, 1996.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–CE–10–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490; telephone (210) 824–9421. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket 96–CE–10–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Hung Viet Nguyen, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone (817) 222–5155; facsimile (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of AD 95–19–07

Several reports of main landing gear (MLG) and nose landing gear (NLG) failure on Fairchild Aircraft SA226 and SA227 series airplanes prompted the FAA to issue Airworthiness Directive (AD) 95–19–07, Amendment 39–9369 (60 FR 47687, September 14, 1995). AD 95–19–07 required the following on Fairchild Aircraft SA226 and SA227 series airplanes equipped with certain MLG and NLG: repetitively inspecting, using ultrasonic methods, the left-hand and right-hand MLG yokes and the NLG yokes for stress corrosion cracking, and, if any cracked yokes are found that exceed certain limits, replacing either the cracked yoke, the yoke/cylinder combination, or the affected MLG or NLG assembly. Accomplishment of the inspections required by AD 95–19–07 was required in accordance with Fairchild Service Bulletin (SB) 226–32–065, Fairchild SB 227–32–039, or Fairchild SB CC7–32–007, all Issued: August 16, 1995, as applicable.

The airplanes in the above-referenced incidents are equipped with at least one part number (P/N) OAS5453 MLG assembly and P/N OAS5451 NLG assembly. Metallurgical analysis of the yokes of the right-hand and left-hand MLG assemblies and NLG assemblies on several of these airplanes revealed that the failure was initiated by stress corrosion cracking of the yokes.

Explanation of the Relevant Service Information

The service bulletins incorporated into AD 95–19–07 contain some incorrect procedures that could prevent an owner/operator from correctly accomplishing the actions required by that AD. For this reason, Fairchild Aircraft revised SB 226–32–065, SB 227–32–039, and SB CC7–32–007, each of which incorporates the following effective pages and revision levels:

Effective pages	SB date
1, 5, and 8	Revised: September 28, 1995.
2, 3, 4, 6, 7, and 9	Issued: August 16, 1995.

These service bulletins specify improved procedures for ultrasonically inspecting the left-hand and right-hand Ozone Industries, Inc. MLG yoke (reference: MLG assembly P/N OAS5453, all dash numbers up to and including –19), and Ozone Industries, Inc. NLG yoke (reference: NLG assembly P/N OAS5451, all dash number up to and including –17), on Fairchild Aircraft SA226 and SA227 series airplanes.

The Need to Revise AD 95–19–07

The FAA determined that the revised service information should be incorporated into AD 95–19–07 to allow for proper inspection of the MLG and NLG yokes of the affected airplanes, and issued priority letter AD 95–19–07 R1 to prevent MLG or NLG failure caused by stress corrosion cracks in the yokes, which could result in loss of control of the airplane during landing operations. The priority letter revised AD 95–19–07 by (1) retaining the repetitive inspections and possible replacement required by AD 95–19–07; and (2) incorporating the revised service bulletins to require accomplishment of the actions in accordance with corrected and clarified procedures.

Reason for This Action

After in-depth analysis, the FAA has established a policy to not allow airplane operation when known cracks exist in primary structure (MLG and NLG assemblies are considered such structure). The FAA makes allowances on this policy to account for parts availability provided analysis shows that an interim, acceptable level of safety can be maintained through a short-term, repetitive inspection program.

For this reason, the FAA has determined that the crack limits in priority letter AD 95–19–07 R1 and AD 95–19–07, Amendment 39–9369, should be eliminated and that AD action should be taken to require immediate replacement of any cracked MLG or NLG assembly. Because analysis shows that a repetitive inspection program can provide an interim acceptable level of safety, the FAA will allow a grace period for those owners/operators with airplanes where a crack is found in the MLG or NLG yoke during the initial inspection required by this action.

Explanation of the Provisions of This AD

Since an unsafe condition has been identified that is likely to exist or develop in other Fairchild Aircraft SA226 and SA227 series airplanes of the same type design, this AD supersedes both priority letter AD 95–19–07 R1 and AD 95–19–07, Amendment 39–9369, with a new AD that retains the requirement of repetitively inspecting, using ultrasonic methods, the left-hand and right-hand MLG yokes and the NLG yokes for stress corrosion cracking, and

requires replacing either the cracked yoke, the yoke/cylinder combination, or the affected MLG or NLG assembly, if any crack is found. Accomplishment of the required inspections is in accordance with Fairchild SB 226–32–065, Fairchild SB 227–32–039, or Fairchild SB CC7–32–007, as applicable. Each of these service bulletins incorporates the following effective pages and revision levels:

Effective pages	SB date
1, 5, and 8	Revised: September 28, 1995.
2, 3, 4, 6, 7, and 9	Issued: August 16, 1995.

Accomplishment of the replacement is in accordance with the applicable maintenance manual.

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

Compliance Time Criteria

The compliance time of this AD is presented in both calendar time and hours time-in-service (TIS). Cracking of certain MLG yokes and NLG yokes on the affected airplanes is caused by stress corrosion, which starts as a result of high local stress (in the area where the piston was shrink fitted to the yoke) incurred through operation. Corrosion can then develop regardless of whether the airplane is in flight or on the ground. The cracks may not be noticed initially as a result of the stress loads, but could then progress as a result of corrosion. The stress incurred during flight operations or temperature changes could then cause rapid crack growth. In order to ensure that these stress corrosion cracks do not go undetected, a compliance time of specific hours TIS and calendar time (whichever occurs first) is utilized.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. 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 No. 96–CE–10–AD.'' The postcard will be date stamped and returned to the commenter.

Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under 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 (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 95–19–07, Amendment 39–9369 (60 FR 47687, September 14, 1995), and by adding a new AD to read as follows:

96–19–05 Fairchild Aircraft: Amendment 39–9753, Docket No. 96–CE–10–AD. Supersedes both AD 95–19–07, Amendment 39–9369, and priority letter AD 95–19–07 R1.

Applicability: Models SA226–T, SA226–AT, SA226–TC, SA226–T(B), SA227–AC, SA227–AT, SA227–BC, SA227–TT, SA227–CC, and SA227–DC airplanes (all serial numbers), certificated in any category, that are equipped with one or more of the following:

1. Ozone Industries, Inc. main landing gear (MLG) yoke (reference: MLG assembly part number OAS5453, all dash numbers up to and including –19); or

2. Ozone Industries, Inc. nose landing gear (NLG) yoke (reference: NLG assembly part number OAS5451, all dash numbers up to and including –17).

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

Compliance: Required initially as follows and thereafter as indicated in the body of this AD:

1. Within the next 100 hours time-in-service (TIS) after the effective date of this AD or within the next 3 months after the effective date of this AD, whichever occurs first; and

2. Upon the installation of one of the affected MLG or NLG assemblies or yokes.

To prevent MLG or NLG failure caused by stress corrosion cracks in the yokes, which could result in loss of control of the airplane during landing operations, accomplish the following:

(a) Inspect, using ultrasonic methods, both sides of the left-hand and right-hand MLG and NLG yokes for stress corrosion cracking in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of Fairchild Service Bulletin (SB) 226–32–065, Fairchild SB 227–32–039, or Fairchild SB CC7–32–007, as applicable. Each of these service bulletins incorporates the following effective pages and revision levels:

Effective pages	SB date
1, 5, and 8	Revised: September 28, 1995.
2, 3, 4, 6, 7, and 9	Issued: August 16, 1995.

(b) If no cracks are found during the initial inspection required by paragraph (a) of this AD, accomplish the following:

(1) Prior to further flight after the initial inspection required by this AD, clean the MLG and NLG yoke and piston in accordance with FIGURE 2 of the service bulletins referenced in this AD, unless already accomplished;

(2) Prior to further flight after the initial inspection required by this AD, apply a small bead of Products Research and Chemical Corporation PR–1422 or PR–1435 sealant to the MLG and NLG yoke as shown in FIGURE 2 of the service bulletins referenced in this AD, and as described in the SA226/227 Series Service Repair Manual, Chapter 51–30–03, Standard Practices—Sealing, unless already accomplished; and

(3) Reinspect the MLG and NLG yokes at intervals not to exceed 2,500 hours TIS or 12 months, whichever occurs first, provided no cracks are found. If cracks are found, prior to further flight, replace the cracked part with a new or serviceable part in accordance with the applicable maintenance manual, and accomplish the cleaning of and sealant application to the MLG and NLG yoke and piston as specified in paragraphs (b)(1) and (b)(2) of this AD. The replacement may be accomplished by replacing the cracked yoke, the total gear assembly, or the yoke/cylinder combination.

(c) If a crack is found during the initial inspection of this AD, replace the cracked part with a new or serviceable part in accordance with the applicable maintenance manual, and accomplish the cleaning of and sealant application to the MLG and NLG yoke and piston as specified in paragraphs (b)(1) and (b)(2) of this AD. The replacement may be accomplished by replacing the cracked yoke, the total gear assembly, or the yoke/cylinder combination. Replace any cracked part in accordance with the following schedule:

(1) With a crack found with a length more than 1.5 inches in length: PRIOR TO FURTHER FLIGHT;

(2) With a crack found with a length more than 1 inch but not more than 1.5 inches: WITHIN THE NEXT 300 HOURS TIS AFTER THE INITIAL INSPECTION REQUIRED BY THIS AD OR WITHIN THE NEXT 60 DAYS AFTER THE INITIAL INSPECTION REQUIRED BY THIS AD, WHICHEVER OCCURS FIRST;

(3) With a crack found with a length more than .75 inch but not more than 1 inch: WITHIN THE NEXT 400 HOURS TIS AFTER THE INITIAL INSPECTION REQUIRED BY THIS AD OR WITHIN THE NEXT 80 DAYS AFTER THE INITIAL INSPECTION REQUIRED BY THIS AD, WHICHEVER OCCURS FIRST;

(4) With a crack found with a length more than .50 inch but not more than .75 inch: WITHIN THE NEXT 500 HOURS TIS AFTER THE INITIAL INSPECTION REQUIRED BY THIS AD OR WITHIN THE NEXT 100 DAYS AFTER THE INITIAL INSPECTION REQUIRED BY THIS AD, WHICHEVER OCCURS FIRST; and

(5) With a crack found with a length less than 0.50 inch: WITHIN THE NEXT 600 HOURS TIS AFTER THE INITIAL INSPECTION REQUIRED BY THIS AD OR WITHIN THE NEXT 120 DAYS AFTER THE INITIAL INSPECTION REQUIRED BY THIS AD, WHICHEVER OCCURS FIRST.

(d) Replacing a MLG or NLG yoke with either Ozone Industries, Inc. MLG yoke (reference: MLG assembly part number OAS5453, all dash numbers up to and including—19), or Ozone Industries, Inc. NLG yoke (reference: NLG assembly part number OAS5451, all dash numbers up to and including—17) re-establishes the effectivity of this AD.

(1) Repetitive inspections are required upon installation and at intervals not to exceed 2,500 hours TIS or 12 months, whichever occurs first, provided no cracks are found.

(2) If cracks are found, prior to further flight, replace the cracked part with a new or serviceable part in accordance with the applicable maintenance manual, and accomplish the cleaning of and sealant application to the MLG and NLG yoke and piston as specified in paragraphs (b)(1) and (b)(2) of this AD. The replacement may be accomplished by replacing the cracked yoke, the total gear assembly, or the yoke/cylinder combination.

(3) The crack limit replacement compliance times specified in paragraph (c) of this AD only apply when cracks are found during the initial inspection required by this AD. If any crack of any length is found during a subsequent (any repetitive) inspection, the part must be replaced PRIOR TO FURTHER FLIGHT.

(e) The MLG and NLG yokes to which this AD applies are manufactured by Ozone Industries, Inc. Replacing these yokes with approved parts, other than the following Ozone Industries, Inc. MLG and NLG yokes eliminates the repetitive inspection requirements of this AD:

(1) Ozone Industries, Inc. MLG yoke (reference: MLG assembly part number OAS5453, all dash numbers up to and including—19).

(2) Ozone Industries, Inc. NLG yoke (reference: NLG assembly part number OAS5451, all dash numbers up to and including—17).

(f) 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.

(g) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Airplane Certification Office (ACO), FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO. Alternative methods of compliance approved in accordance with either priority letter AD 95–19–07 R1 or AD 95–19–07, Amendment 39–9369 (both superseded by this action), are not considered approved as alternative methods of compliance with this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(h) The inspections required by this AD shall be done in accordance with Fairchild Service Bulletin 226–32–065, Fairchild Service Bulletin 227–32–039, or Fairchild Service Bulletin CC7–32–007, as applicable. Each of these service bulletins incorporates the following effective pages and revision levels:

Effective pages	SB date
1, 5, and 8	Revised: September 28, 1995.
2, 3, 4, 6, 7, and 9	Issued: August 16, 1995.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fairchild Aircraft, P.O. Box 790490, San Antonio, Texas 78279–0490. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) This amendment (39–9753) supersedes AD 95–19–07, Amendment 39–9369, and priority letter AD 95–19–07 R1.

(j) This amendment (39–9753)1 becomes effective on October 1, 1996.

Issued in Kansas City, Missouri, on September 3, 1996.

Henry A. Armstrong,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 96–22951 Filed 9–11–96; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 95–ASW–15]

Revision of Class E Airspace; Gainesville, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the geographic coordinates of a final rule that was published in the Federal

Register on June 4, 1996 (61 FR 28037), Airspace Docket No. 95–ASW–15.

EFFECTIVE DATE: September 12, 1996.

FOR FURTHER INFORMATION CONTACT:

Chuck Frankenfield, Operations Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone 817–222–5591.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 96–13929, Airspace Docket No. 95–ASW–15, published on June 4, 1996 (61 FR 28037), revised the description of the Class E airspace area at Gainesville, TX. An error was discovered in the geographic coordinates for the Gainesville Municipal Airport, Gainesville, TX, and for the Gainesville Radio Beacon (RBN). The coordinates for the Gainesville Municipal Airport were published as latitude 33°38′57″N., longitude 97°11′43″W.; they should have been published as latitude 33°39′05″N., longitude 97°11′49″W. The coordinates for the Gainesville RBN were published as latitude 33°42′24″N., longitude 99°10′19″W.; they should have been published as latitude 33°43′07″N., longitude 97°11′55″W. This action corrects the geographic coordinates that were published in error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the geographic coordinates for the description of the Class E airspace area at Gainesville, TX, as published in the Federal Register on June 4, 1996 (61 FR 28037), (Federal Register Document 96–13929: page 28037, column 3), are corrected as follows:

§ 71.1 [Corrected]

* * * * *

ASW TX E5 Gainesville, TX [Corrected]

Gainesville Municipal Airport, TX

Removing ''(Lat. 33°38′57″N., long. 97°11′43″W.)'' and substituting ''(Lat. 33°39′05″N., long. 97°11′49″W.)''

Gainesville RBN

Removing ''(Lat. 33°42′24″N., long. 99°10′19″W.)'' and substituting ''(Lat. 33°43′07″N., long. 97°11′55″W.)''

* * * * *

Issued in Fort Worth, TX, on September 3, 1996.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 96–23367 Filed 9–11–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS FALCON (MHC 59) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: August 21, 1996.

FOR FURTHER INFORMATION CONTACT: Captain R. R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, Virginia, 22332–2400. Telephone Number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS FALCON (MHC 59) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Rule 27(f), pertaining to the display of all-round lights by a vessel engaged in mineclearance operations; and Annex I, paragraph 9(b), prescribing that all-round lights be located as not to be obscured by masts, topmasts or structures within angular sectors of more than six degrees. The Deputy Assistant Judge Advocate General (Admiralty) of the Navy has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Section 706.2 is amended by adding the following entry for USS FALCON to Table Four, paragraph 18:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Table Four

* * * * *

18. * * *

Vessel	Number	Obscured angles relative to ship's heading	
		Port	STBD
*	*	*	*
USS FALCON	MHC 59	65.0° to 75.6°	284.1° to 294.6°

* * * * *

Dated: August 21, 1996.

R.R. Pixa,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 96–23163 Filed 9–11–96; 8:45 am]

BILLING CODE 3810–FF–P

POSTAL SERVICE

39 CFR Part 111

Classification Reform; Implementation Standards

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule sets forth additional Domestic Mail Manual (DMM) standards adopted by the Postal Service to implement the Decision of the Governors of the United States Postal Service on the Recommended Decision of the Postal Rate Commission on Nonprofit Standard Mail, Nonprofit Enhanced Carrier Route Standard Mail, Nonprofit Periodicals, and Within County Periodicals, Docket No. MC96–2, Classification Reform II.

EFFECTIVE DATE: October 6, 1996.

FOR FURTHER INFORMATION CONTACT: Leo F. Raymond, (202) 268–5199.

SUPPLEMENTARY INFORMATION: On April 4, 1996, pursuant to its authority under 39 U.S.C. 3621, *et seq.*, the Postal Service filed with the Postal Rate Commission (PRC) a request for a recommended decision on several mail classification reform proposals for nonprofit Periodicals and Standard Mail (Classification Reform II). The PRC designated the filing as Docket No. MC96–2. On April 11, 1996, the PRC published a notice of the filing, with a description of the Postal Service's proposals, in the Federal Register (61 FR 16129–16146). The PRC issued its Opinion and Recommended Decision on Docket No. MC96–2 on July 19, 1996. In that document, the PRC favorably recommended what the Postal Service had proposed, with the exception of those provisions in the Classroom Periodicals rate schedule; the PRC reopened the record in Docket No. MC96–2 for further proceedings on that category of mail. On August 6, 1996, the Governors of the Postal Service accepted the Recommended Decision and the Board of Governors set October 6, 1996, as the date on which the provisions of Docket No. MC96–2 would take effect. A notice of the Decision of the Governors was published on August 15, 1996 (61 FR 42464–42476).

The DMM standards that were proposed to take effect to implement Docket No. MC96–2 were published for public comment in the Federal Register on June 24, 1996 (61 FR 32606–32616). Because no comments were received on the proposed rule, it was adopted without change as the final rule, except as noted therein to reflect the absence of rate provisions for Classroom Periodicals in the PRC's Recommended Decision that was accepted and implemented by the Governors, and published on August 15, 1996 (61 FR 42478–42489).

Because the PRC's Recommended Decision, as accepted and implemented by the Governors, excluded rate changes for Classroom Periodicals that had been proposed by the Postal Service, the rate schedule for Classroom Periodicals was unchanged, retaining ZIP+4 Classroom rates. Because of this difference from what the Postal Service had proposed in its request and in the proposed rule, the August 15 final rule also proposed standards for ZIP+4 Classroom rate mail that were different from those published in DMM Issue 50. (In general, the Postal Service proposed to establish eligibility standards for ZIP+4 Classroom rate mail that parallel those for other automation rate Periodicals. Mail preparation standards for ZIP+4 Classroom rate mail would be essentially similar to those for upgradable mail in other classes, except a ZIP+4 code would be required in the address. The Postal Service anticipated minimal adverse impact from this proposal on the mailing community, given the applicability of ZIP+4 rates to only letter-size pieces and the likely absence of a significant volume of letter-size mail in the Classroom Periodicals subclass.) Because those specific standards were not part of the June 24 proposed rule, the Postal Service accepted further comments on those standards from interested parties for an additional 21 days (i.e., through September 5, 1996).

No comments were received on the proposed rule for ZIP+4 Classroom Periodicals rate eligibility and mail preparation. Therefore, the Postal Service adopts the corresponding DMM standards as the final rule.

These relevant standards are shown below for the information of readers, but are the same as the corresponding standards published in the August 15 final rule.

All references to DMM sections shown in this rule are based on DMM Issue 50 (July 1, 1996) as amended by the August 15 final rule.

List of Subjects in 39 CFR Part 111

Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

PART 111—[AMENDED]

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

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

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

C CHARACTERISTICS AND CONTENT

* * * * *

C800 Automation-Compatible Mail

C810 Letters and Cards

* * * * *

2.0 DIMENSIONS

* * * * *

[Revise the heading of 2.3 to read as follows:]

2.3 Maximum Weight

[Revise 2.3a to read as follows:]

Maximum weight limits are as follows:

a. 2.5 ounces: upgradable Presorted First-Class Mail, ZIP+4 Classroom Periodicals, and upgradable nonautomation Standard Mail.

* * * * *

C840 Barcoding Standards

* * * * *

2.0 BARCODE LOCATION—LETTER-SIZE PIECES

2.1 Barcode Clear Zone

[Amend 2.1 by revising the first sentence to read as follows:]

Each letter-size piece in an automation rate mailing, each piece of ZIP+4 Classroom Periodicals, and each piece of upgradable Presorted First-Class Mail or upgradable Standard Mail (A) must have a barcode clear zone unless the piece bears a DPBC in the address book. * * *

* * * * *

E ELIGIBILITY

* * * * *

E200 Periodicals

* * * * *

E240 Automation Rates

1.0 BASIC STANDARDS

1.1 All Pieces

[Amend 1.1 by revising the introductory text to read as follows:]

Except for Classroom Periodicals under 3.0, all pieces in an automation Periodicals mailing must:

* * * * *

[Revise the heading of 2.0 to read as follows:]

2.0 RATE APPLICATION—EXCEPT CLASSROOM PERIODICALS

* * * * *

[Add new 3.0 to read as follows:]

3.0 RATE APPLICATION—CLASSROOM PERIODICALS ONLY

3.1 ZIP+4 Rates

ZIP+4 Classroom Periodicals must meet the basic standards in 1.1a through 1.1f and 1.2, except each piece must meet the physical standards for letter-size mail in C810 and the standards for OCR processing in C830, must bear the correct ZIP+4 code in the address, and must have address elements in the standardized format placed in the OCR read area, under A010. ZIP+4 rates apply to each letter-size piece that is sorted under M810 into the corresponding qualifying groups:

a. Groups of 150 or more pieces in 5-digit or unique 3-digit trays qualify for the 3/5 ZIP+4 rate.

b. Groups of fewer than 150 pieces in origin/entry 3-digit trays and groups of 150 or more pieces in other 3-digit or AADC trays, and all pieces in mixed AADC trays qualify for the Basic ZIP+4 rate.

3.2 Barcoded Rates

Barcoded Classroom Periodicals must meet the basic standards in 1.00 Barcoded rates apply to each letter-size piece that is sorted under M810 into the corresponding qualifying groups:

a. Groups of 150 or more pieces in 5-digit trays qualify for the 5-Digit Barcoded rate.

b. Groups of 150 or more pieces in *unique* 3-digit trays qualify for the 3-Digit Barcoded rate.

c. Pieces for unique 3-digit destination that is part of a 3-digit scheme group in L003 qualify for the 3-Digit Barcoded rate when placed in a 3-digit scheme tray if grouped separately from pieces for other 3-digit areas.

d. Groups of fewer that 150 pieces in origin/entry 3-digit/scheme trays and groups of 150 or more pieces in other 3-digit, 3-digit scheme, or AADC trays and all pieces in mixed AADC trays qualify for the Basic Barcoded rate.

* * * * *

M MAIL PREPARATION AND SORTATION

* * * * *

M800 All Automation Mail

[Revise the heading of M810 to read as follows:]

M810 Letter-Size Mail

1.0 BASIC STANDARDS

1.1 Standards

[Amend 1.1 by replacing the term ''Regular Periodicals'' with ''Periodicals'' in the first sentence to read as follows:]

Letter-size automation rate First-Class Mail, Periodicals, and Standard Mail (A) must be prepared under M810 and the eligibility standards for the rate claimed.* * *

1.2 Mailings

[Amend 1.2 by adding the following sentence to the end of the section to read as follows:]

* * *A Periodicals mailings may not contain both ZIP+4 Classroom pieces and any other automation rate Periodicals.

* * * * *

1.6 Scheme Sortation

[Amend 1.6 by adding the following sentence to the end of the section to read as follows:]

* * *Scheme sortation is not available for ZIP+4 Classroom Periodicals.

* * * * *

3.0 PREPARATION—PERIODICALS

3.1 Tray Preparation

[Amend 3.1 by revising 3.1b to read as follows:]

Tray size, preparation sequence, and labeling:

* * * * *

b. 3-digit/scheme (3-digit only for ZIP+4 Classroom Periodicals): required (150-piece minimum except no minimum for required origin/optional entry 3-digit(s)/scheme); overflow allowed; for Line 1, use L002, Column B (*except* use L002, Column A, for ZIP+4 Classroom Periodicals).

* * * * *

3.2 Line 2

[Revise 3.2 to read as follows:]

Line 2: PER or NEWS (as appropriate), LTRS BC (except LTRS UPGR for ZIP+4 Classroom Periodicals), and:

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 96–23394 Filed 9–11–96; 8:45 am]

BILLING CODE 7710-12–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 960126016–6121–04; I.D. 090396B]

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Closures from the Oregon-California Border to Humboldt South Jetty, CA, and from the U.S.-Canadian Border to Leadbetter Point, WA

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

ACTION: Closures.

SUMMARY: NMFS announces that commercial salmon fisheries were closed in the following areas: from the Oregon-California border (42°00'00'' N. lat.) to Humboldt South Jetty, CA (40°45'53'' N. lat.), at midnight, August 22, 1996; and from the U.S.-Canadian border to Leadbetter Point, WA (46°38'10'' N. lat.), at midnight, August 24, 1996. The Director, Northwest Region, NMFS (Regional Director), has determined that the commercial quotas of 2,500 chinook salmon and 20,800 coho salmon for the respective areas have been reached. This action is necessary to conform to the preseason announcement of the 1996 management measures and is intended to ensure conservation of chinook and coho salmon.

DATES: Closure from the Oregon-California border to Humboldt South Jetty, CA, is effective at 2400 hours local time, August 22, 1996, through 0001 hours local time, September 1, 1996, at which time the season reopens under the terms of the preseason announcement of the 1996 management measures. Closure from the U.S.-Canadian border to Leadbetter Point, WA, is effective at 2400 hours local time, August 24, 1996, through 2400 hours local time, September 30, 1996, at which time the season remains closed under the terms of the preseason announcement of the 1996 management measures. Comments will be accepted through September 26, 1996.

ADDRESSES: Comments may be mailed to William Stelle, Jr., Director, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, or Hilda Diaz-Soltero, Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132. Information relevant to this action

has been compiled in aggregate form and is available for public review during business hours at the Northwest Regional Office or Southwest Regional Office.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206–526–6140, or Rodney R. McInnis, 310–980–4030.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR 660.409(a)(1) state that when a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, NMFS will, by notice issued under 50 CFR 660.411, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached.

In the annual management measures for ocean salmon fisheries (61 FR 20175, May 6, 1996), NMFS announced that the 1996 commercial fishery in the area between the Oregon-California border and Humboldt South Jetty, CA, would open on August 15 and continue through August 31 or attainment of the 2,500 chinook salmon quota, whichever occurred first. NMFS also announced that a 1996 commercial fishery contingency season in the area between the U.S.-Canadian border and Leadbetter Point, WA, would open on July 26 and continue through September 30 or attainment of the 18,800 chinook salmon quota, whichever occurred first. An inseason action at 61 FR 40157, August 1, 1996, announced implementation of the contingency season. A further inseason action at 61 FR 43472, August 23, 1996, increased the commercial coho salmon quota for the area to 20,800 fish.

The best available information on August 21 indicated that catch and effort data and projections supported closure of the commercial fishery in the area between the Oregon-California border and Humboldt South Jetty, CA, at midnight, August 22, and closure of the commercial fishery in the area between the U.S.-Canadian border and Leadbetter Point, WA, at midnight, August 24.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the California Department of Fish and Game, and the Washington Department of Fish and Wildlife regarding these closures. The States of California and Washington will manage the commercial fishery in state waters adjacent to these areas of the exclusive economic zone in accordance with this Federal action. As provided by the inseason notice procedures of 50 CFR 660.411, actual notice to fishermen of this action was given prior to 2400 hours local time, August 22, 1996 (closure from the Oregon-California border to Humboldt South Jetty, CA) and 2400 hours local time, August 24, 1996 (closure from the U.S.-Canadian border to Leadbetter Point, WA) by telephone hotline number 206–526–6667 or 800–662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz. Because of the need for immediate action to stop the fishery upon achievement of the quota, NMFS has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. This notice does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under E.O. 12866.

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

Dated: September 5, 1996

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–23253 Filed 9–11–96; 8:45 am]

BILLING CODE 3510–22–F

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50 CFR Part 679

[Docket No. 960129019–6019–01; I.D. 090696D]

Fisheries of the Exclusive Economic Zone Off Alaska; Sharpchin and Northern Rockfish in the Aleutian Islands Subarea

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

ACTION: Inseason adjustment; request for comments.

SUMMARY: NMFS issues an inseason adjustment prohibiting retention of Atka mackerel in the Aleutian Islands subarea of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent overfishing of the sharpchin/northern rockfish species group.

DATES: 1200 hrs, Alaska local time (A.l.t.), September 7, 1996, until 2400 hrs, A.l.t., December 31, 1996. Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 23, 1996.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or be delivered to the fourth floor of the Federal Building, 709 West 9th Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Magnuson Act requires that conservation and management measures prevent overfishing. The 1996 overfishing level for the sharpchin/northern rockfish species group in the Aleutian Islands subarea of the BSAI is established by the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996) as 5,810 metric tons (mt) and the acceptable biological catch as 5,810 mt. As of August 24, 1996, 6,578 mt of sharpchin/northern rockfish have been caught.

NMFS closed directed fishing for sharpchin/northern rockfish on May 30, 1996 (61 FR 28072, June 4, 1996) and prohibited retention of sharpchin/northern rockfish on July 27, 1996 (61 FR 40158, August 1, 1996). Substantial trawl fishing effort will be directed at remaining amounts of Atka mackerel in the Aleutian Islands subarea during 1996. This fishery can have a significant bycatch of sharpchin/northern rockfish.

The Administrator, Alaska Region, NMFS, has determined, in accordance with § 679.25(a)(1)(i) and (a)(2)(iii), that closing the season by prohibiting retention of Atka mackerel by vessels using trawl gear is necessary to prevent overfishing of the sharpchin/northern rockfish species group, and is the least restrictive measure to achieve that purpose. Without this prohibition of retention, significant incidental catch of sharpchin/northern rockfish would occur by trawl vessels targeting Atka mackerel.

Therefore, NMFS is requiring that further catches of Atka mackerel by vessels using trawl gear in the Aleutian Islands subarea of the BSAI be treated as prohibited species in accordance with § 679.21(b)(2).

The Assistant Administrator for Fisheries, NOAA, finds for good cause that providing prior notice and public comment or delaying the effective date of this action is impracticable and contrary to the public interest. Immediate effectiveness is necessary to prevent overfishing of sharpchin/northern rockfish in the Aleutian Islands subarea of the BSAI. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until September 23, 1996.

Classification

This action is taken under § 679.20 and is exempt from OMB review under E.O. 12866.

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

Dated: September 6, 1996.

Gary Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–23321 Filed 9–6–96; 5:02 pm]

BILLING CODE 3510–22–P

50 CFR Part 679

[Docket No. 960129019–6019–01; I.D. 090696F]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock by Vessels Using Nonpelagic Trawl Gear in the Bering Sea and Aleutian Island Area

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

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock by trawl vessels using nonpelagic trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the BSAI bycatch allowance of halibut specified for the trawl pollock/Atka mackerel/''other species'' fishery category.

EFFECTIVE DATE: 1200 hrs, Alaska local time (A.l.t.), September 7, 1996, until 2400 hrs, A.l.t., December 31, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 600 and 679.

The 1996 bycatch allowance of halibut specified for the trawl pollock/Atka mackerel/''other species'' fishery category which is defined at § 679.21(e)(3)(iv)(F), was established as 430 metric tons by the Final 1996 Harvest Specifications of Groundfish (61 FR 4311, February 5, 1996).

The Administrator, Alaska Region, NMFS, has determined, in accordance with § 679.21(e)(7), that the bycatch allowance of halibut specified for the trawl pollock/Atka mackerel/''other species'' fishery category has been reached. Therefore, NMFS is closing the directed fishery for pollock by trawl vessels using nonpelagic trawl gear in the BSAI.

Maximum retainable bycatch amounts for applicable gear types may be found in the regulations at § 679.20(e).

Classification

This action is taken under 50 CFR 679.21 and is exempt from review under E.O. 12866.

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

Dated: September 6, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–23322 Filed 9–6–96; 5:02 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 61, No. 178
Thursday, September 12, 1996

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

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Part 1780

RIN 0572–AB20

Streamlining the Rural Utilities Service Water and Waste Program Regulations

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency; USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS) hereby amends the regulations utilized to administer the water and waste loan and grant programs. The proposed rule will combine the water and waste loan and grant regulations into one regulation. Unnecessary and burdensome requirements for entities seeking financial assistance under the programs will be eliminated. The streamlining of the regulation will allow RUS to provide better service to rural entities needing assistance in correcting and alleviating health and sanitary problems in their communities, and in general improve the quality of life in rural areas. This rule will also incorporate changes in the water and waste loan and grant program mandated by the 1996 Farm Bill. This rule could impact the amount of loan and grant an applicant could receive. Therefore, RUS will honor all written commitments of loan and grant amounts issued prior to the effective date of this rule.

DATES: Comments on the proposed rule must be received on or before October 15, 1996.

ADDRESSES: Submit written comments on the proposed rule. RUS requires a signed original and 3 copies of all comments (7 CFR 1700.30(e)) to the Program Support and Regulatory Analysis Group, Rural Utilities Service, 14th & Independence Avenue SW., AG Box 1522, Washington, DC 20250, Telephone: (202) 720–0736.

FOR FURTHER INFORMATION CONTACT: Jerry W. Cooper, Loan Specialist, Water and Waste Division, Rural Utilities Service, USDA, South Agriculture Building, Room 6328, AG Box 1548, Washington, DC 20250, telephone: (202) 720–9589.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this proposed rule in conformance with Executive Order 12866 and the Office of Management and Budget has determined that it is a ''significant regulatory action''.

Intergovernmental Review

These programs are listed in the Catalog of Federal Domestic Assistance under number 10.760, Water and Waste Systems For Rural Communities and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Environmental Impact Statement

This action has been reviewed in accordance with FmHA Instruction 1940–G, ''Environmental Program.'' It has been determined that the action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Compliance With Executive Order 12778

The regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and (2)(b)(2) of that Order. Provisions within this part which are inconsistent with State law are controlling. All administrative remedies pursuant to 7 CFR part 11 must be exhausted prior to filing suit.

Information Collection and Paperwork Requirements

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) RUS is requesting comments on the information collection incorporated in this proposed rule.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For further information contact Jerry W. Cooper, Loan Specialist, Water and Waste Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1548, Washington, DC 20250–1548, telephone: (202) 720–9589.

Title: Water and Waste Disposal Loan and Grant Program.

OMB Control Number: 0575–0015.

Type of Request: Addendum to a previously approved information collection.

The program provides loan and grant funds for water and waste disposal projects serving the most financially needy rural communities. Financial assistance should result in reasonable user costs for rural residents, rural businesses, and other rural users. The program is limited to rural areas and small towns with a population of 10,000 or less. Communities seeking financial assistance through the program must provide certain detailed information to RUS that is used to determine eligibility and the credit worthiness of the applicant. Additional information is needed to assure that proposed projects will meet the needs of the community, are properly constructed, and that the financial interest of the Government is protected. All the information collected is used by RUS to manage and account for Government resources. The reports and forms are required to ensure the proper and judicious use of public funds.

This proposed rule eliminates the pre-application procedures which were previously required under 7 CFR part 1940 subpart A. The addendum will reflect the reduction in reporting burden by 8,726 hours due to the elimination of this reporting requirement.

Estimate of Burden: The public reporting burden for this collection of information is estimated to average 2.7 hours per respondent.

Respondents: Non-profit institutions and state, local or tribal governments.

Estimated Number of Respondents: 10,520.

Estimated Number of Responses: 85,182.

Estimated Total Annual Burden on Respondents: 227,128 hours.

Copies of this information collection can be obtained from Dawn Wolfgang, Program Support and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., STOP 1522, Washington, DC 20250–1522. Telephone: (202) 720–0812. Fax: (202) 720–4120.

Comments may be sent to F. Lamont Heppe, Jr., Director, Program Support and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW, STOP 1522, Washington, DC 20250–1522. Telephone: (202) 720–0812. Fax: (202) 720–4120.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this rule.

All comments will become a matter of public record.

National Performance Review

This regulatory action is being taken as part of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Unfunded Mandate Reform Act

This rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandate Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus today's rule is not subject to the requirements of sections 202 and 205 of the Unfunded Mandate Reform Act of 1995.

Cross References of Regulations

The Rural Utilities Service is an Agency resulting from a reorganization of programs administered by the former Farmers Home Administration, the former Rural Development Administration, and the former Rural Electrification Administration. Dual-references or cross-references to former Farmers Home Administration regulations and forms are provided for by the Department of Agriculture Reorganization Act of 1994.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule.

Background

The water and waste loan and grant programs are authorized by various sections of the Consolidated Farm and Rural Development Act, (7 U.S.C. 1921 *et seq.*), as amended. The regulations for these programs, particularly the loan program, have not been completely reviewed for many years. The recent streamlining and reorganization of the Department of Agriculture provided an opportunity to review and rewrite the water and waste loan and grant regulations. A task force, was formed to review and rewrite the regulations. The aim of the task force was to make the regulations easier to understand, eliminate unnecessary requirements, and continue to protect the interest of the U.S. taxpayer.

The program provides loan and grant funds for water and waste disposal projects serving the most financially needy rural communities. Financial assistance should result in reasonable user costs for rural residents, rural businesses, and other rural users. The program is limited to rural areas and small towns with a population of 10,000 or less.

The proposed rule will divide the regulation into four subparts: A, B, C, and D. Subpart A contains the general policies and requirements of the loan and grant program. Subpart B contains the loan and grant application processing requirements. Subpart C contains all the requirements for planning, designing, bidding, contracting, constructing, and inspections. Subpart D has information required in the preparation of notes or bonds and bond transcript documents for public body applicants.

Major changes are:

1. Redirects additional grant funds to communities that truly need the assistance in order to construct a project. Communities with incomes over 100 percent of the State nonmetropolitan median household income will not qualify for any grant funds as in the current regulations.

2. Stretches the grant dollars appropriated by Congress to help more communities by changing the maximum percentage of grant funds that a higher income community can receive from 55 percent to 45 percent of RUS's share of the project costs. This change could have an indirect effect of having an incentive for development of regional projects.

3. The process used to select projects for funding has been revised to direct funds to low income, small communities that need to correct health problems. Also, the priority points awarded for regional systems have been increased.

4. The application process has been streamlined to reduce unnecessary paperwork and improve service to the rural communities. There will be less regulations and the number of pages will be greatly reduced.

5. The application process has been shortened by eliminating the preapplication process.

6. A preliminary engineering report (PER) must be submitted earlier in the application process. The requirement of submitting a PER earlier in the process will assist the staff in making better decisions. Also, applicants have to have this type of document to help them determine what, where, and how they are going to build needed facilities. This change will force applicants to have a clear picture of what they want to construct prior to applying for assistance. A majority of applicants have a PER at the preapplication stage now, therefore the change will tend to put all applicants on a level field.

The major 1996 Farm Bill changes are:

1. Funds made available for these programs may be made available for a water system that is making significant progress toward meeting the Safe Drinking Water Act standards.

2. Funds made available for water treatment discharge or waste disposal system must meet applicable Federal and State water pollution control standards.

3. Not earlier than 60 days before filing an application for loan or grant assistance, a notice of intent shall be published in a general circulation newspaper.

4. When applicants hire outside engineers, the selection of an engineer for a project design shall be done by a request for proposals.

5. Assistance under any rural development program administered by the Secretary or any agency of the Department of Agriculture shall not be conditioned on any requirement that the recipient of the assistance accept or receive electric service from any particular utility, supplier, or cooperative. This is being implemented for the water and waste loan and grant programs.

List of Subjects in 7 CFR Part 1780

Community development, Community facilities, Grant programs-Housing and community development, Rural areas, Waste treatment and

disposal-Domestic, Water supply-Domestic.

Therefore, RUS proposes to amend chapter XVII, title 7, Code of Federal Regulations as follows:

PART 1780—WATER AND WASTE LOANS AND GRANTS

1. Part 1780, is added to read as follows:

PART 1780—WATER AND WASTE LOANS AND GRANTS

Subpart A—General Policies and Requirements

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1780.2 Purpose.
1780.3 Definitions and grammatical rules of construction.
1780.4 Availability of forms and regulations.
1780.5 [Reserved]
1780.6 Application information.
1780.7 Eligibility.
1780.8 [Reserved]
1780.9 Eligible loan and grant purposes.
1780.10 Limitations.
1780.11 Service area requirements.
1780.12 [Reserved]
1780.13 Rates and terms.
1780.14 Security.
1780.15 Other Federal, state, and local requirements.
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1780.17 Selection priorities and process.
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1780.23 [Reserved]
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Subpart B—Loan and Grant Application Processing

1780.31 General.
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1780.44 Actions prior to loan or grant closing or start of construction, whichever occurs first.
1780.45 Loan and grant closing and delivery of funds.
1780.46 [Reserved]
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1780.48 Regional commission grants.
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Subpart C—Planning, Designing, Bidding, Contracting, Constructing and Inspections

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1780.70 Owner's procurement regulations.
1780.71 [Reserved]
1780.72 Procurement methods.
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1780.74 Contracts awarded prior to applications.
1780.75 Contract provisions.
1780.76 Contract administration.
1780.77–1780.79 [Reserved]

Subpart D—Information Pertaining to Preparation of Notes or Bonds and Bond Transcript Documents for Public Body Applicants

1780.80 General.
1780.81 Policies related to use of bond counsel.
1780.82 [Reserved]
1780.83 Bond transcript documents.
1780.84–1780.86 [Reserved]
1780.87 Permanent instruments for Agency loans.
1780.88 [Reserved]
1780.89 Multiple advances of Agency funds using permanent instruments.
1780.90 Multiple advances of Agency funds using temporary debt instruments.
1780.91–1780.93 [Reserved]
1780.94 Minimum bond specifications.
1780.95 Public bidding on bonds.
1780.96–1780.100 [Reserved]

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 16 U.S.C. 1005.

Subpart A—General Policies and Requirements

§ 1780.1 General.

(a) This part outlines the policies and procedures for making and processing direct loans and grants for water and waste projects. The Rural Utilities Service (RUS) shall cooperate fully with State and local agencies in making loans and grants to assure maximum support to the State strategy for rural development. Agency officials and their staffs shall maintain coordination and liaison with State agency and substate planning districts.

(b) The income data used in this part to determine median household income must be that which most accurately reflects the income of the service area. The median household income of the service area and the nonmetropolitan median household income of the State will be determined from income data from the most recent decennial census of the United States. If there is reason to believe that the census data is not an accurate representation of the median household income within the area to be served, the reasons will be documented and the applicant may furnish, or the Agency may obtain, additional information regarding such median household income. Information will consist of reliable data from local, regional, State or Federal sources or from a survey conducted by a reliable impartial source. The nonmetropolitan median household income of the State may only be updated on a national basis by the RUS National Office. This will be done only when median household income data for the same year for all Bureau of the Census areas is available from the Bureau of the Census or other reliable sources. Bureau of the Census areas would include areas such as: Counties, County Subdivisions, Cities, Towns, Townships, Boroughs, and other places.

(c) RUS debt instruments will require an agreement that if at any time it shall appear to the Government that the borrower is able to refinance the amount of the indebtedness to the Government then outstanding, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources, at reasonable rates and terms for loans for similar purposes and periods of time, the borrower will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government and will take all such actions as may be required in connection with such loan.

(d) Funds allocated for use under this part are also for the use of Indian tribes within the State, regardless of whether State development strategies include Indian reservations within the State's boundaries. Native Americans residing on such reservations must have equal opportunity to participate in the benefits of these programs as compared with other residents of the State. Such tribes might not be subject to State and local laws or jurisdiction. However, any requirements of this part that affect applicant eligibility, the adequacy of RUS's security, or the adequacy of service to users of the facility and all other requirements of this part must be met.

(e) RUS financial programs must be extended without regard to race, color, religion, sex, national origin, marital status, age, or physical or mental handicap.

(f) Any processing or servicing activity conducted pursuant to this part involving authorized assistance to Agency employees, members of their

families, known close relatives, or business or close personal associates, is subject to the provisions of subpart D of part 1900 of this title. Applicants for assistance are required to identify any known relationship or association with a RUS employee.

(g) Water and waste facilities will be designed, installed, and operated in accordance with applicable laws which include but are not limited to the Safe Drinking Water Act, Clean Water Act and the Resource Conservation and Recovery Act.

(h) RUS financed facilities will be consistent with any current development plans of State, multijurisdictional areas, counties, or municipalities in which the proposed project is located.

(i) Each RUS financed facility will be in compliance with appropriate State or Federal agency regulations which have control of the appropriation, diversion, storage and use of water and disposal of excess water.

(j) Water and waste applicants must demonstrate that they possess the financial, technical, and managerial capability necessary to consistently comply with pertinent Federal and State laws and requirements. In developing water and waste systems, applicants must consider alternatives of ownership, system design, and the sharing of services.

(k) Applicants should be aware of and comply with other Federal statute requirements including but not limited to:

(1) Section 504 of the Rehabilitation Act of 1973. Under section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), no handicapped individual in the United States shall, solely by reason of their handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving RUS financial assistance;

(2) Civil Rights Act of 1964. All borrowers are subject to, and facilities must be operated in accordance with, title VI of the Civil Rights Act of 1964 and subpart E of part 1901 of this title, particularly as it relates to conducting and reporting of compliance reviews. Instruments of conveyance for loans and/or grants subject to the Act must contain the covenant required by § 1901.202(e) of this title;

(3) The Americans with Disabilities Act (ADA) of 1990. This Act prohibits discrimination on the basis of disability in employment, State and local government services, public transportation, public accommodations, facilities, and telecommunications. Title II of the Act applies to facilities operated by State and local public entities which provides services, programs and activities. Title III of the Act applies to facilities owned, leased, or operated by private entities which accommodate the public; and

(4) Age Discrimination Act of 1975. This Act provides that no person in the United States shall on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

§ 1780.2 Purpose.

Provide loan and grant funds for water and waste projects serving the most financially needy communities. Financial assistance should result in reasonable user costs for rural residents, rural businesses, and other rural users.

§ 1780.3 Definitions and grammatical rules of construction.

(a) Definitions. For the purposes of this part:

Agency means any United States Department of Agriculture (USDA) employee acting on behalf of the Rural Utilities Service in accordance with appropriate delegations of authority.

Approval official means the USDA official at the State level who has been delegated the authority to approve loans or grants.

Equivalent Dwelling Unit (EDU) means the level of service provided to a typical rural residential dwelling.

Parity bonds means bonds which have equal standing with other bonds of the same Issuer.

Poverty line means the level of income for a family of four, as defined in section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)).

Processing office means the office designated by the State program official to accept and process applications for water and waste disposal assistance.

Project means all activity that an applicant is currently undertaking to be financed in whole or part with RUS assistance.

Protective advances are payments made by a lender for items such as insurance or taxes in order to preserve and protect the security or the lien or priority of the lien securing the loan.

Rural and Rural Areas means any area not in a city, or town with a population in excess of 10,000 inhabitants, according to the latest decennial census of the United States.

Rural Development means the mission area of the Under Secretary for Rural Development. Rural Development State and local offices will administer this water and waste program on behalf of the Rural Utilities Service.

RUS means the Rural Utilities Service, an agency of the United States Department of Agriculture established pursuant to section 232 of the Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354), successor to the Farmer's Home Administration and the Rural Development Administration with respect to certain water and waste disposal loan and grant programs.

Service area means the area reasonably expected to be served by the project.

Servicing office means the office designated by the State program official to service water and waste disposal loans and grants.

Similar system cost means the average annual EDU user cost of a system within a community having similar economic conditions and being served by the same type of established system. Similar system cost shall include all charges, taxes, and assessments attributable to the system including debt service, reserves and operation and maintenance costs.

State program official means the USDA official at the State level who has been delegated the responsibility of administering the water and waste disposal programs under this regulation for a particular State or States.

Statewide nonmetropolitan median household income means the median household income of all rural areas of a state.

(b) Rules of grammatical construction. Unless the context otherwise indicates, ''includes'' and ''including'' are not limiting, and ''or'' is not exclusive. The terms defined in paragraph (a) of this section include the plural as well as the singular, and the singular as well as the plural.

§ 1780.4 Availability of forms and regulations.

Information about the availability of forms, regulations, bulletins and publications cited in this part is available from any USDA/Rural Development office or the Rural Utilities Service, United States Department of Agriculture, Washington, DC 20250–1500.

§ 1780.5 [Reserved]

§ 1780.6 Application information.

(a) The Rural Development State Director in each State will determine the office and staff that will be responsible for delivery of the program (processing office) and designate an approving

office. Applications will be accepted by the processing office.

(b) The applicant's governing body should designate one person to act as contact person with the Agency during loan and grant processing. Agency personnel should make every effort to involve the applicant's contact person when meeting with the applicant's professional consultants or agents.

§ 1780.7 Eligibility.

Facilities financed by water and waste disposal loans or grants must serve rural areas.

(a) *Eligible applicant.* An applicant must be:

(1) A public body, such as a municipality, county, district, authority, or other political subdivision of a State, territory or commonwealth,

(2) An organization operated on a not-for-profit basis, such as an association, cooperative, or private corporation. The organization must be an association controlled by a local public body or bodies, or have a broadly based ownership by or membership of people of the local community, or

(3) Indian tribes on Federal and State reservations and other Federally recognized Indian tribes.

(b) *Eligible facilities.* Facilities financed by RUS may be located in non-rural areas. However, loan and grant funds may be used to finance only that portion of the facility serving rural areas, regardless of facility location.

(c) *Eligible projects.* (1) Projects must serve a rural area which, if such project is completed, is not likely to decline in population below that for which the project was designed.

(2) Projects must be designed and constructed so that adequate capacity will or can be made available to serve the present population of the area to the extent feasible and to serve the reasonably foreseeable growth needs of the area to the extent practicable. Water systems should have sufficient capacity to provide for reasonable fire protection to the extent practicable.

(3) Projects must be necessary for orderly community development and consistent with a current comprehensive community water, waste disposal, or other current development plan for the rural area.

(d) *Credit elsewhere.* Applicants must certify in writing and the Agency shall determine and document that the applicant is unable to finance the proposed project from their own resources, through commercial credit at reasonable rates and terms, or other funding sources.

(e) *Legal authority and responsibility.* Each applicant must have or will obtain the legal authority necessary for owning, constructing, operating, and maintaining the proposed facility or service and for obtaining, giving security for, and repaying the proposed loan. The applicant shall be responsible for operating, maintaining, and managing the facility, and providing for its continued availability and use at reasonable rates and terms. This responsibility shall be exercised by the applicant even though the facility may be operated, maintained, or managed by a third party under contract or management agreement. Guidance for preparing a management agreement is available from the Agency. Such contracts, management agreements, or leases must not contain options or other provisions for transfer of ownership.

(f) *Economic feasibility.* All projects financed under the provisions of this section must be based on taxes, assessments, income, fees, or other satisfactory sources of revenues in an amount sufficient to provide for facility operation and maintenance, reasonable reserves, and debt payment. If the primary use of the facility is by business and the success or failure of the facility is dependent on the business, then the economic viability of that business must be assessed.

(g) *Federal Debt Collection Act of 1990.* An outstanding judgment obtained by the United States in a Federal Court (other than in the United States Tax Court), which has been recorded, shall cause the applicant to be ineligible to receive a loan or grant until the judgment is paid in full or otherwise satisfied.

(h) *Expanded eligibility for timber-dependent communities in Pacific Northwest.* In the Pacific Northwest, defined as an area containing national forest covered by the Federal document entitled, ''Forest Plan for a sustainable Economy and a Sustainable Environment,'' dated July 1, 1993, the population limits contained in section 1780.3(a) of this part are expanded to include communities with not more than 25,000 inhabitants until September 30, 1998, if:

(1) Part or all of the community lies within 100 miles of the boundary of a national forest covered by the Federal document entitled, ''Forest Plan for a Sustainable Economy and a Sustainable Environment,'' dated July 1, 1993; and

(2) The community is located in a county in which at least 15 percent of the total primary and secondary labor and proprietor income is derived from forestry, wood products, or forest-related industries such as recreation and tourism.

§ 1780.8 [Reserved]

§ 1780.9 Eligible loan and grant purposes.

Loan and grant funds may be used only for the following purposes:

(a) To construct, enlarge, extend, or otherwise improve rural water, sanitary sewage, solid waste disposal, and storm wastewater disposal facilities;

(b) To construct or relocate public buildings, roads, bridges, fences, or utilities, and to make other public improvements necessary for the successful operation or protection of facilities authorized in paragraph (a) of this section;

(c) To relocate private buildings, roads, bridges, fences, or utilities, and other private improvements necessary for the successful operation or protection of facilities authorized in paragraph (a) of this section;

(d) For payment of other utility connection charges as provided in service contracts between utility systems; and

(e) When a necessary part of the project relates to those facilities authorized in paragraphs (a), (b), (c) or (d) of this section the following may be considered:

(1) Loan or grant funds may be used for:

(i) Reasonable fees and costs such as: legal, engineering, administrative services, fiscal advisory, recording, environmental analyses and surveys, possible salvage or other mitigation measures, planning, establishing or acquiring rights;

(ii) Costs of acquiring interest in land; rights, such as water rights, leases, permits, rights-of-way; and other evidence of land or water control or protection necessary for development of the facility;

(iii) Purchasing or renting equipment necessary to install, operate, maintain, extend, or protect facilities;

(iv) Cost of applicant labor necessary to install and extend service; and

(v) In unusual cases, the cost for connecting the user to the main service line.

(2) Only loan funds may be used for:

(i) Interest incurred during construction in conjunction with multiple advances or interest on interim financing;

(ii) Initial operating expenses, including interest, for a period ordinarily not exceeding one year when the applicant is unable to pay such expenses;

(iii) The purchase of existing facilities when it is necessary either to improve service or prevent the loss of service; and

(iv) Refinancing debts incurred by, or on behalf of, an applicant when all of the following conditions exist:

(A) The debts being refinanced are a secondary part of the total loan;

(B) The debts were incurred for the facility or service being financed or any part thereof;

(C) Arrangements cannot be made with the creditors to extend or modify the terms of the debts so that a sound basis will exist for making a loan; and

(v) Prepayment of costs for which RUS grant funds were obligated.

(3) Grant funds may be used to restore loan funds used to prepay grant obligated costs.

(f) Construction incurred before loan or grant approval.

(1) Funds may be used to pay obligations for construction incurred before loan or grant approval if such requests are made in writing by the applicant and the Agency determines that:

(i) Compelling reasons exist for incurring obligations before loan or grant approval;

(ii) The obligations will be incurred for authorized loan or grant purposes; and

(iii) The Agency's authorization to pay such obligations is on the condition that it is not committed to make the loan or grant; it assumes no responsibility for any obligations incurred by the applicant; and the applicant must subsequently meet all loan or grant approval requirements, including environmental and contracting requirements.

(2) If construction is started without Agency approval, post-approval in accordance with this section may be considered, provided the construction meets applicable requirements including those regarding approval and environmental matters.

(g) Water or sewer service may be provided through individual installations or small clusters of users within an applicant's service area. The approval official should consider items such as: Quantity and quality of the individual installations that may be developed; cost effectiveness of the individual facility compared with the initial and long term user cost on a central system; health and pollution problems attributable to individual facilities; operational or management problems peculiar to individual installations; and permit and regulatory agency requirements.

(1) Applicants providing service through individual facilities must meet the eligibility requirements in § 1780.7.

(2) The Agency must approve the form of agreement between the applicant and individual users for the installation, operation, maintenance and payment for individual facilities.

(3) If taxes or assessments are not pledged as security, applicants providing service through individual facilities must obtain security necessary to assure collection of any sum the individual user is obligated to pay the applicant.

(4) Notes representing indebtedness owed the applicant by a user for an individual facility will be scheduled for payment over a period not to exceed the useful life of the individual facility or the RUS loan, whichever is shorter. The interest rate will not exceed the interest rate charged the applicant on the RUS indebtedness.

(5) Applicants providing service through individual or cluster facilities must obtain:

(i) Easements for the installation and ingress to and egress from the facility if determined necessary by RUS; and

(ii) An adequate method for denying service in the event of nonpayment of user fees.

§ 1780.10 Limitations.

(a) Loan and grant funds may not be used to finance:

(1) Facilities which are not modest in size, design, and cost;

(2) Loan or grant finder's fees;

(3) The construction of any new combined storm and sanitary sewer facilities;

(4) Any portion of the cost of a facility which does not serve a rural area;

(5) That portion of project costs normally provided by a business or industrial user, such as wastewater pretreatment, etc.;

(6) Rental for the use of equipment or machinery owned by the applicant;

(7) For other purposes not directly related to operating and maintenance of the facility being installed or improved; and

(8) A judgment which would disqualify an applicant for a loan or grant as provided for in § 1780.7(g) of this part.

(b) Grant funds may not be used to:

(1) Reduce EDU costs to a level less than similar system cost;

(2) Pay any costs of a project when the median household income of the service area is and more than 100 percent of the nonmetropolitan median household income of the State;

(3) Pay project costs when other loan funding for the project is not at reasonable rates and terms; and

(4) Pay project costs when other funding is a guaranteed loan obtained in accordance with subpart I of part 1980 of this chapter.

(c) Grants may not be made in excess of the following percentages of the RUS funded project development costs. Facilities previously installed will not be considered in determining the development costs.

(1) 75 percent when the median household income of the service area is below the higher of the poverty line or 80% of the state nonmetropolitan median income and the project is necessary to alleviate a health or sanitary problem.

(2) 45 percent when the median household income of the service area exceeds the 80 percent requirements described in paragraph (c)(1) of this section but is not more than 100 percent of the statewide nonmetropolitan median household income.

(3) Applicants are advised that the percentages contained in paragraph (c)(1) and (c)(2) of this section are maximum amounts and may be further limited due to availability of funds or the grant determination procedures contained in § 1780.35 (d) of this part.

§ 1780.11 Service area requirements.

(a) All facilities financed under the provisions of this part shall be for public use. The facilities will be installed so as to serve any potential user within the service area who desires service and can be feasibly and legally served. This does not preclude:

(1) Financing or constructing projects in phases when it is not practical to finance or construct the entire project at one time; and

(2) Financing or constructing facilities where it is not economically feasible to serve the entire area, provided economic feasibility is determined on the basis of the entire system and not by considering the cost of separate extensions to or parts thereof; the applicant publicly announces a plan for extending service to areas not initially receiving service from the system; and potential users located in the areas not to be initially served receive written notice from the applicant that service will not be provided until such time as it is economically feasible to do so.

(b) Should the Agency determine that inequities exist within the applicants service area for the same type service proposed (i.e., water or waste disposal) such inequities will be remedied by the applicant prior to loan or grant approval or included as part of the project. Inequities are defined as unjustified variations in availability, adequacy or quality of service. User rate schedules for portions of existing systems that were developed under different financing, rates, terms or conditions do not necessarily constitute inequities.

(c) Developers are normally expected to provide utility-type facilities in new or developing areas in compliance with appropriate State statutes. RUS financing will be considered to an eligible applicant only in such cases when failure to complete development would result in an adverse economic condition for the rural area (not the community being developed); the proposal is necessary to the success of a current area development plan; and loan repayment can be assured by:

(1) The applicant already having sufficient assured revenues to repay the loan; or

(2) Developers providing a bond or escrowed security deposit as a guarantee sufficient to meet expenses attributable to the area in question until a sufficient number of the building sites are occupied and connected to the facility to provide enough revenues to meet operating, maintenance, debt service, and reserve requirements. Such guarantees from developers will meet the requirements in § 1780.39(c)(4)(ii); or

(3) Developers paying cash for the increased capital cost and any increased operating expenses until the developing area will support the increased costs; or

(4) The full faith and credit of a public body where the debt is evidenced by general obligation bonds; or

(5) The loan is to a public body evidenced by a pledge of tax revenue or assessments; or

(6) The user charges can become a lien upon the property being served and income from such lien can be collected in sufficient time to be used for its intended purposes.

§ 1780.12 [Reserved]

§ 1780.13 Rates and terms.

(a) *General.* (1) Each loan will bear interest at the rate prescribed in FmHA Instruction 440.1, exhibit B. The interest rates will be set by the Agency for each quarter of the fiscal year. All rates will be adjusted to the nearest one-eighth of one per centum. The rate will be the lower of the rate in effect at the time of loan approval or the rate in effect at the time of loan closing unless the applicant otherwise chooses.

(2) If the interest rate is to be that in effect at loan closing on a loan involving multiple advances of RUS funds using temporary debt instruments, the interest rate charged shall be that in effect on the date when the first temporary debt instrument is issued.

(b) *Poverty rate.* The poverty interest rate will not exceed 5 per centum per annum. All poverty rate loans must comply with the following conditions:

(1) The primary purpose of the loan is to upgrade existing facilities or construct new facilities required to meet applicable health or sanitary standards; and

(2) The median household income of the service area is below the higher of the poverty line, or 80 percent of the Statewide nonmetropolitan median household income.

(c) *Intermediate rate.* The intermediate interest rate will be set at the poverty rate plus one-half of the difference between the poverty rate and the market rate, not to exceed 7 percent per annum. It will apply to loans that do not meet the requirements for the poverty rate and for which the median household income of the service area is not more than 100 percent of the nonmetropolitan median household income of the State.

(d) *Market rate.* The market interest rate will be set using as guidance the average of the Bond Buyer Index for the four weeks prior to the first Friday of the last month before the beginning of the quarter. The market rate will apply to all loans that do not qualify for a different rate under paragraph (b) or (c) of this section.

(e) *Repayment terms.* The loan repayment period shall not exceed the useful life of the facility, State statute or 40 years from the date of the note or bond, whichever is less. Where RUS grant funds are used in connection with an RUS loan, the loan will be for the maximum term permitted by this part, State statute, or the useful life of the facility, whichever is less, unless there is an exceptional case where circumstances justify making an RUS loan for less than the maximum term permitted. In such cases, the reasons must be fully documented.

(1) Principal payments may be deferred in whole or in part for a period not to exceed 36 months following the date the first interest installment is due. If for any reason it appears necessary to permit a longer period of deferment, the Agency may authorize such deferment. Deferments of principal will not be used to:

(i) Postpone the levying of taxes or assessments;

(ii) Delay collection of the full rates which the borrower has agreed to charge users for its services as soon as those services become available;

(iii) Create reserves for normal operation and maintenance;

(iv) Make any capital improvements except those approved by the Agency which are determined to be essential to the repayment of the loan or to maintain adequate security; and

(v) Make payment on other debt.

(2) Payment date. Loan payments will be scheduled to coincide with income availability and be in accordance with State law. If State law only permits principal plus interest (P&I) type bonds, annual or semiannual payments will be used. Insofar as practical monthly payments will be scheduled one full month following the date of loan closing; or semiannual or annual payments will be scheduled six or twelve full months, respectively, following the date of loan closing or any deferment period. Due dates falling on the 29th, 30th or 31st day of the month will be avoided.

(3) In all cases, including those in which RUS is jointly financing with another lender, the RUS payments of principal and interest should approximate amortized installments.

§ 1780.14 Security.

Loans will be secured by the best security position practicable in a manner which will adequately protect the interest of RUS during the repayment period of the loan. Specific security requirements for each loan will be included in a letter of conditions.

(a) *Public bodies.* Loans to such borrowers, including Federally recognized Indian tribes as appropriate, will be evidenced by notes, bonds, warrants, or other contractual obligations as may be authorized by relevant laws and by borrower's documents, resolutions, and ordinances. Security, in the following order of preference, will consist of:

(1) The full faith and credit of the borrower when the debt is evidenced by general obligation bonds; and/or

(2) Pledges of taxes or assessments; and/or

(3) Pledges of facility revenue and, when it is the customary financial practice in the State, liens will be taken on the interest of the applicant in all land, easements, rights-of-way, water rights, water purchase contracts, water sales contracts, sewage treatment contracts, and similar property rights, including leasehold interests, used or to be used in connection with the facility whether owned at the time the loan is approved or acquired with loan funds.

(b) *Other-than-public bodies.* Loans to other-than-public body applicants and Federally recognized Indian tribes, as appropriate, will be secured in the following order of preference:

(1) Assignments of borrower income will be taken and perfected by filing, if legally permissible; and

(2) A lien will be taken on the interest of the applicant in all land, easements, rights-of-way, water rights, water purchase contracts, water sales

contracts, sewage treatment contracts and similar property rights, including leasehold interest, used, or to be used in connection with the facility whether owned at the time the loan is approved or acquired with loan funds. In unusual circumstances where it is not legally permissible or feasible to obtain a lien on such land (such as land rights obtained from Federal or local government agencies, and from railroads) and the approval official determines that the interest of RUS is otherwise adequately secured, the lien requirement may be omitted as to such land rights. For existing borrowers where the Agency already has a security position on real property, the approval official may determine that the interest of the Government is adequately secured and not require additional liens on such land rights. When the subsequent loan is approved or the acquisition of real property is subject to an outstanding lien indebtedness, the next highest priority lien obtainable will be taken if the approval official determines that the loan is adequately secured.

(c) *Joint financing security.* For projects utilizing joint financing, when adequate security of more than one type is available, the other lender may take one type of security with RUS taking another type. For projects utilizing joint financing with the same security to be shared by RUS and another lender, RUS will obtain at least a parity position with the other lender. A parity position is to ensure that with joint security, in the event of default, each lender will be affected on a proportionate basis. A parity position will conform with the following unless an exception is granted by the approval official:

(1) It is not necessary for loans to have the same repayment terms. Loans made by other lenders involved in joint financing with RUS should be scheduled for repayment on terms similar to those customarily used in the State for financing such facilities.

(2) The use of a trustee or other similar paying agent by the other lender in a joint financing arrangement is acceptable to RUS. A trustee or other similar paying agent will not normally be used for the RUS portion of the funding unless required to comply with State law. The responsibilities and authorities of any trustee or other similar paying agent on projects that include RUS funds must be clearly specified by written agreement and approved by the State program official and the Office of the General Counsel (OGC). RUS must be able to deal directly with the borrower to enforce the provisions of loan and grant agreements and perform necessary servicing actions.

(3) In the event adequate funds are not available to meet regular installments on parity loans, the funds available will be apportioned to the lenders based on the respective current installments of principal and interest due.

(4) Funds obtained from the sale or liquidation of secured property or fixed assets will be apportioned to the lenders on the basis of the pro rata amount outstanding; provided, however, funds obtained from such sale or liquidation for a project that included RUS grant funds will be apportioned as required by the grant agreement.

(5) Protective advances must be charged to the borrower's account and be secured by a lien on the security property. To the extent consistent with State law and customary lending practices in the area, repayment of protective advances made by either lender, for the mutual protection of both lenders, should receive first priority in apportionment of funds between the lenders. To ensure agreement between lenders, efforts should be made to obtain the concurrence of both lenders before one lender makes a protective advance.

§ 1780.15 Other Federal, State, and local requirements.

Proposals for facilities financed in whole or in part with RUS funds will be coordinated with appropriate Federal, State and local agencies. If there are conflicts between this part and State or local laws or regulatory commission regulations, the provisions of this part will control. Applicants will be required to comply with Federal, State, and local laws and any regulatory commission rules and regulations pertaining to:

(a) Organization of the applicant and its authority to own, construct, operate, and maintain the proposed facilities;

(b) Borrowing money, giving security therefore, and raising revenues for the repayment thereof;

(c) Land use zoning; and

(d) Health and sanitation standards and design and installation standards unless an exception is granted by RUS.

§ 1780.16 [Reserved]

§ 1780.17 Selection priorities and process.

When ranking eligible applications for consideration for limited funds, Agency officials must consider the priority items met by each application and the degree to which those priorities are met. Points will be awarded as follows:

(a) *Population priorities.* (1) The proposed project will primarily serve a rural area having a population not in excess of 1,000—20 points;

(2) The proposed project primarily serves a rural area having a population between 1,001 and 2,500—15 points;

(3) The proposed project primarily serves a rural area having a population between 2,501 and 5,500—5 points.

(b) *Health priorities.* The proposed project is:

(1) Needed to alleviate an emergency situation, correct unanticipated diminution or deterioration of a water supply, or to meet Safe Drinking Water Act requirements which pertain to a water system—25 points;

(2) Required to correct inadequacies of a wastewater disposal system, or to meet health standards which pertain to a wastewater disposal system—25 points;

(3) Required to meet administrative orders issued to correct local, State, or Federal solid waste violations—15 points.

(c) *Income priorities.* The median household income of the population to be served by the proposed project is:

(1) Less than the poverty line if the poverty line is less than 80% of the statewide nonmetropolitan median income—30 points;

(2) Less than 80 percent of the statewide nonmetropolitan median household income—20 points;

(3) Equal to or more than the poverty line and between 80% and 100%, inclusive, of the State's nonmetropolitan median household income—15 points.

(d) *Other priorities.* (1) The proposed project will: merge ownership, management, and operation of smaller facilities providing for more efficient management and economical service—15 points;

(2) The proposed project will enlarge, extend, or otherwise modify existing facilities to provide service to additional rural areas—10 points;

(3) Applicant is a public body or Indian tribe—5 points;

(4) Amount of other than RUS funds committed to the project is:

(i) 50% or more—15 points;

(ii) 20% to 49%—10 points;

(iii) 5%—19% —5 points.

(5) Projects that will serve Agency identified target areas—10 points;

(6) Projects that primarily recycle solid waste products thereby limiting the need for solid waste disposal—5 points;

(7) The proposed project will serve an area that has an unreliable quality or supply of drinking water—10 points.

(e) *In certain cases the State program official may assign up to 15 points to a project.* The points may be awarded to projects in order to improve compatibility and coordination between RUS's and other agencies' selection

systems, to ensure effective RUS fund utilization, and to assist those projects that are the most cost effective. A written justification must be prepared and placed in the project file each time these points are assigned.

(f) *Cost overruns.* An application may receive consideration for funding before others at the State or National Office level when it is a subsequent request for a previously approved project which has encountered construction cost overruns. The cost overruns must be due to high bids or unexpected construction problems that cannot be reduced by negotiations, redesign, use of bid alternatives, rebidding or other means. Cost overruns exceeding 20% of the development cost at time of loan or grant approval or where the scope of the original purpose has changed will not be considered under this paragraph.

(g) *National office priorities.* In selecting projects for funding at the National Office level State program official points may or may not be considered. The Administrator may assign up to 15 additional points to account for items such as geographic distribution of funds, the highest priority projects within a State, and emergency conditions caused by economic problems or natural disasters. The Administrator may delegate the authority to assign up to 15 of the administrator's points to appropriate National Office staff.

§ 1780.18 Public information.

(a) *Public notice of intent to file an application with the Agency.* Within 60 days of filing an application with the Agency the applicant must publish a notice of intent to apply for a RUS loan or grant. The notice of intent must be published in a newspaper of general circulation in the proposed area to be served.

(b) *General public meeting.* Applicants should inform the general public regarding the development of any proposed project. Any applicant not required to obtain authorization by vote of its membership or by public referendum, to incur the obligations of the proposed loan or grant, must hold at least one public information meeting. The public meeting must be held after the application is filed and not later than loan or grant approval. The meeting must give the citizenry an opportunity to become acquainted with the proposed project and to comment on such items as economic and environmental impacts, service area, alternatives to the project, or any other issue identified by the Agency. To the extent possible, this meeting should cover items necessary to satisfy all public information meeting requirements for the proposed project. To minimize duplication of public notices and public involvement, the applicant shall, where possible, coordinate and integrate the public involvement activities of the environmental review process into this requirement. The applicant will be required, at least 10 days prior to the meeting, to publish a notice of the meeting in a newspaper of general circulation in the service area, to post a public notice at the applicant's principal office, and to notify the Agency. The applicant will provide the Agency a copy of the published notice and minutes of the public meeting. A public meeting is not normally required for subsequent loans or grants which are needed to complete the financing of a project.

§§ 1780.19–1780.23 [Reserved]

§ 1780.24 Approval authorities.

Appropriate reviews, concurrence, and authorization must be obtained for all loans or grants in excess of the amounts indicated in RUS Staff Instruction 1780–1.

(a) *Redelegation of authority by State Directors.* Unless restricted by memorandum from the RUS Administrator, State Directors can redelegate their approval authorities to State employees by memorandum.

(b) *Restriction of approval authority by the RUS Administrator.* The RUS Administrator can make written restrictions or revocations of the authority given to any approval official.

§ 1780.25 Exception Authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this part which is not inconsistent with the authorizing statute or other applicable law and is determined to be in the Government's interest.

§§ 1780.26–1780.30 [Reserved]

Subpart B—Loan and Grant Application Processing

§ 1780.31 General.

(a) Applicants are encouraged to contact the Agency processing office early in the planning stages of their project. Agency personnel are available to provide general advice and assistance regarding RUS programs, other funding sources, and types of systems or improvements appropriate for the applicant's needs. The Agency can also provide access to technical engineering and environmental assistance and information resources for other project development issues such as public information, income surveys, developing rate schedules, system operation and maintenance, and environmental compliance requirements. Throughout the planning, application processing and construction of the project, Agency personnel will work closely and cooperatively with the applicant and their representatives, other State and Federal agencies and technical assistance providers.

(b) The processing office will handle initial inquiries and provide basic information about the program. They are to provide the application, SF 424.2, ''Application for Federal Assistance (For Construction),'' assist applicants as needed in completing SF 424.2, and in filing a request for intergovernmental review. Federally recognized Indian tribes are exempt from intergovernmental review. The processing office will explain eligibility requirements and meet with the applicant whenever necessary to discuss application processing.

(c) Applications that are not developed in a reasonable period of time taking into account the size and complexity of the proposed project may be removed from the State's active file. Applicants will be consulted prior to taking such action.

(d) Starting with the earliest discussions with prospective applicants or review of applications and continuing throughout application processing, environmental issues must be considered. Throughout the application process the State Environmental Coordinator will discuss with the applicant and their engineer, environmental review requirements for evaluating a project's potential for environment impacts. This should provide flexibility to consider alternatives to the project and develop methods to mitigate identified adverse environmental impacts. The environmental review requirements shall be performed simultaneously and concurrently with the project's engineering design and mitigation measures integrated into the design to minimize any adverse environmental impacts.

§ 1780.32 Timeframes for application processing.

(a) The processing office will determine if the application is properly assembled. If not, the applicant will be notified within fifteen days as to what additional submittal items are needed.

(b) The processing and approval offices will coordinate their reviews to ensure that the applicant is advised about eligibility and anticipated fund

availability within 45 days of the receipt of a completed application.

§ 1780.33 Application requirements.

An initial application consists of the following:

(a) One copy of a completed SF 424.2;

(b) A copy of the State intergovernmental comments or one copy of the filed application for State intergovernmental review; and

(c) Two copies of the preliminary engineering report (PER) for the project. The PER should be completed in accordance with RUS Bulletins 1780–2 through 1780–5.

(1) The PER may be submitted to the processing office prior to the rest of the application material if the applicant desires a preliminary review.

(2) The processing office will forward one copy of the PER with comments and recommendations to the State staff engineer for review upon receipt from the applicant.

(3) The State staff will consult with the applicant's engineer as appropriate to resolve any questions concerning the PER and any environmental concerns. Written comments will be provided by the State staff engineer and State Environmental Coordinator to the processing office to meet eligibility determination time lines.

(d) Written certification that other credit is not available.

(e) Supporting documentation necessary to make an eligibility determination such as financial statements, audits, organizational documents, or existing debt instruments. The processing office will advise applicants regarding the required documents. Applicants that are indebted to RUS will not need to submit documents already on file with the processing office.

(f) Form FmHA 1940–20, ''Request for Environmental Information.'' The applicant should consult with the processing office to determine what information should be included with this form.

(g) The applicants Internal Revenue Service Taxpayer Identification Number (TIN). The TIN will be used by the Agency to assign a case number which will be the applicant's or transferee's TIN preceded by State and County Code numbers. Only one case number will be assigned to each applicant regardless of the number of loans or grants or number of separate facilities, unless an exception is authorized by the National Office.

(h) Other Forms and certifications. Applicants will be required to submit the following items to the processing office, upon notification from the processing office to proceed with further development of the full application:

(1) Form FmHA 442–7, ''Operating Budget'';

(2) Form FmHA 1910–11, ''Application Certification, Federal Collection Policies for Consumer or Commercial Debts'';

(3) Form FmHA 400–1, ''Equal Opportunity Agreement'';

(4) Form FmHA 400–4, ''Assurance Agreement'';

(5) Form AD–1047, ''Certification Regarding Drug-Free Workplace requirements (Grants) Alternative I for Grantees Other Than Individuals';

(6) Form AD–1049, Certification regarding Drug-Free Workplace Requirements (Grants) Alternative I For Grantees Other Than Individuals;

(7) Certifications for Contracts, Grants, and Loans (Regarding Lobbying); and

(8) Certification regarding prohibited tying arrangements. Applicants that provide electric service must provide the Agency a certification that they will not require users of a water or waste facility financed under these regulations to accept electric service as a condition of receiving assistance.

§ 1780.34 [Reserved]

§ 1780.35 Processing office review.

Review of the application will usually include the following:

(a) *Nondiscrimination.* Boundaries for the proposed service area must not be chosen in such a way that any user or area will be excluded because of race, color, religion, sex, marital status, age, handicap, or national origin. This does not preclude construction of the project in phases as noted in § 1780.11 as long as it is not done in a discriminatory manner.

(b) *Grant determination.* Grants will be determined by the processing office in accordance with the following provisions and will not result in EDU costs below similar system user cost.

(1) *Maximum grant.* Grants may not exceed the percentages in § 1780.10(c) of this part of the eligible RUS funded project development costs listed in § 1780.9 of this part.

(2) *Debt service.* Applicants will be considered for grant assistance when the debt service portion of the average annual EDU cost, for users in the applicant's service area, exceeds the following percentages of median household income:

(i) 0.5 percent when the median household income of the service area is equal to or below 80% of the statewide nonmetropolitan median income.

(ii) 1.0 percent when the median household income of the service area exceeds the 0.5 percent requirement but is not more than 100 percent the statewide nonmetropolitan household income.

(3) *Similar system cost.* If the grant determined in paragraph (b)(2) of this section results in an annual EDU cost that is not comparable with similar systems, the Agency will determine a grant amount based on achieving EDU costs that are not below similar system user costs.

(4) *Wholesale service.* When an applicant provides wholesale sales or services on a contract basis to another system or entity, similar wholesale system cost will be used in determining the amount of grant needed to achieve a reasonable wholesale user cost.

(5) *Subsidized cost.* When annual cost to the applicant for delivery of service is subsidized by either the State, commonwealth, or territory, and uniform flat user charges regardless of usage are imposed for similar classes of service throughout the service area, the Agency may proceed with a grant in an amount necessary to reduce such delivery cost to a reasonable level.

(c) *User charges.* The user charges should be reasonable and produce enough revenue to provide for all costs of the facility after the project is complete. The planned revenue should be sufficient to provide for all debt service, debt reserve, operation and maintenance, and if appropriate, additional revenue for facility replacement of short lived assets without building a substantial surplus. Ordinarily, the total debt reserve will be equal to one average annual loan installment which will accumulate at the rate of one-tenth of the total each year.

§ 1780.36 Approving official review.

Projects may be obligated as their applications are completed and approved.

(a) *Selection of applications for further processing.* The application and supporting information submitted will be used to determine the applications selected for further development and funding. After completing the review, the approval official will normally select those eligible applications with the highest priority scores for further processing. When authorizing the development of an application for funding, the following will be considered:

(1) Funds available in State allocation;

(2) Anticipated allocation of funds for the next fiscal year; and

(3) Time necessary for applicant to complete the application.

(b) *Lower scoring projects.* (1) In cases where preliminary cost estimates indicate that an eligible, high scoring application is unfeasible or would require an amount of funding from RUS that exceeds either 25 percent of a State's current annual allocation or an amount greater than that remaining in the State's allocation, the approval official may instead select the next lower scoring application for further processing provided the high scoring applicant is notified of this action and given an opportunity to revise the proposal and resubmit it.

(2) If it is found that there is no effective way to reduce costs, the approval official, after consultation with applicant, may submit a request for an additional allocation of funds for the proposed project to the National Office. The request should be submitted during the fiscal year in which obligation is anticipated. Such request will be considered along with all others on hand. A written justification must be prepared and placed in the project file.

§ 1780.37 Applications determined ineligible.

If at any time an application is determined ineligible, the processing office will notify the applicant in writing of the reasons. The notification to the applicant will state that an appeal of this decision may be made by the applicant under 7 CFR part 11.

§ 1780.38 [Reserved]

§ 1780.39 Application processing.

(a) *Processing conference.* Before starting to assemble the full application and after the applicant selects its professional and technical representatives, it should arrange with the processing office for an application conference to provide a basis for orderly application assembly. The processing office will explain program requirements, public information requirements and provide guidance on preparation of items necessary for approval.

(b) *Professional services and contracts related to the facility.* Fees provided for in contracts or agreements shall be reasonable. The Agency shall consider fees to be reasonable if they are not in excess of those ordinarily charged by the profession as a whole for similar work when RUS financing is not involved. Applicants will be responsible for providing the services necessary to plan projects including design of facilities, preparation of cost and income estimates, development of proposals for organization and financing, and overall operation and maintenance of the facility. Contracts or other forms of agreement between the applicant and its professional and technical representatives are required and are subject to RUS concurrence.

(1) *Engineering services.* Applicants selection of engineering services for project design shall be done by publishing a request for proposal in a newspaper of general circulation. Guidance on entering into an agreement for engineering services is available from the Agency.

(2) *Other professional services.* Professional services of the following may be necessary: Attorney, bond counsel, accountant, auditor, appraiser, environmental professionals, and financial advisory or fiscal agent (if desired by applicant). Guidance on entering into an agreement for legal services is available from the Agency.

(3) *Bond counsel.* Unless otherwise provided by subpart D of this part, public bodies are required to obtain the service of recognized bond counsel in the preparation of evidence of indebtedness.

(3) *Contracts for other services.* Contracts or other forms of agreements for other services including management, operation, and maintenance will be developed by the applicant and presented to the Agency for review and concurrence. Guidance on entering into an management agreement is available from the Agency.

(c) *User estimates.* Applicants dependent on users fees for debt payment or operation and maintenance expenses shall base their income and expense forecast on realistic user estimates. For users presently not receiving service, consideration must be given to the following:

(1) An estimated number of maximum users should not be used when setting user fees and rates since it may be several years before all residents will need service by the system. In establishing rates a realistic number of users should be employed.

(2) Meaningful user cash contributions. The amount of cash contributions required will be set by the applicant and concurred in by the approval official. Contributions should be an amount high enough to indicate sincere interest on the part of the potential user, but not so high as to preclude service to low income families. Contributions ordinarily should be an amount approximating one year's minimum user fee, and shall be paid in full before loan closing or commencement of construction, whichever occurs first. Once economic feasibility is ascertained based on a demonstration of meaningful potential user cash contributions, the contribution, membership fee or other fees that may be imposed are not a loan requirement under this section. A meaningful user cash contribution is not required when:

(i) The Agency determines that the potential users as a whole in the applicant's service area cannot make cash contributions, or

(ii) State statutes or local ordinances require mandatory use of the system and the applicant or legal entity having such authority agrees in writing to enforce such statutes, or ordinances.

(3) An enforceable user agreement with a penalty clause is required (RUS Bulletin 1780–9 can be used) except:

(i) For users presently receiving service; or

(ii) Where mandatory use of the system is required.

(4) Individual vacant property owners will not be considered when determining project feasibility unless:

(i) The owner has plans to develop the property in a reasonable period of time and become a user of the facility; and

(ii) The owner agrees in writing to make a monthly payment at least equal to the proportionate share of debt service attributable to the vacant property until the property is developed and the facility is utilized on a regular basis. A bond or escrowed security deposit must be provided to guarantee this monthly payment and to guarantee an amount at least equal to the owner's proportionate share of construction costs. If a bond is provided, it must be executed by a surety company that appears on the Treasury Department's most current list (Circular 570, as amended) and be authorized to transact business in the State where the project is located. The guarantee shall be payable jointly to the borrower and the United States of America.

(5) Applicants must provide a positive program to encourage connection by all users as soon as service is available. The program will be available for review and concurrence by the processing office before loan closing or commencement of construction, whichever occurs first. Such a program shall include:

(i) An aggressive information program to be carried out during the construction period. The applicant should send written notification to all signed users in advance of the date service will be available, stating the date users will be expected to have their connections completed, and the date user charges will begin;

(ii) Positive steps to assure that installation services will be available. These may be provided by the contractor installing the system, local

plumbing companies, or local contractors;

(iii) Aggressive action to see that all signed users can finance their connections.

(d) *Interim financing.* For all loans exceeding $500,000, where funds can be borrowed at reasonable interest rates on an interim basis from commercial sources for the construction period, such interim financing may be obtained so as to preclude the necessity for multiple advances of RUS loan funds. However, the approval official may make an exception when interim financing is cost prohibitive or unavailable. Guidance on informing the private lender of RUS's commitment is available from the Agency. When interim commercial financing is used, the application will be processed, including obtaining construction bids, to the stage where the RUS loan would normally be closed, that is immediately prior to the start of construction. The RUS loan should be closed as soon as possible after the disbursal of all interim funds.

(e) *Reserve requirements.* Provision for the accumulation of necessary reserves over a reasonable period of time will be included in the loan documents.

(1) *General obligation or special assessment bonds.* Ordinarily, the requirements for reserves will be considered to have been met if general obligation or other bonds which pledge the full faith and credit of the political subdivision are used, or special assessment bonds are used, and if such bonds provide for the annual collection of sufficient taxes or assessments to cover debt service.

(2) Other than general obligation or special assessment bonds. Each borrower will be required to establish and maintain reserves sufficient to assure that loan installments will be paid on time, for emergency maintenance, for extensions to facilities, and for replacement of short-lived assets which have a useful life significantly less than the repayment period of the loan. Borrowers issuing bonds or other evidences of debt pledging facility revenues as security will plan their reserve to provide for a annual reserve equal to one-tenth of an average annual loan installment each year for the life of the loan unless prohibited by state law.

(f) *Membership authorization.* For organizations other than public bodies, the membership will authorize the project and its financing. Form FmHA 1942–8, ''Resolution of Members or Stockholders'' may be used for this authorization. The approval official may, with the concurrence of OGC, accept the loan resolution without such membership authorization when State statutes and the organization's charter and bylaws do not require such authorization; and

(1) The organization is well established and is operating with a sound financial base; or

(2) The members of the organization have all signed an enforceable user agreement with a penalty clause and have made the required meaningful user cash contribution.

(g) *Insurance.* The purpose of RUS's insurance requirements is to protect the government's financial interest based on the facility financed with loan funds. It is the responsibility of the applicant and not that of RUS to assure that adequate insurance and fidelity or employee dishonesty bond coverage is maintained. The requirements below apply to all types of coverage determined necessary. The approval official may grant exceptions to normal requirements when appropriate justification is provided establishing that it is in the best interest of the applicant and will not adversely affect the government's interest.

(1) Insurance requirements proposed by the applicant will be accepted if the processing office determines that proposed coverage is adequate to protect the government's financial interest. Applicants are encouraged to have their attorney, consulting engineer, and/or insurance provider(s) review proposed types and amounts of coverage, including any deductible provisions.

(2) The use of deductibles may be allowed by RUS providing the applicant has financial resources which would likely be adequate to cover potential claims requiring payment of the deductible.

(3) *Fidelity or employee dishonesty bonds.* Applicants will provide coverage for all persons who have access to funds, including persons working under a contract or management agreement. Coverage may be provided either for all individual positions or persons, or through ''blanket'' coverage providing protection for all appropriate employees. An exception may be granted by the approval official when funds relating to the facility financed are handled by another entity and it is determined that the entity has adequate coverage or the government's interest would otherwise be adequately protected. The amount of coverage required by RUS will normally approximate the total annual debt service requirements for the RUS loans.

(4) *Property insurance.* Fire and extended coverage will normally be maintained on all structures except as noted below. Ordinarily, RUS should be listed as mortgagee on the policy when RUS has a lien on the property. Normally, major items of equipment or machinery located in the insured structures must also be covered. Exceptions:

(i) Reservoirs, pipelines and other structures if such structures are not normally insured;

(ii) Subsurface lift stations except for the value of electrical and pumping equipment therein.

(5) General liability insurance, including vehicular coverage.

(6) Flood insurance required for facilities located in special flood- and mudslide-prone areas.

(7) *Worker's compensation.* The borrower will carry worker's compensation insurance for employees in accordance with State laws.

(h) The processing office will conduct appropriate environmental reviews in accordance with RUS requirements.

(i) The processing office will assure that appropriate forms and documents listed in RUS Bulletin 1780–6 are complete. Letters of conditions will not be issued unless funds are available.

§ 1780.40 [Reserved]

§ 1780.41 Loan or grant approval.

(a) The processing office will submit the following to the approval official:

(1) Form FmHA 1942–45, ''Project Summary'';

(2) Form FmHA 442–7, ''Operating Budget'';

(3) Form 442–3, ''Balance Sheet'' or a financial statement or audit that includes a balance sheet;

(4) Form FmHA 442–14, ''Association Project Fund Analysis'';

(5) Letter of Conditions'';

(6) Form FmHA 1942–46, ''Letter of Intent to Meet Conditions'';

(7) Form FmHA 1940–1, ''Request for Obligation of Funds'';

(8) Completed environmental review documents including copies of required publication evidence; and

(9) Grant determination, if applicable.

(b) Approval and applicant notification will be accomplished by mailing to the applicant on the obligation date a copy of Form FmHA 1940–1. The date the applicant is notified is also the date the interest rate at loan approval is established.

§ 1780.42 Transfer of obligations.

An obligation of funds established for an applicant may be transferred to a different (substituted) applicant provided:

(a) The substituted applicant is eligible and has the authority to receive

the assistance approved for the original applicant; and

(b) The need, purpose(s) and scope of the project for which RUS funds will be used remain substantially unchanged.

§ 1780.43 [Reserved]

§ 1780.44 Actions prior to loan or grant closing or start of construction, whichever occurs first.

(a) Applicants must provide evidence of adequate insurance and fidelity or employee dishonesty bond coverage.

(b) *Verification of users and other funds.* In connection with a project that involves new users and will be secured by a pledge of user fees or revenues, the processing office will authenticate the number of users. Ordinarily each signed user agreement will be reviewed and checked for evidence of cash contributions. If during the review any indication is received that all signed users may not connect to the system, there will be such additional investigation made as deemed necessary to determine the number of users who will connect to the system.

(c) *Initial compliance review.* An initial compliance review should be completed under subpart E of part 1901 of this chapter.

(d) *Applicant contribution.* An applicant contributing funds toward the project cost shall deposit these funds in its project account before start of construction. Project costs paid with applicant funds prior to the required deposit time shall be appropriately accounted for.

(e) *Excess RUS loan and grant funds.* If there is a significant reduction in project cost, the applicant's funding needs will be reassessed. Decreases in RUS funds will be based on revised project costs and current number of users, however, other factors including RUS regulations used at the time of loan or grant approval will remain the same. Obligated loan or grant funds not needed to complete the proposed project will be deobligated. Any reduction will be applied to grant funds first. In such cases, applicable forms, the letter of conditions, and other items will be revised.

(f) *Evidence of and disbursement of other funds.* Applicants expecting funds from other sources for use in completing projects being partially financed with RUS funds will present evidence of the commitment of these funds from such other sources. An agreement should be reached with all funding sources on how funds are to be disbursed before the start of construction. RUS funds will not be used to pre-finance funds committed to the project from other sources.

(g) *Acquisition of land, easements, water rights, and existing facilities.* Applicants are responsible for acquisition of all property rights necessary for the project and will determine that prices paid are reasonable and fair. RUS may require an appraisal by an independent appraiser or Agency employee.

(1) *Rights-of-way and easements.* Applicants will obtain valid, continuous and adequate rights-of-way and easements needed for the construction, operation, and maintenance of the facility.

(i) The applicant must provide a legal opinion relative to the title to rights-of-way and easements. Form FmHA 442–22, ''Opinion of Counsel Relative to Rights-of-Way,'' may be used. When a site is for major structures such as a reservoir or pumping station and the applicant is able to obtain only a right-of-way or easement on such a site rather than a fee simple title, the applicant will furnish a title report thereon by the applicant's attorney showing ownership of the land and all mortgages or other lien defects, restrictions, or encumbrances, if any.

(ii) For user connections funded by RUS, applicants will obtain adequate rights to construct and maintain the connection line or other facilities located on the users property. This right may be obtained through formal easement or user agreements.

(2) *Title for land or existing facilities.* Title to land essential to the successful operation of facilities or title to facilities being purchased, must not contain any restrictions that will adversely affect the suitability, successful operation, security value, or transferability of the facility. Preliminary and final title opinions must be provided by the applicant's attorney. The opinions must be in sufficient detail to assess marketability of the property. Form FmHA 1927–9, ''Preliminary Title Opinion,'' and Form FmHA 1927–10, ''Final Title Opinion,'' may be used to provide the required title opinions.

(i) In lieu of receiving title opinions from the applicant's attorney, the applicant may use a title insurance company. If a title insurance company is used, the company must provide the Agency a title insurance binder, disclosing all title defects or restrictions, and include a commitment to issue a title insurance policy. The policy should be in an amount at least equal to the market value of the property as improved. The title insurance binder and commitment should be provided to the Agency prior to requesting closing instructions. The Agency will be provided a title insurance policy which will insure RUS's interest in the property without any title defects or restrictions which have not been waived by the Agency.

(ii) The approval official may waive title defects or restrictions, such as utility easements, that do not adversely affect the suitability, successful operation, security value, or transferability of the facility.

(3) *Water rights.* The following will be furnished as applicable:

(i) A statement by the applicant's attorney regarding the nature of the water rights owned or to be acquired by the applicant (such as conveyance of title, appropriation and decree, application and permit, public notice and appropriation and use).

(ii) A copy of a contract with another company or municipality to supply water; or stock certificates in another company which represents the right to receive water.

(4) *Lease agreements.* Where the right of use or control of real property not owned by the applicant is essential to the successful operation of the facility during the life of the loan, such right will be evidenced by written agreements or contracts between the owner of the property and the applicant. Lease agreements shall not contain provisions for restricted use of the site of facility, forfeiture or summary cancellation clauses. Lease agreements shall provide for the right to transfer, encumber, assign and sub-lease without restriction. Lease agreements will ordinarily be written for a term at least equal to the term of the loan. Such lease contracts or agreements will be approved by the approval official with the advice and counsel of OGC, as necessary.

(h) *Obtaining loan closing instructions.* The information required by OGC will be transmitted to OGC with request for closing instructions. Upon receipt of closing instructions, the processing office will discuss with the applicant and its engineer, attorney, and other appropriate representatives, the requirements contained therein and any actions necessary to proceed with closing. State program officials have the option to work with OGC to obtain waivers for closing instructions in certain cases. Closing instructions are not required for grants.

§ 1780.45 Loan and grant closing and delivery of funds.

(a) *Loan closing.* Notes and bonds will be completed on the date of loan closing except for the entry of subsequent RUS multiple advances where applicable. The amount of each note will be in multiples of not less than $100. The

amount of each bond will ordinarily be in multiples of not less than $1,000.

(1) Form FmHA 440–22, ''Promissory Note (Association or Organization),'' will ordinarily be used for loans to nonpublic bodies.

(2) Forms FmHA 1942–47, ''Loan Resolution (Public Bodies),'' or FmHA 1942–9, ''Loan Resolution (Security Agreement)'' will be adopted by public and other-than-public bodies. These resolutions supplement other provisions in this part.

(3) Subpart D of this part contains instructions for preparation of notes and bonds evidencing indebtedness of public bodies.

(b) *Loan disbursement.*

(1) *Multiple advances.* Multiple advances will be used only for loans in excess of $100,000. Advances will be made only as needed to cover disbursements required by the borrower over a 30-day period.

(i) Subpart D of this part contains instructions for making multiple advances to public bodies.

(ii) Advances will be requested by the borrower in writing. The request should be in sufficient amounts to pay cost of construction, rights-of-way and land, legal, engineering, interest, and other expenses as needed. The borrower may use Form FmHA 440–11, ''Estimate of Funds Needed for 30 Day Period Commencing XXX,'' to show the amount of funds needed during the 30-day period.

(2) RUS loan funds obligated for a specific purpose, such as the paying of interest, but not needed at the time of loan closing will remain in the Finance Office until needed unless State statutes require all funds to be delivered to the borrower at the time of closing. Loan funds may be advanced to prepay costs under § 1780.9(e)(2)(iv). If all funds must be delivered to the borrower at the time of closing to comply with State statutes, funds not needed at loan closing will be handled as follows:

(i) Deposited in an appropriate borrower account, such as debt service or construction accounts, or

(ii) Deposited in a joint bank account under paragraph (e)(3) of this section.

(c) *Grant closing.* RUS Bulletin 1780–12 ''Water or Waste System Grant Agreement'' of this part will be completed and executed in accordance with the requirements of grant approval. The grant will be considered closed when RUS Bulletin 1780–12 has been properly executed. Processing or approval officials are authorized to sign the grant agreement on behalf of RUS. For grants that supplement RUS loan funds, the grant should be closed simultaneously with the closing of the loan. However, when grant funds will be disbursed before loan closing, as provided in paragraph (d)(1) of this section, the grant will be closed not later than the delivery date of the first advance of grant funds.

(d) *Grant disbursements.* RUS policy is not to disburse grant funds from the Treasury until they are actually needed by the applicant. Applicant funds will be disbursed before the disbursal of any RUS grant funds. RUS loan funds will be disbursed before the disbursal of any RUS grant funds except when:

(1) Interim financing of the total estimated amount of loan funds needed during construction is arranged, and

(2) All interim funds have been disbursed, and

(3) RUS grant funds are needed before the RUS loan can be closed.

(e) *Use and accountability of funds.*—(1) Arrangements will be agreed upon for the prior concurrence by the Agency of the bills or vouchers upon which warrants will be drawn. Form FmHA 402–2, ''Statement of Deposits and Withdrawals,'' or similar form will be used by the Agency to monitor funds. Periodic reviews of these accounts shall be made by the Agency.

(2) Pledge of collateral for grants to nonprofit organizations. Grant funds must be deposited in a bank with Federal Deposit Insurance Corporation (FDIC) insurance coverage. Also, if the balance in the account containing grant funds exceeds the FDIC insurance coverage, the excess amount must be collaterally secured. The pledge of collateral for the excess will be in accordance with Treasury Circular 176.

(3) *Joint RUS/borrower bank account.* RUS funds and any funds furnished by the borrower including contributions to purchase major items of equipment, machinery, and furnishings will be deposited in a joint RUS/borrower bank account if determined necessary by the approval official. When RUS has a Memorandum of Understanding with another agency that provides for the use of joint RUS/borrower accounts, or when RUS is the primary source of funds for a project and has determined that the use of a joint RUS/borrower bank account is necessary, project funds from other sources may also be deposited in the joint bank account. RUS shall not be accountable to the source of the other funds nor shall RUS undertake responsibility to administer the funding program of the other entity. Joint RUS/borrower bank accounts should not be used for funds advanced by an interim lender. When funds exceeds the FDIC insurance coverage, the excess must have a pledge of collateral in accordance with Treasury Circular 176.

(4) *Payment for project costs.* Project costs will be monitored by the RUS processing office. Invoices will be approved by the borrower and their engineer, as appropriate, and submitted to the processing office for concurrence. The review and acceptance of project costs, including construction pay estimates, by RUS does not attest to the correctness of the amounts, the quantities shown or that the work has been performed under the terms of the agreements or contracts.

(f) *Use of remaining funds.* Funds remaining after all costs incident to the basic project have been paid or provided for will not include applicant contributions. Funds remaining, may be considered in direct proportion to the amounts obtained from each source. Remaining funds will be handled as follows:

(1) Remaining funds may be used for eligible loan or grant purposes, provided the use will not result in major changes to the facility design or project scope and that the purpose of the loan or grant remains the same;

(2) RUS loan funds that are not needed will be applied as an extra payment on the RUS indebtedness unless other disposition is required by the bond ordinance, resolution, or State statute; and

(3) Grant funds not expended under paragraph (f)(1) of this section will be cancelled. Prior to the actual cancellation, the borrower, its attorney and its engineer will be notified of RUS's intent to cancel the remaining funds. The applicant will be given appropriate appeal rights.

(g) *Post review of loan closing.* In order to determine that the loan has been properly closed the loan docket will be reviewed by OGC. The State program official has the option to consult with OGC to obtain waivers of this review.

§ 1780.46 [Reserved]

§ 1780.47 Borrower accounting methods, management reporting and audits.

(a) Borrowers are required to provide RUS an annual audit or financial statements.

(b) Method of accounting and preparation of financial statements. Annual organization-wide financial statements must be prepared on the accrual basis of accounting, in accordance with generally accepted accounting principles (GAAP), unless State statutes or regulatory agencies provide otherwise, or an exception is granted by the Agency. An organization

may maintain its accounting records on a basis other than accrual accounting, and make the necessary adjustments so that annual financial statements are presented on the accrual basis.

(c) *Record retention.* Each borrower shall retain all records, books, and supporting material for 3 years after the issuance of the audit or management reports. Upon request, this material will be made available to RUS, Office of the Inspector General (OIG), United States Department of Agriculture (USDA), the Comptroller General, or to their assignees.

(d) *Audits.* All audits are to be performed in accordance with the latest revision of the generally accepted government auditing standards (GAGAS), developed by the Comptroller General of the United States. In addition, the audits are also to be performed in accordance with various Office of Management and Budget (OMB) Circulars. The type of audit each borrower is required to submit will be designated by RUS. Further guidance on preparing an acceptable audit can be obtained from RUS. It is not intended that audits required by this part be separate and apart from audits performed in accordance with State and local laws. To the extent feasible, the audit work should be done in conjunction with those audits. Audits shall be annual unless otherwise prohibited and supplied to the processing office as soon as possible but in no event later than 150 days following the period covered by the audit. OMB Circulars are available in any USDA/RUS office.

(e) *Borrowers exempt from audits.* All borrowers who are exempt from audits, will, within 60 days following the end of each fiscal year, furnish the RUS with annual financial statements, consisting of a verification of the organization's balance sheet and statement of income and expense by an appropriate official of the organization. Forms FmHA 442–2, ''Statement of Budget, Income and Equity,'' and 442–3 may be used.

(f) *Management reports.* These reports will furnish management with a means of evaluating prior decisions and serve as a basis for planning future operations and financial strategies. In those cases where revenues from multiple sources are pledged as security for an RUS loan, two reports will be required; one for the project being financed by RUS and one combining the entire operation of the borrower. In those cases where RUS loans are secured by general obligation bonds or assessments and the borrower combines revenues from all sources, one management report combining all such revenues is acceptable. The following management data will be submitted by the borrower to the processing office. These reports at a minimum will include a balance sheet and income and expense statement.

(1) *Quarterly reports.* A quarterly management report will be required for the first year for new borrowers and for all borrowers experiencing financial or management problems for one year from the date problems were noted. If the borrower's account is current at the end of the year, the processing office may waive the required reports.

(2) *Annual management reports.* Prior to the beginning of each fiscal year the following will be submitted to the processing office. (If Form FmHA 442–2 is used as the annual management report, enter data in column three only of Schedule 1, and complete all of Schedule 2.)

(i) Two copies of the management reports and proposed ''Annual Budget''.

(ii) Financial information may be reported on Form FmHA 442–2 which includes Schedule 1, ''Statement of Budget, Income and Equity'' and Schedule 2, ''Projected Cash Flow'' or information in similar format.

(iii) A copy of the rate schedule in effect at the time of submission.

(g) Substitute for management reports. When RUS loans are secured by the general obligation of the public body or tax assessments which total 100 percent of the debt service requirements, the State program official may authorize an annual audit to substitute for other management reports if the audit is received within 150 days following the period covered by the audit.

§ 1780.48 Regional commission grants.

Grants are sometimes made by regional commissions for projects eligible for RUS assistance. RUS has agreed to administer such funds in a manner similar to administering RUS assistance.

(a) When RUS has funds in the project, no charge will be made for administering regional commission funds.

(b) When RUS has no loan or grant funds in the project, an administrative charge will be made pursuant to the Economy Act of 1932, as amended (31 U.S.C. 1535). A fee of 5 percent of the first $50,000 of a regional commission grant and 1 percent of any amount over $50,000 will be paid RUS by the commission.

(1) *Appalachian Regional Commission (ARC).* RUS Bulletin 1780–23 of this part will be followed in determining the responsibilities of RUS. The ARC Federal Co-chairman and the State program official will provide each other with the necessary notification and certification.

(2) *Other regional commissions.* Title V of the Public Works and Economic Development Act of 1965 authorizes other commissions similar to ARC. RUS Bulletin 1780–23 of this part will be used to develop a separate project management agreement between RUS and the commission for each project. The agreement should be prepared by the State program official as soon as notification is received that a commission grant will be made and the amount is confirmed.

(c) Regional commission grants should be obligated as soon as possible in accordance with § 1780.41 of this part, except that the announcement procedure referred to in § 1780.41(c) is not applicable. Regional commission grants will be disbursed from the Finance Office in the same manner as RUS funds.

§ 1789.49 Rural or Native Alaskan villages.

(a) *General.*—(1) This section contains regulations for providing grants to remedy the dire sanitation conditions in rural Alaskan villages using funds specifically made available for this purpose.

(2) Unless specifically modified by this section, grants will be made, processed, and serviced in accordance with this subpart.

(b) *Definitions.*—(1) *Dire sanitation condition.* For the purpose of this section a dire sanitation condition exists where:

(i) Recurring instances of a waterborne communicable disease has been documented; or

(ii) No community-wide water and sewer system exists and individual residents must haul water to or human waste from their homes and/or use pit privies.

(2) *Rural or Native Alaskan village.* A rural or Native Alaskan community which meets the definition of a village under State statutes and does not have a population in excess of 10,000 inhabitants, according to the latest decennial Census of the United States.

(c) *Eligibility.*—(1) The applicant must be a rural or Native Alaskan village.

(2) The median household income of the village cannot exceed 110 percent of the statewide nonmetropolitan household income.

(3) A dire sanitation condition must exist in the village.

(4) The applicant must obtain 50 percent of project development costs from State or local contributions. The local contribution can be from loan funds authorized under subpart A of this part.

(d) *Grant amount.* Grants will be made for up to 50 percent of the project development costs.

(e) *Use of funds.* Grant funds can be used to pay reasonable costs associated with providing potable water or waste disposal services to residents of rural or Native Alaskan villages.

(f) *Construction.* (1) If the State of Alaska is contributing to the project costs, the project does not have to meet the construction requirements of this subpart.

(2) If a loan is made in accordance with this part for part of the local contribution, all of the requirements of this part apply.

§§ 1780.50–1780.52 [Reserved]

Subpart C—Planning, Designing, Bidding, Contracting, Constructing and Inspections.

§ 1780.53 General.

This subpart is specifically designed for use by owners including the professional or technical consultants or agents who provide assistance and services such as engineering, environmental, inspection, financial, legal or other services related to planning, designing, bidding, contracting, and constructing water and waste disposal facilities. These procedures do not relieve the owner of the contractual obligations that arise from the procurement of these services. For this subpart, an owner is defined as an applicant, borrower, or grantee.

§ 1780.54 Technical services.

Owners are responsible for providing the engineering and environmental services necessary for planning, designing, bidding, contracting, inspecting, and constructing their facilities. Services may be provided by the owner's ''in house'' engineer or through contract, subject to Agency concurrence. Engineers must be licensed in the State where the facility is to be constructed.

§ 1780.55 Preliminary engineering reports.

Preliminary engineering reports (PER)s must conform with customary professional standards. PER guidelines for water, sanitary sewer, solid waste, and storm sewer are available from the Agency.

§ 1780.56 [Reserved]

§ 1780.57 Design policies.

Facilities financed by the Agency will be designed and constructed in accordance with sound engineering practices, and must meet the requirements of Federal, State and local agencies.

(a) *Environmental review.* Facilities financed by the Agency must undergo an environmental impact analysis in accordance with RUS requirements. Facility planning and design must not only be responsive to the owner's needs but must consider the environmental impacts of the proposed project. Facility designs shall incorporate and integrate, where practicable, mitigation measures that avoid or minimize adverse environmental impacts. Environmental reviews serve as a means of assessing environmental impacts of project proposals, rather than justifying decisions already made. Applicants may not take any action on a project proposal that will have an adverse environmental impact or limit the choice of reasonable project alternatives being reviewed prior to the completion of the Agency's environmental review.

(b) *Architectural barriers.* All facilities intended for or accessible to the public or in which physically handicapped persons may be employed or reside must be developed in compliance with the Architectural Barriers Act of 1968 (Pub. L. 90–480) as implemented by 41 CFR 101–19.6, section 504 of the Rehabilitation Act of 1973 (Pub. L. 93–112) as implemented by 7 CFR, parts 15 and 15b, and Titles II and III of the Americans with Disabilities Act of 1990.

(c) *Energy conservation.* Facility design should consider cost effective energy saving measures.

(d) *Fire protection.* Water facilities should have sufficient capacity to provide reasonable fire protection to the extent practicable.

(e) *Growth capacity.* Facilities should have sufficient capacity to provide for reasonable growth to the extent practicable.

(f) *Water conservation.* Owners are encouraged, when economically feasible, to incorporate water conservation practices into a facility's design. For existing water systems, evidence must be provided showing that the distribution system water losses do not exceed reasonable levels.

(g) *Conformity with state drinking water standards.* No funds shall be made available under this regulation for a water system unless the Agency determines that the water system will make significant progress toward meeting the standards established under title XIV of the Public Health Service Act (commonly known as the 'Safe Drinking Water Act') (42 U.S.C. 300f et seq.).

(h) *Conformity with federal and state water pollution control standards.* No funds shall be made available under this regulation for a water treatment discharge or waste disposal system unless the Agency determines that the effluent from the system conforms with applicable Federal and State water pollution control standards.

(i) *Combined sewers.* New combined sanitary and storm water sewer facilities will not be financed by the Agency. Extensions to existing combined systems can only be financed when separate systems are impractical.

(j) *Dam safety.* Projects involving any artificial barrier which impounds or diverts water, or the rehabilitation or improvement of such a barrier, must comply with the provisions for dam safety as set forth in the Federal Guidelines for Dam Safety (Government Printing Office stock No. 041–001–00187–5) as prepared by the Federal Coordinating Council for Science, Engineering and Technology.

(j) *Pipe.* All pipe used shall meet current American Society for Testing Materials (ASTM) or American Water Works Association (AWWA) standards.

(k) *Water system testing.* For new water systems or extensions to existing water systems, leakage shall not exceed limits set by either ASTM or AWWA whichever is the more stringent.

(l) *Metering devices.* Water facilities financed by the Agency will have metering devices for each connection. An exception to this requirement may be granted by the State program official when the owner demonstrates that installation of metering devices would be a significant economic detriment and that environmental consideration would not be adversely affected by not installing such devices. Sanitary sewer projects should incorporate water system metering devices whenever practicable.

(m) *Economical service.* The facility's design must provide the most economical service practicable.

§§ 1780.58–1780.60 [Reserved]

§ 1780.61 Construction contracts.

Contract documents must be sufficiently descriptive and legally binding in order to accomplish the work as economically and expeditiously as possible.

(a) *Standard construction contract documents.* If the construction contract documents utilized are not in the format previously approved by the Agency, OGC's review of the construction contract documents will be obtained prior to their use.

(b) *Contract review and concurrence.* The owner's attorney will review the executed contract documents, including performance and payment bonds, and will certify that they are adequate, and that the persons executing these

documents have been properly authorized to do so. The contract documents, engineer's recommendation for award, and bid tabulation sheets will be forwarded to the Agency for concurrence prior to awarding the contract. All contracts will contain a provision that they are not effective until they have been concurred in by the Agency. The State program official or designee is responsible for concurring in construction contracts with the legal advice and guidance of the OGC when necessary.

§ 1780.62 Utility purchase contracts.

Applicants proposing to purchase water or other utility service from private or public sources shall have written contracts for supply or service which are reviewed and concurred in by the Agency. To the extent practical, the Agency review and concurrence of such contracts should take place prior to their execution by the owner. OGC advice and guidance may be requested. Form FmHA 442–30, ''Water Purchase Contract,'' may be used when appropriate. If the Agency loan will be repaid from system revenues, the contract will be pledged to the Agency as part of the security for the loan. Such contracts will:

(a) Include a commitment by the supplier to furnish, at a specified point, an adequate quantity of water or other service and provide that, in case of shortages, all of the supplier's users will proportionately share shortages.

(b) Set out the ownership and maintenance responsibilities of the respective parties including the master meter if a meter is installed at the point of delivery.

(c) Specify the initial rates and provide a type of escalator clause which will permit rates for the association to be raised or lowered proportionately as certain specified rates for the supplier's regular customers are raised or lowered. Provisions may be made for altering rates in accordance with the decisions of the appropriate State agency which may have regulatory authority.

(d) Cover period of time which is at least equal to the repayment period of the loan. State program officials may approve contracts for shorter periods of time if the supplier cannot legally contract for such period, or if the owner and supplier find it impossible or impractical to negotiate a contract for the maximum period permissible under State law, provided:

(1) The supplier is subject to regulations of the Federal Energy Regulatory Commission or other Federal or State agency whose jurisdiction can be expected to prevent unwarranted curtailment of supply; or

(2) The contract contains adequate provisions for renewal; or

(3) A determination is made that in the event the contract is terminated, there are or will be other adequate sources available to the owner that can feasibly be developed or purchased.

(e) Set out in detail the amount of connection or demand charges, if any, to be made by the supplier as a condition to making the service available to the owner. However, the payment of such charges from loan funds shall not be approved unless the Agency determines that it is more feasible and economical for the owner to pay such a connection charge than it is for the owner to provide the necessary supply by other means.

(f) Provide for a pledge of the contract to the Agency as part of the security for the loan.

(g) Not contain provisions for:

(1) Construction of facilities which will be owned by the supplier. This does not preclude the use of money paid as a connection charge for construction to be done by the supplier.

(2) *Options for the future sale or transfer.* This does not preclude an agreement recognizing that the supplier and owner may at some future date agree to a sale of all or a portion of the facility.

(h) If it is impossible to obtain a firm commitment for either an adequate quantity or sharing shortages proportionately, a contract may be executed and concurred in provided adequate evidence is furnished to enable the Agency to make a determination that the supplier has adequate supply and/or treatment facilities to furnish its other users and the applicant for the foreseeable future; and

(1) The supplier is subject to regulations of the Federal Energy Regulatory Commission or other Federal or State agency whose jurisdiction can be expected to prevent unwarranted curtailment of supply; or

(2) A suitable alternative supply could be arranged within the repayment ability of the borrower if it should become necessary; or

(3) Concurrence in the proposed contract is obtained from the National Office.

§ 1780.63 Sewage treatment and bulk water sales contracts.

Owners entering into agreements with private or public parties to treat sewage or supply bulk water shall have written contracts for such service and all such contracts shall be subject to the Agency concurrence. Section 1780.62 of this part should be used as a guide to prepare such contracts.

§§ 1780.64–1780.66 [Reserved]

§ 1780.67 Performing construction.

Owners are encouraged to accomplish construction through contracts with qualified contractors. Owners may accomplish construction by using their own personnel and equipment provided the owners possess the necessary skills, abilities and resources to perform the work and provided a licensed engineer prepares design drawings and specifications and inspects construction and furnishes inspection reports as required by § 1780.76 of this part. Inspection services may be provided by individuals as approved by the State staff engineer. Payments for construction will be handled under § 1780.76(d) of this part.

§ 1780.68 Owner's contractual responsibility.

This part does not relieve the owner of any responsibilities under its contract. The owner is responsible for the settlement of all contractual and administrative issues arising out of procurement entered into in support of a loan or grant. These include, but are not limited to: source evaluation, protests, disputes, and claims. Matters concerning violation of laws are to be referred to the applicable local, State, or Federal authority.

§ 1780.69 [Reserved]

§ 1780.70 Owner's procurement regulations.

Owner's procurement requirements must comply with the following standards:

(a) *Code of conduct.* Owners shall maintain a written code or standards of conduct which shall govern the performance of their officers, employees or agents engaged in the award and administration of contracts supported by Agency funds. No employee, officer or agent of the owner shall participate in the selection, award, or administration of a contract supported by Agency funds if a conflict of interest, real or apparent, would be involved. Examples of such conflicts would arise when: the employee, officer or agent; any member of their immediate family; their partner; or an organization which employs, or is about to employ, any of the above; has a financial or other interest in the firm selected for the award.

(1) The owner's officers, employees or agents shall neither solicit nor accept gratuities, favors or anything of

monetary value from contractors, potential contractors, or parties to subagreements.

(2) To the extent permitted by State or local law or regulations, the owner's standards of conduct shall provide for penalties, sanctions, or other disciplinary actions for violations of such standards by the owner's officers, employees, agents, or by contractors or their agents.

(b) *Maximum open and free competition.* All procurement transactions, regardless of whether by sealed bids or by negotiation and without regard to dollar value, shall be conducted in a manner that provides maximum open and free competition. Procurement procedures shall not restrict or eliminate competition. Examples of what are considered to be restrictive of competition include, but are not limited to: placing unreasonable requirements on firms in order for them to qualify to do business; noncompetitive practices between firms; organizational conflicts of interest; and unnecessary experience and bonding requirements. In specifying materials, the owner and its consultant will consider all materials normally suitable for the project commensurate with sound engineering practices and project requirements. The Agency shall consider fully any recommendation made by the owner concerning the technical design and choice of materials to be used for a facility. If the Agency determines that a design or material, other than those that were recommended should be considered by including them in the procurement process as an acceptable design or material in the water or waste disposal facility, the Agency shall provide such owner with a comprehensive justification for such a determination. The justification will be documented in writing.

(c) *Owner's review.* Proposed procurement actions shall be reviewed by the owner's officials to avoid the purchase of unnecessary or duplicate items. Consideration should be given to consolidation or separation of procurement items to obtain a more economical purchase. Where appropriate, an analysis shall be made of lease versus purchase alternatives, and any other appropriate analysis to determine which approach would be the most economical. To foster greater economy and efficiency, owners are encouraged to enter into State and local intergovernmental agreements for procurement or use of common goods and services.

(d) Solicitation of offers, whether by competitive sealed bid or competitive negotiation, shall:

(i) Incorporate a clear and accurate description of the technical requirements for the material, product or service to be procured. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a ''brand name or equal'' description may be used to define the performance or other salient requirements of a procurement. The specific feature of the name brands which must be met by the offeror shall be clearly stated; and

(ii) Clearly specify all requirements which offerors must fulfill and all other factors to be used in evaluating bids or proposals.

(e) Affirmative steps should be taken to assure that small, minority, and women businesses are utilized when possible as sources of supplies, equipment, construction and services.

(f) *Contract pricing.* Cost plus a percentage of cost method of contracting shall not be used.

(g) *Unacceptable bidders.* The following will not be allowed to bid on, or negotiate for, a contract or subcontract related to the construction of the project:

(1) An engineer as an individual or firm who has prepared plans and specifications or who will be responsible for monitoring the construction;

(2) Any firm or corporation in which the owner's engineer is an officer, employee, or holds or controls a substantial interest;

(3) The governing body's officers, employees, or agents;

(4) Any member of the immediate family or partners in the entities referred to in paragraphs (g)(1), (g)(2) or (g)(3) of this section; or

(5) An organization which employs, or is about to employ, any person in the entities referred to in paragraph (g)(1), (g)(2) or (g)(3) or (g)(4) of this section.

(h) *Contract award.* Contracts shall be made only with responsible parties possessing the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall include but not be limited to matters such as integrity, record of past performance, financial and technical resources, and accessibility to other necessary resources. Contracts shall not be made with parties who are suspended or debarred by any Agency of the United States Government.

§ 1780.71 [Reserved]

§ 1780.72 Procurement methods.

Procurement shall be made by one of the following methods: small purchase procedures; competitive sealed bids (formal advertising); competitive negotiation; or noncompetitive negotiation. Competitive sealed bids (formal advertising) is the preferred procurement method for construction contracts.

(a) *Small purchase procedures.* Small purchase procedures are those relatively simple and informal procurement methods that are sound and appropriate for a procurement of services, supplies or other property, costing in the aggregate not more than $100,000. If small purchase procedures are used for a procurement, written price or rate quotations shall be requested from at least three qualified sources.

(b) *Competitive sealed bids.* In competitive sealed bids (formal advertising), an invitation for sealed bids is publicly advertised and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is lowest, price and other factors considered. When using this method the following shall apply:

(1) The invitation for bids shall be publicly advertised at a sufficient time prior to the date set for opening of bids. The invitation shall comply with the requirements in § 1780.70(d). Bids shall be solicited from an adequate number of qualified sources;

(2) All bids shall be opened publicly at the time and place stated in the invitation for bids;

(3) A firm-fixed-price contract award shall be made by written notice to that responsible bidder whose bid, conforming to the invitation for bids, is lowest. When specified in the bidding documents, factors such as discounts and transportation costs shall be considered in determining which bid is lowest; and

(4) Any or all bids may be rejected by the owner when it is in its best interest.

(c) *Competitive negotiation.* Competitive negotiation is required for the procurement of engineering services for project design. In competitive negotiations, proposals are requested from a number of sources and the Request for Proposal is publicized. Negotiations are normally conducted with more than one of the sources submitting offers. Competitive negotiation may be used if conditions are not appropriate for the use of formal advertising and where discussions and bargaining with a view to reaching

agreement on the technical quality, price, other terms of the proposed contract and specifications may be necessary. If competitive negotiation is used for a procurement, the following requirements shall apply:

(1) Proposals shall be solicited from an adequate number of qualified sources to permit reasonable competition consistent with the nature and requirements of the Procurement. The Request for Proposal shall be publicized and reasonable requests by other sources to compete shall be honored to the maximum extent practicable;

(2) The Request for Proposal shall identify all significant evaluation factors, including price or cost where required, and their relative importance;

(3) The owner shall provide mechanisms for technical evaluation of the proposals received, determination of responsible offerors for the purpose of written or oral discussions, and selection for contract award;

(4) Award may be made to the responsible offeror whose proposal will be most advantageous to the owner, price and other factors considered. Unsuccessful offerors should be promptly notified; and

(5) Owners may utilize competitive negotiation procedures for procurement of other professional services, whereby competitors' qualifications are evaluated and the most qualified competitor is selected, subject to negotiations of fair and reasonable compensation.

(d) *Noncompetitive negotiation.* Noncompetitive negotiation is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. Noncompetitive negotiation may be used when the award of a contract is not feasible under small purchase or competitive sealed bids. Circumstances under which a contract may be awarded by noncompetitive negotiations are limited to the following:

(1) The item is available only from a single source; or

(2) There exists a public exigency or emergency and the urgency for the requirement will not permit a delay incident to competitive solicitation; or

(3) After solicitation of a number of sources, competition is determined inadequate; or

(4) No acceptable bids have been received after formal advertising; or

(5) The procurement is for professional services other than design engineering; or

(6) The aggregate amount does not exceed $100,000.

§ 1780.73 [Reserved]

§ 1780.74 Contracts awarded prior to applications.

Owners awarding construction or other procurement contracts prior to filing an application, must provide evidence that is satisfactory to the Agency that the contract was entered into without intent to circumvent the requirements of Agency regulations.

(a) *Modifications.* The contract shall be modified to conform with the provisions of this part. Where this is not possible, modifications will be made to the extent practicable and, as a minimum, the contract must comply with all State and local laws and regulations as well as statutory requirements and executive orders related to the Agency financing. When all construction is complete and it is impracticable to modify the contracts, the owner must provide the certification required by paragraph (d) of this section.

(b) *Consultant's certification.* Provide a certification by an engineer, licensed in the State where the facility is constructed, that any construction performed complies fully with the plans and specifications.

(c) *Owner's certification.* Provide a certification by the owner that the contractor has complied with applicable statutory and executive requirements related to Agency financing for construction already performed.

§ 1780.75 Contract provisions.

In addition to provisions required for a valid and legally binding contract, any recipient of Agency funds shall include the following contract provisions in all contracts.

(a) *Remedies.* Contracts other than small purchases shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. A realistic liquidated damage provision should also be included.

(b) *Termination.* All contracts exceeding $10,000, shall contain suitable provisions for termination by the owner including the manner by which it will be affected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) *Surety.* In all contracts for construction or facility improvements exceeding $100,000, the owner shall require bonds or cash deposit in escrow assuring performance and payment each in the amount of 100 percent of the contract cost. The surety will be in the form of performance bonds and payment bonds. For contracts of lesser amounts, the owner may require surety. When a surety is not provided, contractors will furnish evidence of payment in full for all materials, labor, and any other items procured under the contract. Form FmHA 1924–10, ''Release by Claimants,'' and Form FmHA 1924–9, ''Certificate of Contractor's Release,'' may be used for this purpose. Companies providing performance bonds and payment bonds must hold a certificate of authority as an acceptable surety on Federal bonds as listed in Treasury Circular 570 as amended and be legally doing business in the State where the facility is located.

(d) *Equal Employment Opportunity.* All contracts awarded in excess of $10,000 by owners shall contain a provision requiring compliance with Executive Order 11246, entitled, ''Equal Employment Opportunity,'' as amended by Executive Order 11375, and as supplemented by Department of Labor regulations 41 CFR part 60.

(e) *Anti-kickback.* All contracts for construction shall include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874). This Act provides that each contractor shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which they are otherwise entitled. The owner shall report suspected or reported violations to the Agency.

(f) *Records.* All negotiated contracts (except those of $10,000 or less) awarded by owners shall include a provision to the effect that the owner, the Agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the contractor which are directly pertinent to a specific Federal loan or grant program for the purpose of making audits, examinations, excerpts, and transcriptions. Owners shall require contractors to maintain all required records for 3 years after making final payment and all other pending matters are closed.

(g) *State Energy Conservation Plan.* Contracts shall incorporate mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163).

(h) *Change orders.* The construction contract shall require that all contract change orders be concurred in by the Agency.

(i) *Agency concurrence.* All contracts must contain a provision that they shall not be effective unless and until the State program official or designee concurs in writing.

(j) *Retainage.* All construction contracts shall contain adequate provisions for retainage. No payments will be made that would deplete the retainage nor place in escrow any funds that are required for retainage nor invest the retainage for the benefit of the contractor. The retainage shall not be less than an amount equal to 5 percent of an approved partial payment estimate until the project is substantially complete and accepted by the owner, consulting engineer and Agency. The contract must provide that additional amounts may be retained if the job is not proceeding satisfactorily.

(k) *Other compliance requirements.* Contracts in excess of $100,000 shall contain a provision which requires compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency (EPA) regulations 40 CFR part 15, which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The provision shall require reporting of violations to the Agency and to the U.S. Environmental Protection Agency, Assistant Administrator for Enforcement. Solicitations and contract provisions shall include the requirements of 4 CFR 15.4(c) as set forth in RUS Bulletin 1780–14 of this part.

§ 1780.76 Contract administration.

Owners shall be responsible for maintaining a contract administration system to monitor the contractors' performance and compliance with the terms, conditions, and specifications of the contracts.

(a) *Preconstruction conference.* Prior to beginning construction, the owner will schedule a preconstruction conference where the consulting engineer will review the planned development with the Agency, owner, resident inspector, attorney, contractor, and other interested parties. The conference will thoroughly cover applicable items included in Form FmHA 1924–16, ''Record of Pre-construction Conference,'' and the discussions and agreements will be documented.

(b) *Monitoring reports.* The owner is required to monitor construction and provide a report to the Agency giving a full explanation under the following circumstances:

(1) Reasons why approved construction schedules were not met.

(2) Analysis and explanation of cost overruns and how payment is to be made for the same; and

(3) If events occur which have a significant impact upon the project.

(c) *Inspection.* Full-time resident inspection is required for all construction unless a written exception is made by the Agency upon written request of the owner. Unless otherwise agreed, the resident inspector will be provided by the consulting engineer. Prior to the preconstruction conference, the consulting engineer will submit a resume of qualifications of the resident inspector to the owner and to the Agency for acceptance in writing. If the owner provides the resident inspector, it must submit a resume of the inspector's qualifications to the project engineer and the Agency for acceptance in writing prior to the preconstruction conference. The resident inspector will work under the technical supervision of the project engineer and the role and responsibilities will be defined in writing.

(d) *Inspector's daily diary.* The resident inspector will maintain a record of the daily construction progress in the form of a daily diary and daily inspection reports. The daily entries shall be made available to the Agency personnel and will be reviewed during project inspections. The original complete set will be furnished to the owner upon completion of construction. RUS Bulletin 1780–18 is available from the Agency for preparing daily inspection reports.

(e) *Payment for Construction.* Form FmHA 1924–18, ''Partial Payment Estimate,'' or other similar form may be used for construction payments. If Form 1924–18 is not used, prior concurrence by the State staff engineer must be obtained.

(1) Payment of contract retainage will not be made until such retainage is due and payable under the terms of the contact.

(2) Invoices for the payment of construction costs must be approved by the owner, project engineer and concurred in by the Agency.

(3) The review and acceptance of project costs, including construction payment estimates by the Agency shall not attest to the correctness of the amounts, the quantities shown, or that the work has been performed under the terms of agreements or contracts.

(f) *Prefinal inspections.* A prefinal inspection will be made by the owner, resident inspector, project engineer, contractor, representatives of other agencies involved, and Agency representative (preferably the State staff engineer or designee). The inspection results will be recorded by the project engineer and a copy provided to all interested parties.

(g) *Final inspection.* A final inspection will be made by the Agency before final payment is made.

(h) *Changes in development plans.* (1) Changes in development plans shall be reviewed and approved by the Agency provided:

(i) Funds are available to cover any additional costs; and

(ii) The change is for an authorized loan or grant purpose; and

(iii) It will not adversely affect the soundness of the facility operation or the Agency's security; and

(iv) The change is within the scope of the contract,

(2) Changes will be recorded on Form FmHA 1924–7, ''Contract Change Order,'' or other similar form if approved by the State program official or designee. Regardless of the form, change orders must be approved by the State program official or designee.

(3) Changes should be accomplished only after Agency approval and shall be authorized only by means of contract change order. The change order will include items such as:

(i) Any changes in labor and material;

(ii) Changes in facility design;

(iii) Any decrease or increase in quantities based on final measurements that are different from those shown in the bidding schedule; and

(iv) Any increase or decrease in the time to complete the project.

(4) All changes shall be recorded on chronologically numbered contract change orders as they occur. Change orders will not be included in payment estimates until approved by all parties.

§§ 1780.77–1780.79 [Reserved]

Subpart D—Information Pertaining to Preparation of Notes or Bonds and Bond Transcript Documents for Public Body Applicants

§ 1780.80 General.

This subpart includes information for use by public body applicants in the preparation and issuance of evidence of debt (bonds, notes, or debt instruments, herein referred to as bonds) and other necessary loan documents.

§ 1780.81 Policies related to use of bond counsel.

The applicant is responsible for preparation of bonds and bond transcript documents. The applicant will obtain the services and opinion of recognized bond counsel experienced in municipal financing with respect to the validity of a bond issue, except for issues of $100,000 or less. With prior approval of the approval official, the applicant may elect not to use bond counsel. Such issues will be closed in accordance with the following:

(a) The applicant must recognize and accept the fact that application processing may require additional legal and administrative time;

(b) It must be established that not using bond counsel will produce significant savings in total legal costs;

(c) The local attorney must be able and experienced in handling this type of legal work;

(d) The applicant must understand that it will likely have to obtain an opinion from bond counsel at its expense should the Agency require refinancing of the debt;

(e) Bonds will be prepared in accordance with this regulation and conform as closely as possible to the preferred methods of preparation stated in section 1780.94; and

(f) Closing instructions must be issued by OGC.

§ 1780.82 [Reserved]

§ 1780.83 Bond transcript documents.

Any questions relating to Agency requirements should be discussed with Agency representatives. Bond counsel or local counsel, as appropriate, must furnish at least two complete sets of the following to the applicant, who will furnish one complete set to the Agency:

(a) Copies of all organizational documents;

(b) Copies of general incumbency certificate;

(c) Certified copies of minutes or excerpts from all meetings of the governing body at which action was taken in connection with the authorizing and issuing of the bonds;

(d) Certified copies of documents evidencing that the applicant has complied fully with all statutory requirements incident to calling and holding a favorable bond election, if one is necessary;

(e) Certified copies of the resolutions, ordinances, or other documents such as the bond authorizing resolutions or ordinances and any resolution establishing rates and regulating use of facility, if such documents are not included in the minutes furnished;

(f) Copies of the official Notice of Sale and the affidavit of publication of the Notice of Sale when State statute requires a public sale;

(g) Specimen bond, with any attached coupons;

(h) Attorney's no-litigation certificate;

(i) Certified copies of resolutions or other documents pertaining to the bond award;

(j) Any additional or supporting documents required by bond counsel;

(k) For loans involving multiple advances of Agency loan funds, a preliminary approving opinion of bond counsel (or local counsel if no bond counsel is involved) if a final unqualified opinion cannot be obtained until all funds are advanced. The preliminary opinion for the entire issue shall be delivered at or before the time of the first advance of funds. It will state that the applicant has the legal authority to issue the bonds, construct, operate and maintain the facility, and repay the loan, subject only to changes occurring during the advance of funds, such as litigation resulting from the failure to advance loan funds, and receipt of closing certificates.

(l) Final unqualified approving opinion of bond counsel, (and preliminary approving opinion, if required) or local counsel if no bond counsel is involved, including an opinion as to whether interest on bonds will be exempt from Federal and State income taxes. With approval of the State program official, a final opinion may be qualified to the extent that litigation is pending relating to Indian claims that may affect title to land or validity of the obligation. It is permissible for such opinion to contain language referring to the last sentence of section 306 (a)(1) or to Section 309A (h) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926 (a)(1) or 1929a (h)).

§§ 1780.84 and 1780.86 [Reserved]

§ 1780.87 Permanent instruments for Agency loans.

Agency loans will be evidenced by an instrument determined legally sufficient and in accordance with the following order of preference:

(a) *First preference—Form FmHA 440–22, ''Promissory Note''.* Refer to paragraph (b) of this section for methods of various frequency payment calculations; and

(b) *Second preference—single instruments with amortized installments.* A single instrument providing for amortized installments which follows Form FmHA 440–22 as closely as possible. The full amount of the loan must show on the face of the instrument, and there must be provisions for entering the date and amount of each advance on the reverse or an attachment. When principal payments are deferred, the instrument will show that ''interest only'' is due on interest-only installment dates, rather than specific dollar amounts. The payment period including the ''interest only'' installment cannot exceed 40 years, the useful life of the facility, or State statute limitations, whichever occurs first. The amortized installment, computed as follows, will be shown as due on installment dates thereafter.

(1) *Monthly payments.* Multiply by twelve the number of years between the due date of the last interest-only installment and the final installment to determine the number of monthly payments. When there are no interest-only installments, multiply by twelve the number of years over which the loan is amortized. Then multiply the loan amount by the amortization factor and round to the next higher dollar.

(2) *Semiannual payments.*—Multiply by two the number of years between the due date of the last interest-only installment and the due date of the final installment to determine the correct number of semiannual periods. When there are no interest-only installments, multiply by two the number of years over which the loan is amortized. Then multiply the loan amount by the applicable amortization factor.

(3) *Annual payments.* Subtract the due date of the last interest-only installment from the due date of the final installment to determine the number of annual payments. When there are no interest-only installments, the number of annual payments will equal the number of years over which the loan is amortized. Then multiply the loan amount by the applicable amortization factor and round to the next higher dollar.

(c) *Third preference—single instruments with installments of principal plus interest.* If a single instrument with amortized installments is not legally permissible, use a single instrument providing for installments of principal plus interest accrued on the principal balance. For bonds with semiannual interest and annual principal, the interest is calculated by multiplying the principal balance times the interest rate and dividing this figure by two. Principal installments are to be scheduled so that total combined interest and principal payments closely approximate amortized payments.

(1) The repayment terms concerning interest only installments described in paragraph (b) of this section apply.

(2) The instrument shall contain in substance provisions indicating:

(i) Principal maturities and due dates;

(ii) Regular payments shall be applied first to interest due through the next principal and interest installment due date and then to principal due in chronological order stipulated in the bond; and

(iii) Payments on delinquent accounts will be applied in the following sequence:

(A) billed delinquent interest;

(B) past due interest installments;

(C) past due principal installments;

(D) interest installment due; and

(E) principal installment due.

(d) *Fourth preference—serial bonds with installments of principal plus interest.* If instruments described under the first, second, and third preferences are not legally permissible, use serial bonds with a bond or bonds delivered in the amount of each advance. Bonds will be numbered consecutively and delivered in chronological order. Such bonds will conform to the minimum requirements of § 1780.94 of this part. Provisions for application of payments will be the same as those set forth in paragraphs (c)(2)(ii) of this section.

(e) *Coupon bonds.* Coupon bonds will not be used unless required by State statute. Such bonds will conform to the minimum requirements of § 1780.94 of this part.

§ 1780.88 [Reserved]

§ 1780.89 Multiple advances of Agency funds using permanent instruments.

Where interim financing from commercial sources is not used, Agency loan proceeds will be disbursed on an ''as needed by borrower'' basis in amounts not to exceed the amount needed during 30-day periods.

§ 1780.90 Multiple advances of Agency funds using temporary debt instruments.

When none of the instruments described in § 1780.87 of this part are legally permissible or practical, a bond anticipation note or similar temporary debt instrument may be used. The debt instrument will provide for multiple advances of Agency funds and will be for the full amount of the Agency loan. The instrument will be prepared by bond counsel, or local counsel if bond counsel is not involved, and approved by the State program official and OGC. At the same time the Agency delivers the last advance, the borrower will deliver the permanent bond instrument and the canceled temporary instrument will be returned to the borrower. The approved debt instrument will show at least the following:

(a) The date from which each advance will bear interest;

(b) The interest rate as determined by § 1780.13 of this part;

(c) A payment schedule providing for interest on outstanding principal at least annually; and

(d) A maturity date which shall be no earlier than the anticipated issuance date of the permanent instruments and no longer than the 40-year statutory limit.

§§ 1780.91–1780.93 [Reserved]

§ 1780.94 Minimum bond specifications.

The provisions of this paragraph are minimum specifications only and must be followed to the extent legally permissible.

(a) *Type and denominations.* Bond resolutions or ordinances will provide that the instruments be either a bond representing the total amount of the indebtedness or serial bonds in denominations customarily accepted in municipal financing (ordinarily in multiples of not less than $1,000). Single bonds may provide for repayment of principal plus interest or amortized installments. Amortized installments are preferred by the Agency.

(b) *Bond registration.* Bonds will contain provisions permitting registration for both principal and interest. Bonds purchased by the Agency will be registered in the name of ''United States of America'' and will remain so registered at all times while the bonds are held or insured by the Government. The Agency address for registration purposes will be that of the Finance Office.

(c) *Size and quality.* Size of bonds and coupons should conform to standard practice. Paper must be of sufficient quality to prevent deterioration through ordinary handling over the life of the loan.

(d) *Date of bond.* Bonds will normally be dated as of the day of delivery. However, the borrower may use another date if approved by the Agency. Loan closing is the date of delivery of the bonds or the date of delivery of the first bond when utilizing serial bonds, regardless of the date of delivery of the funds. The date of delivery will be stated in the bond if different from the date of the bond. In all cases, interest will accrue from the date of delivery of the funds.

(e) *Payment date.* Loan payments will be scheduled to coincide with income availability and be in accordance with State law.

(1) If income is available monthly, monthly payments are recommended unless precluded by State law. If income is available quarterly or otherwise more frequently than annually, payments must be scheduled on such basis. However, if State law only permits principal plus interest (P&I) type bonds, annual or semiannual payments will be used.

(2) The payment schedule will be enumerated in the evidence of debt, or if that is not feasible, in a supplemental agreement.

(3) If feasible, the first payment will be scheduled one full month, or other period, as appropriate, from the date of loan closing or any deferment period. Due dates falling on the 29th, 30th, and 31st day of the month will be avoided. When principal payments are deferred, interest-only payments will be scheduled at least annually.

(f) *Extra payments.* Extra payments are derived from the sale of basic chattel or real estate security, refund of unused loan funds, cash proceeds of property insurance and similar actions which reduce the value of basic security. At the option of the borrower, regular facility revenue may also be used as extra payments when regular payments are current. Unless otherwise established in the note or bond, extra payments will be applied as follows:

(1) For loans with amortized debt instruments, extra payments will be applied first to interest accrued to the date of receipt of the payment and second to principal.

(2) For loans with debt instruments with P&I installments, the extra payment will be applied to the final unpaid principal installment.

(3) For borrowers with more than one loan, the extra payment will be applied to the account secured by the lowest priority of lien on the property from which the extra payments was obtained. Any balance will be applied to other Agency loans secured by the property from which the extra payment was obtained.

(4) For assessment bonds, see paragraph (m) of this section.

(g) The place of payments on bonds purchased by the Agency will be determined by the Agency.

(h) *Redemptions.* Bonds will normally contain customary redemption provisions. However, no premium will be charged for early redemption on any bonds held by the Government.

(i) *Additional revenue bonds.* Parity bonds may be issued to complete the project. Otherwise, parity bonds may not be issued unless acceptable documentation is provided establishing that net revenues for the fiscal year following the year in which such bonds are to be issued will be at least 120

percent of the average annual debt serviced requirements on all bonds outstanding, including the newly-issued bonds. For purposes of this section, net revenues are, unless otherwise defined by State statute, gross revenues less essential operation and maintenance expenses. This limitation may be waived or modified by the written consent of bondholders representing 75 percent of the then-outstanding principal indebtedness. Junior and subordinate bonds may be issued in accordance with the loan resolution.

(j) *Precautions.* The following types of provisions in debt instruments should be avoided:

(1) Provisions for the holder to manually post each payment to the instrument.

(2) Provisions for returning the permanent or temporary debt instrument to the borrower in order that it, rather than the Agency, may post the date and amount of each advance or repayment on the instrument.

(3) Provisions that amend covenants contained in Forms FmHA 1942–47 or FmHA 1942–9.

(4) *Defeasance provisions in loan or bond resolutions.* When a bond issue is defeased, a new issue is sold which supersedes the contractual provisions of the prior issue, including the refinancing requirement and any lien on revenues. Since defeasance in effect precludes the Agency from requiring refinancing before the final maturity date, it represents a violation of the statutory refinancing requirement; therefore, it is disallowed. No loan documents shall include a provision of defeasance.

(k) *Assessment bonds.* When security includes special assessment to be collected over the life of the loan, the instrument should address the method of applying any payments made before they are due. It may be desirable for such payments to be distributed over remaining payments due, rather than to be applied in accordance with normal procedures governing extra payments, so that the account does not become delinquent.

(l) *Multiple debt instruments.* The following will be adhered to when preparing debt instruments:

(1) When more than one loan type is used in financing a project, each type of loan will be evidenced by a separate debt instrument or series of debt instruments;

(2) Loans obligated in different fiscal years and those obligated with different terms in the same fiscal year will be evidenced by separate debt instruments;

(3) Loans obligated for the same loan type in the same fiscal year with the same term may be combined in the same debt instrument;

(4) Loans obligated in the same fiscal year with different interest rates that will be closed at the same interest rate may be combined in the same debt instrument.

§ 1780.95 Public bidding on bonds.

Bonds offered for public sale shall be offered in accordance with State law and in such a manner to encourage public bidding. The Agency will not submit a bid at the advertised sale unless required by State law, nor will reference to Agency's rates and terms be included. If no acceptable bid is received, the Agency will negotiate the purchase of the bonds.

§§ 1780.96–1780.100 [Reserved]

Dated: September 4, 1996.

Inga Smulkstys,

Acting Under Secretary for Rural Development.

[FR Doc. 96–23082 Filed 9–11–96; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 96–AGL–12]

Establishment of Class E Airspace; Gettysburg, SD, Gettysburg Municipal Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Gettysburg, SD. A Global Positioning System (GPS) standard instrument approach procedure (SIAP) to Runway 31 has been developed for Gettysburg Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before October 4, 1996.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 96–AGL–12, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

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

FOR FURTHER INFORMATION CONTACT: John A. Clayborn, Air Traffic Division, Operations Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provides the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 96–AGL–12.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of

Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Gettysburg, SD; this proposal would provide adequate Class E airspace for operators executing the GPS Runway 31 SIAP at Gettysburg Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9C dated August 17, 1995, and effective September 16, 1995, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389; 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9C, Airspace Designations and Reporting Points, dated August 17, 1995, and effective September 16, 1995, is amended as follows:

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

* * * * *

AGL SD E5 Gettysburg, SD [New]

Gettysburg Municipal Airport, SD
(Lat. 44°59′16″N, long. 99°57′11″W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Gettysburg Municipal Airport and within 4 miles each side of the 323 course extending from the 6.4-mile radius to 10 miles southeast and that airspace extending upward from 1,200 feet above the surface bounded on the west by V–71, on the north by V–344, on the east by V–561, and on the south by the 30.5-mile arc of the Pierre VORTAC, and that airspace east of Gettysburg Municipal Airport bounded on the west by V–561, on the north by latitude 450000N, on the east by longitude 993000W, and thence south to V–263, and thence southeast to the 30.5-mile arc of the Pierre VORTAC.

* * * * *

Issued in Des Plaines, Illinois on August 20, 1996.

Maureen Woods,

Manager, Air Traffic Division.

[FR Doc. 96–22836 Filed 9–11–96; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 103

RIN 1515–AB89

Electronic Request for Confidential Treatment of Export Manifest Data

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations concerning export manifest data to enable shippers to request confidential treatment of their name and address information on the Automated Export System (AES). The changes proposed will also provide for the availability of AES export manifest data on magnetic tapes.

DATES: Comments must be received on or before November 12, 1996.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW, Washington, DC 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1099 14th St., NW, suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: AES Team, Office of Information and Technology, (202) 927–0280. If you have a fax machine, phone (202) 927–3555 to receive a menu of AES topics on which specific information is available via fax.

SUPPLEMENTARY INFORMATION:

Background

The filing and public disclosure requirements applicable to vessel inward manifests are contained at Section 431 of the Tariff Act of 1930, as amended (19 U.S.C. 1431). While the filing requirements applicable to vessel outward manifests are contained at Section 4197 of the Revised Statutes of the United States, as amended (46 U.S.C. App. 91), the public disclosure requirements applicable to such manifests are contained at Section 431 of the Tariff Act of 1930, as amended (19 U.S.C. 1431). (It is noted regarding the filing of manifest information that while the Secretary of Commerce, pursuant to 13 U.S.C. 301, is required to collect information from all persons engaged in foreign commerce or trade, it is Customs that collects the actual manifest information, see 13 U.S.C. 303.) Regarding the public disclosure of

manifest data, Section 431(c) provides that the information to be made available shall include the name and address of each importer or consignee and the name and address of the shipper to such importer or consignee, unless the importer or consignee has made a biennial certification—in writing—to the Disclosure Law Officer, Headquarters, U.S. Customs Service, claiming confidential treatment of such information.

The Customs Regulations implementing the public disclosure of manifest information requirements are found at § 103.31(c) (19 CFR 103.31(c)) (formerly § 103.14(c), but redenominated May 3, 1996, in T.D. 96–36 (61 FR 19838)); the confidentiality provisions are found at § 103.31(d) (19 CFR 103.31(d)). Section 103.31 was last amended in 1992 by T.D. 92–92 (57 FR 44089), to make inbound manifest data acquired from the Automated Manifest System (AMS) available to the public on magnetic tapes.

On February 24, 1994, the Commissioner of Customs directed Customs to develop an Automated Export System (AES) in cooperation with the Bureau of the Census. The AES was implemented on an initial and voluntary basis on July 3, 1995, at five ports: Charleston, SC, Baltimore, MD, Houston, TX, Norfolk, VA, and Los Angeles-Long Beach, CA. At this time all exporters, forwarders, and carriers transmitting information into AES are still required to file paper Shippers Export Declarations and outward manifests as required by existing regulations. See, 19 CFR 4.63.

Changes in procedures are planned that will allow approved participants in AES to meet these requirements solely through the electronic filing of information into AES.

AES was designed to create, to the maximum extent possible, a paperless environment in export reporting. It is anticipated that this will result in significant private-sector savings by reducing the need for document preparation, routing, and submission.

Further, AES was designed and developed with the input and advice of affected private-sector parties. Because much of the manifest data will be made available to the news media and public, several requests were made that AES be programmed to accommodate an on-line request for confidential treatment of the shipper's name and address data on outward manifests. Such a procedure, if implemented, would provide cost savings and efficiencies similar to those described above and encourage greater utilization of the AES.

Accordingly, this document proposes to amend the Customs Regulations at §§ 103.31(d)(2) and (e) (1) and (3). Section 103.31(d)(2) will be revised to provide that those shippers that use the AES may request confidential treatment of their name and address information via the AES, as an alternative to the written certification procedures delineated at § 103.31(d)(1). Electronic requests for confidential treatment via AES will be treated in the identical manner as a request in writing. Section 103.31(e)(1) will be revised to provide that outward manifest data acquired from the AES is available to the public on magnetic tape and § 103.31(e)(3) will be revised to list the 11 data elements (two elements for which confidentiality may be requested) that will be provided to the public.

Comments

Before adopting this proposal as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, Franklin Court, 1099 14th St., NW, Suite 4000, Washington, D.C.

The Regulatory Flexibility Act and Executive Order 12866

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and based upon the information set forth above, it is certified that the proposed amendments, if adopted, will not have a significant impact on a substantial number of small entities. Accordingly, the proposal is not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

List of Subjects in 19 CFR Part 103

Administrative practice and procedure, Confidential business information, Exports, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

For the reasons stated above, it is proposed to amend part 103 of the Customs Regulations (19 CFR part 103) as set forth below:

PART 103—AVAILABILITY OF INFORMATION

1. The general authority citation for part 103 continues to read, and a specific authority citation for § 103.31 is added to read, as follows:

Authority: 5 U.S.C. 301, 552, 552a; 19 U.S.C. 66, 1624; 31 U.S.C. 9701.

Section 103.31 also issued under 19 U.S.C. 1431 and 46 U.S.C. App. 91;

* * * * *

2. In § 103.31, paragraph (d)(2); the first sentence of paragraph (e)(1); and paragraph (e)(3) are revised to read as follows:

§ 103.31 Information on vessel manifests and summary statistical reports.

* * * * *

(d) *Confidential treatment*—

(2) *Outward manifest.* A shipper, authorized employee, official, or authorized agent of the shipper may request confidential treatment of its name and address contained in outward manifests by following the written certification procedures provided in paragraphs (d)(1)(ii)–(iv) of this section or, if authorized to transmit information on the Automated Export System (AES), by submitting a certification request on-line in that system. In the latter situation, the format and routing of such request will be as designated in the AES Users Guide.

* * * * *

(e) *Availability of manifest data on magnetic tapes.*

(1) *Availability.* Inward manifest data acquired from the Automated Manifest System (AMS) and outward manifest data acquired from the Automated Export System (AES) are available to interested members of the public on magnetic tape. * * *

* * * * *

(3) *Data elements.* The following are the data elements from the designated manifest (AMS/AES) which will be provided to the public via magnetic tape:

(i) *AMS manifest:*

(A) Carrier code;

(B) Vessel country code;

(C) Vessel name;

(D) Voyage number;

(E) Port of unlading;

(F) Estimated date of arrival;

(G) Bill of lading number;

(H) Foreign port of lading;

(I) Manifest quantity;

(J) Manifest units;

(K) Weight;

(L) Weight unit;

(M) Shipper's name [1];

(N) Shipper's address [1];

(O) Consignee's address [1];

(Q) Notifying party's name [1];
(R) Notifying party's address [1];
(S) Piece count;
(T) General description of goods;
(U) Container number(s); and
(V). Seal number(s).
(ii) *AES manifest*:
(A) Carrier code;
(B) Vessel country code;
(C) Vessel name;
(D) Voyage number;
(E) Port of lading;
(F) Foreign port of unlading;
(G) Manifest quantity;
(H) Manifest units;
(I) General description of goods;
(J) Shipper's name [1]; and
(K) Shipper's address [1].

Michael H. Lane,
Acting Commissioner of Customs.

Approved: June 5, 1996.

John P. Simpson,
Deputy Assistant Secretary of the Treasury.

[FR Doc. 96–23360 Filed 9–11–96; 8:45 am]

BILLING CODE 4820–02–M

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19 CFR Part 123

RIN 1515–AB90

Port Passenger Acceleration Service System (PORTPASS) Program

AGENCY: Customs Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to reference certain Immigration and Naturalization Service (INS) Regulations that provide for land-border inspection programs jointly developed with Customs. These land-border inspection programs—collectively known as Port Passenger Acceleration Service System (PORTPASS)—are designed to facilitate the processing of certain identified, pre-registered, low-risk travelers along the United States border who frequently cross at certain areas by exempting them from normal report of arrival and presentation for inspection requirements, while still safeguarding the integrity of the United States land border. Participation in PORTPASS is voluntary and annual application fees are charged by the INS.

DATES: Comments must be received on or before November 12, 1996.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1301 Constitution Avenue, NW, Washington, D.C. 20229. Comments submitted may be inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1099 14th St., NW, Suite 4000, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Joseph O'Gorman, Office of Field Operations, Passenger Operations Division, (202) 927–0543.

SUPPLEMENTARY INFORMATION:

Background

Reporting and Inspection Requirements

Except as otherwise authorized by the Secretary, all individuals arriving in the United States are required to (1) Enter only at designated border crossing points, (2) immediately report their arrival to Customs (and other Federal inspection agencies, such as the Immigration and Naturalization Service (INS), that have reporting requirements), and (3) present themselves and their vehicle, and all persons and merchandise (including baggage) on board, for inspection, and may not depart from the designated customs border crossing point until authorized to do so. 19 U.S.C. 1433 and 1459. Failure to report such arrival and make such presentation for inspection may result in the individual being liable for certain civil and criminal penalties, as provided under 19 U.S.C. 1459, in addition to other penalties applicable under other provisions of law, see, 19 U.S.C. 1436 and 1497. Customs reporting and inspection requirements applicable to individuals entering the U.S. at land border crossings are delineated at § 123.1, Customs Regulations (19 CFR 123.1).

Low-Risk Border-Crossing Facilitating Programs

At certain remote locations along the U.S. land border, these reporting and inspection requirements often burden low-risk local residents needing to cross the international border by requiring them to travel to a land border crossing which may be located a considerable distance away. Further, the hours of the most convenient land-border crossing may be limited to 8 hours during the day. To facilitate the entry processing of such low-risk travelers, Customs and the Immigration and Naturalization Service (INS) have developed certain technologically-innovative land-border inspection programs, collectively known as the Port Passenger Accelerated Service System (PORTPASS). (See INS document at 60 FR 50386, September 29, 1995, implementing land border facilitating programs, codified at 8 CFR 235.13). Two land border entry facilitation programs have been developed thus far under the PORTPASS: One concerns travellers that enter the U.S. through designated lanes at busy Port of Entry (POE) crossings (the Dedicated Commuter Lane (DCL) program); the other concerns local residents who enter the U.S. at remote land border crossings (the Automated Permit Port (APP) program).

The Dedicated Commuter Lane Program

The DCL program is designed to expedite the entry of low-risk travelers in privately-owned vehicles through a staffed POE by use of dedicated express lanes, without inhibiting Customs mandate to enforce the customs laws of the U.S. and those laws enforced or administered by Customs, including the prevention of illegal entry of both aliens and controlled substances into the U.S. The DCL program was implemented as a pilot program in 1991 at the Peace Arch crossing in Blaine, Washington. See, 8 CFR 286.8. Program specifics and eligibility requirements for participation in the DCL program are delineated at § 235.13 of the INS Regulations (8 CFR 235.13).

The Automated Permit Port Program

The APP program is designed to facilitate border crossings in remote areas by local residents identified as low-risk who are pre-authorized to enter the U.S. at designated APPs during periods when the port is closed, i.e., unstaffed by Customs and INS personnel, while still safeguarding the integrity of the U.S. border through the use of automated technology. Although it is anticipated that APPs may be established wherever there exists identifiable groups of low-risk local residents along the U.S. border, at present the first of these APPs are expected to be established at Scobey, Montana, and at Forest City and Orient, Maine. For program specifics and eligibility requirements for participation in the APP program, again see § 235.13 of the INS Regulations.

Although it is only proposed in this document to amend § 123.1 of the Customs Regulations (19 CFR 123.1) to reference §§ 235.13 and 286.8 of the INS regulations (8 CFR 235.13 and 286.8), which provide for the PORTPASS program, a general description of the PORTPASS program requirements follows.

PORTPASS Requirements in General

(1) *Eligibility*. Participation in PORTPASS is voluntary. Currently, applicants must be either citizens of the U.S., legal permanent residents of the U.S., citizens of Canada, landed immigrants of Canada who are citizens of the Commonwealth countries, or

other non-immigrants as determined by the Commissioner of the U.S. Immigration Service.

(2) *Application.* Application for participation in either or both facilitated-entry programs under PORTPASS—DCL and APP—is made by completing INS Form I–823 (Application—Inspections Facilitation Programs) and paying a non-refundable, annual application fee to the INS, which is authorized to be collected under their user-fee legislation. The fee is US$25 per applicant, with the maximum amount payable by a family (husband, wife, and minor children under 18 years of age) set at US$50. These fees may be waived for APP applicants. If fingerprints are required, a separate fingerprinting processing fee will be charged. Applications must be supported by evidence of citizenship and, in the case of lawful permanent residents of either the U.S. or Canada, evidence of legal permanent resident status in the U.S. or Canada. Evidence of residency must be submitted by all applicants. Alien applicants requiring a valid visa must be in possession of such documentation and any other documentation required by the Immigration and Nationality Act (see, 8 U.S.C. 1201 *et seq.*, as amended) at the time of the application, at the time of each entry, and at all times while present in the United States. Applications can be mailed or submitted, during regular working hours, to Customs/INS personnel at the POE having jurisdiction over the particular border crossing for which the applicant requests PORTPASS participation. Each applicant must present him/herself for inspection by a Customs/Immigration Officer prior to approval of the application and agree to abide by the conditions specified at paragraph (4) below. Further, regarding the DCL program, each vehicle registered by a PORTPASS participant must be inspected and approved prior to its use in that program.

Once accepted into a PORTPASS program, an identity card, decal, or other appropriate identifying device is issued to identify the participant—and vehicle, in the case of the DCL program—authorized to participate in a program. However, such identification items remain the property of the U.S. Government and will be removed/surrendered when participation is revoked or upon expiration of the authorized period of use. Authorization to participate in PORTPASS is valid for one year from the date of acceptance; however, participation may be renewed annually upon reapplication and payment of the required application fee.

(3) *Denial of application.* An application may be denied at the discretion of either Service—Customs or INS—having jurisdiction over the land border crossing point. The specific reason(s) for denying an application will be personally explained to the applicant. While there will be no appeal from a denial, because the denial will be without prejudice, the applicant may reapply immediately.

(4) *Conditions for participation in PORTPASS.* Because participation in the PORTPASS programs constitutes an exception to the normal reporting and presentation for inspection requirements contained at 19 CFR 123.1, participants must agree to abide by the following conditions:

(i) Facilitated entry into the U.S. is authorized only at the land-border crossing approved. Participants who wish to enter the U.S. through other land-border crossings must make separate application for each land-border crossing and comply with all applicable program requirements.

(ii) Whenever an authorized vehicle carries passengers, each passenger must be individually authorized under the same PORTPASS program to make facilitated entry into the U.S. at that land-border crossing.

(iii) Participants must be in possession of all documents issued that authorize participation in the PORTPASS program and any other entry documents as required by regulation each time facilitated entry is made into the U.S. For example, alien applicants requiring either a valid visa or Nonresident Alien Border Crossing Identification Card must be in possession of such documentation each time facilitated entry into the U.S. is made.

(iv) Participants shall not import merchandise in excess of applicable personal duty exemptions (see generally, subparts D (for residents) and E (for nonresidents) of 19 CFR Part 148), negotiable instruments in amounts subject to reporting requirements, commercial merchandise, or prohibited/restricted merchandise. Importation of such merchandise precludes facilitated entry into the U.S. under PORTPASS and requires the application of normal entry procedures established under the Customs laws and regulations and the laws and regulations administered by other Federal inspection agencies.

(v) Participants agree to abide by all Federal, state, and local laws regarding the importation of alcohol or agricultural products or the importation or possession of controlled substances, as defined at section 101 of the Controlled Substance Act (21 U.S.C. 802).

(vi) Participants agree that Customs retains the right to conduct inspections within its legal authority to ensure compliance with PORTPASS requirements.

Violation of any of the conditions applicable to facilitated entry or other Customs laws and regulations and other laws and regulations administered by Federal inspection agencies will result in revocation of PORTPASS participation authorization and may lead to other applicable sanctions, such as administrative and/or criminal prosecution, deportation (if applicable), as well as possible seizure of the goods and/or the vehicle.

As stated above, it is only proposed in this document to amend § 123.1 of the Customs Regulations (19 CFR 123.1) to reference the INS regulations at §§ 235.13 and 286.8, which provide the program specifics for the PORTPASS.

Comments

Before adopting this proposed regulation as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4 of the Treasury Department Regulations (31 CFR 1.4), and § 103.11(b) of the Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1099 14th St., NW., 4th floor, Washington, DC.

Inapplicability of the Regulatory Flexibility Act, and Executive Order 12866

Pursuant to provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that, if adopted, the proposed amendments will not have a significant economic impact on a substantial number of small entities, as the proposed amendments concern the entry status of individuals. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604. This amendment does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

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

List of Subjects

19 CFR Part 123

Administrative practice and procedure, Aliens, Canada, Customs duties and inspection, Fees, Forms, Immigration, Imports, Mexico, Reporting and recordkeeping requirements, Test programs.

Amendments to the Regulations

For the reasons stated above, it is proposed to amend part 123 of the Customs Regulations (19 CFR part 123), as set forth below:

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The authority citation for part 123 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1624.

* * * * *

2. In § 123.1, it is proposed to amend the first sentence in paragraph (a) by adding the words ‘‘, unless excepted by voluntary enrollment in and compliance with PORTPASS—a joint Customs Service/Immigration and Naturalization Service facilitated entry program (See, Immigration and Naturalization Regulations at 8 CFR 235.13),’’ after the words ‘‘Individuals arriving in the United States’’; and, to amend paragraph (b) by removing the second and third sentences and adding, in their place, the sentence that reads as follows:

§ 123.1 Report of arrival from Canada or Mexico and permission to proceed.

* * * * *

(b) *Vehicles.* * * *. Upon arrival of the vehicle in the U.S., the driver shall, unless he or she and all of the vehicle’s occupants are excepted by enrollment in, and in compliance with, PORTPASS—a joint Customs Service/Immigration and Naturalization Service facilitated entry program (See, Immigration and Naturalization Regulations at 8 CFR 235.1 and 286.8), immediately report such arrival to Customs, and shall not depart or discharge any passenger or merchandise (including baggage) without authorization by the appropriate Customs officer.

* * * * *

Approved: July 29, 1996.

George J. Weise,

Commissioner of Customs.

Dennis M. O’Connell,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 96–23361 Filed 9–11–96; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 70, 71, 80, 101, 107, 170, 172, 173, 174, 175, 177, 178, 184, and 1250

[Docket No. 96N–0149]

RIN 0910–AA69

Reinvention of Regulations Needing Revisions; Request for Comments on Certain Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending the comment period on the advance notice of proposed rulemaking to reinvent certain regulations; the advance notice appeared in the Federal Register of June 12, 1996 (61 FR 29701). The agency is taking this action in response to several requests for an extension of the comment period. This extension is intended to allow interested persons additional time to submit comments to FDA on the proposed reinvention of certain regulations.

DATES: Written comments by October 10, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Corinne L. Howley, Center for Food Safety and Applied Nutrition (HFS–24), 200 C St., SW, Washington, DC 20204, 202–205–4272.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 12, 1996 (61 FR 29701), FDA issued an advance notice of proposed rulemaking to reinvent certain regulations that appear to need revision. These regulations were identified by FDA as candidates for revocation following a page-by-page review of its regulations that the agency conducted in response to the Administration’s ‘‘Reinventing Government’’ initiative. Interested person were given until September 10, 1996, to comment on the advance notice.

FDA received several requests for an extension of the comment period on its advance notice of proposed rulemaking to reinvent certain regulations. After careful consideration, FDA has decided to extend the comment period to October 10, 1996, to allow additional time for the submission of comments on whether the regulations discussed in the advance notice should be revised.

Interested persons may, on or before October 10, 1996, submit to Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 9, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–23481 Filed 9–10–96; 11:02 am]

BILLING CODE 4160–01–F

21 CFR Part 101

[Docket No. 96N–0244]

Food Labeling; Declaration of Free Glutamate in Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is considering establishing requirements for label information about the free glutamate content of foods. The recent finding of the Federation of American Societies for Experimental Biology (FASEB) that oral ingestion of 3 or more grams (g) of monosodium glutamate (MSG) without food can cause adverse reactions in certain otherwise healthy individuals has prompted the agency to consider what action is necessary to protect consumers from inadvertently ingesting levels of MSG or other forms of free glutamate that could cause an adverse reaction. Thus, the agency seeks public comment on whether additional labeling requirements are necessary to protect glutamate-intolerant consumers from adverse reactions, and, if so, how such labeling requirements should be implemented. The agency also solicits comment on establishing formal criteria for the use of claims about the absence of MSG to ensure that labels bearing such claims are not misleading. The agency solicits comment on whether such criteria should be based on a defined threshold level of free glutamate in a finished food, on the ingredients used in the food, or both.

DATES: Written comments by November 12, 1996.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Felicia B. Satchell, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

Glutamic acid, one of the amino acids found in nature, is a building block of virtually all proteins and is a normal component of the human body. In the human body and in most foods, glutamic acid exists primarily in its salt form, glutamate. Glutamate is a naturally occurring component of many foods, including tomatoes, cheese, meat, mushrooms, and milk. ''Free'' glutamate is glutamate that is not incorporated into a protein; ''bound'' glutamate is glutamate that is a component of an intact protein. Meat and milk contain primarily bound glutamate, while tomatoes, mushrooms, and certain cheeses contain, in addition to bound glutamate, relatively high levels of free glutamate.

It is the free form of glutamate that has been shown to have flavor-enhancing properties in food. As noted previously, some foods contain relatively high levels of naturally occurring free glutamate. Free glutamate may be introduced into foods as a component of various food ingredients, such as tomato sauce and hydrolyzed protein products, or it may be added in one of its various salt forms, such as MSG.

MSG is the most commonly used form of free glutamate added to food for flavor-enhancing purposes. It is a white, practically odorless, free-flowing crystalline powder (Ref. 1), similar in appearance to salt or sugar. MSG has been used for many years as a flavor enhancer for a variety of foods prepared in homes and restaurants and by food processors. MSG is manufactured commercially by a fermentation process using starch, beet sugar, cane sugar, or molasses. The American food processing industry has used MSG widely since the late 1940's (Ref. 2), and consumption in the United States is estimated to be 28,000 tons per year. As a food ingredient, MSG is used to enhance the flavor of meat, poultry, vegetables, and many processed foods. MSG is described in 21 CFR 182.1 as an example of a common food ingredient that is generally recognized as safe (GRAS) under section 201(s) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(s)). When used as an ingredient in a food, MSG must be declared in the ingredient statement by its common or usual name, in accordance with section 403(i) of the act (21 U.S.C. 343(i)) and 21 CFR part 101. Thus, ''monosodium glutamate'' must appear in the ingredient list of any food to which MSG has been added (21 CFR 101.22(h)(5)). This is true even when MSG has been added indirectly as part of another ingredient to which MSG has been added (e.g., a spice blend that includes MSG).

While MSG is the most well-known and widely used form of free glutamate used to enhance the flavor of foods, other salts of free glutamate, such as monopotassium glutamate and monoammonium glutamate also have flavor-enhancing properties. GRAS uses of glutamic acid, glutamic acid hydrochloride, monoammonium glutamate, and monopotassium glutamate are codified in 21 CFR 182.1045, 182.1047, 182.1500, and 182.1516, respectively. Like MSG, these substances must be declared in the ingredient statement of any food to which they are added.

Free glutamate occurs naturally in various foods and in food substances that are used as ingredients in finished foods, or it can be produced by hydrolysis of proteins; in such cases, the presence of free glutamate in the food is not required to be declared on the label under existing regulations. Naturally occurring free glutamate is not required to be declared in the ingredient statement because it is not an added ingredient; rather, it is a natural constituent of the food, like protein or a vitamin. Similarly, when a food that contains naturally occurring free glutamate is used as an ingredient in another food, the free glutamate is not required to be declared in the ingredient statement of the finished food. Rather, the ingredient containing the free glutamate is declared in the ingredient statement by its common or usual name. The principle that it is the ingredients and not the constituents of a food that must be declared also applies when a food that contains free glutamate produced by protein hydrolysis is used as an ingredient in another food. In that situation too, the glutamate-containing ingredient must be declared in the ingredient statement of the finished food, but free glutamate need not be declared as an ingredient. Because the average consumer is not aware that ingredients like hydrolyzed soy protein, autolyzed yeast extract, tomato paste, and parmesan cheese contain free glutamate or that free glutamate is essentially equivalent to MSG, declaration of these ingredients by their common or usual names does not indicate to the consumer that an MSG-like substance is present in the food.

A number of consumers, particularly consumers who report adverse reactions to MSG, have stated to FDA (Ref. 3) their belief that manufacturers use ingredients such as hydrolyzed proteins and autolyzed yeast extracts for the express purpose of adding free glutamate to a food while hiding its presence. These consumers report the same types of adverse reactions to foods containing hydrolyzed proteins, autolyzed yeast extracts, and forms of ''manufactured'' glutamate (other than MSG) that they experience when they inadvertently consume foods that have MSG declared in the ingredient list. Consequently, FDA has received numerous requests that labels of all foods containing these ingredients be required to declare the presence of free glutamate in the finished food, on the ground that free glutamate presents a health concern to consumers. Some consumers have also requested that FDA require that the amount of free glutamate be declared on the label. Until recently, the agency's response has been that the scientific literature does not provide a public health basis on which to impose special labeling requirements for such ingredients or for foods that contain free glutamate. However, in light of the recent findings of the Life Sciences Research Office (LSRO) of FASEB, the agency is reconsidering the need for labeling to inform individuals who experience adverse reactions to glutamate about its presence in a food. (The agency notes that in the Federal Register of January 6, 1993 (58 FR 2950), it proposed to require the term ''(contains glutamate)'' as part of the common or usual name for autolyzed yeast extracts and highly hydrolyzed proteins. That proposal was not based on any health concern regarding the use of these ingredients in food; therefore, the comments to that proposal and the agency's decision with respect to those comments will not be addressed in this document.)

B. Previous Safety Reviews

Until the recent findings of the FASEB report (discussed in section I.C. of this document) that a subgroup of otherwise healthy individuals experiences a complex of symptoms following ingestion of 3 or more (g) of MSG without food, FDA relied on

previous safety review studies in deciding that special labeling for free-glutamate-containing (hereinafter referred to as ''glutamate-containing'') foods was not warranted. These studies indicated that while anecdotal reports of adverse reactions to MSG and other glutamate-containing ingredients existed, there were no verifiable scientific data establishing that the levels of these ingredients used in the food supply could cause adverse reactions in the general population. Historically, the agency has not issued labeling requirements on the basis of anecdotal reports alone because such reports do not by themselves establish a cause-and-effect relationship between the suspected substance and the occurrence of an adverse reaction.

MSG and other glutamate-containing ingredients have been the subject of numerous safety reviews during the past decade. In 1969, largely as a result of a recommendation by the White House Conference on Food, Nutrition and Health, FDA proceeded to reevaluate the safety of all GRAS substances for food use. The Select Committee on GRAS Substances (SCOGS), convened by FASEB in 1972 under a contract with FDA, independently reviewed the health aspects of MSG and of glutamate-containing protein hydrolysates in 1978 and 1980 (Refs. 4, 5, 6, and 7). Although protein hydrolysates are not listed as GRAS food ingredients by regulation, they are described as GRAS in a number of FDA opinion letters (Refs. 8, 9, 10, and 11). SCOGS concluded that MSG and hydrolyzed proteins were safe for the general population at then-current levels of use but recommended additional evaluation to determine their safety at significantly higher levels of consumption.

In 1986, FDA's Advisory Committee on Hypersensitivity to Food Constituents (Ref. 12) concluded that MSG posed no threat to the general public but that reactions of brief duration might occur in some people. Other reports gave similar findings. A 1991 report by the European Community's (EC) Scientific Committee for Foods (Ref. 13) reaffirmed the safety of MSG and other forms of free glutamate and classified the ''acceptable daily intake'' for MSG as ''not specified,'' the most favorable designation for a food ingredient. In addition, the EC committee said, ''infants, including prematures, have been shown to metabolize glutamate as efficiently as adults and, therefore, do not display any special susceptibility to elevated oral intakes of glutamate.''

A 1992 report from the Council on Scientific Affairs of the American Medical Association (Ref. 14) stated that glutamate in any form has not been shown to be a ''significant health hazard.'' Also, the 1987 Joint Expert Committee on Food Additives of the United Nations Food and Agriculture Organization and the World Health Organization (Ref. 15) placed MSG and other glutamate salts in the safest category of food ingredients.

Although the general consensus of the many safety reviews that have been done on the use of MSG and other glutamate-containing ingredients in foods is that they are safe for the general population, the use of these ingredients has been very controversial. FDA has received many anecdotal reports of adverse reactions following ingestion of glutamate-containing foods. Between 1980 and 1995, the Adverse Reaction Monitoring System in FDA's Center for Food Safety and Applied Nutrition received 661 reports of complaints about adverse reactions to MSG (Ref. 16). Headache was the most frequently reported symptom. However, other symptoms, such as a ''burning sensation'' on the back of the neck, forearms, and chest, facial pressure or tightness, neck and chest pain, palpitations, numbness, nausea, and vomiting, were also reported. These symptoms were transient, typically beginning within 25 minutes after consumption of MSG or of a glutamate-containing food and subsiding within about 2 hours. Initially many of these symptoms became known popularly as ''Chinese Restaurant Syndrome.'' As discussed in section I.C. of this document, FASEB refers to these symptoms collectively as the ''MSG symptom complex.''

C. The FASEB Report

Because of the agency's concern regarding the continued reports of adverse reactions to MSG and other glutamate-containing ingredients and because of the expanding base of scientific knowledge on the role of glutamate in brain function, FDA decided that an up-to-date review of the safety of MSG and other glutamate-containing ingredients was warranted. Thus, as part of its ongoing evaluation of GRAS ingredients and in response to the concerns raised by consumers, FDA contracted with FASEB in 1992 to do an up-to-date scientific safety review of the effects of the use of MSG and hydrolyzed protein products as food ingredients. The agency announced the study in the Federal Register of December 4, 1992 (57 FR 57467). As discussed in that document, the objectives of the review were to: (1) Determine whether MSG and hydrolyzed protein products, as used in the American food supply, contribute to the presentation of a complex of symptoms (initially described as the Chinese Restaurant Syndrome) after oral ingestion of levels up to or beyond 5 g per eating occasion (i.e., a meal or snack), and/or the elicitation of other reactions, including more serious adverse reactions that have been reported to occur following ingestion of 25 to 100 milligrams per eating occasion; (2) to determine whether MSG and hydrolyzed protein products, as used in the American food supply, have the potential to contribute to brain lesions in neonatal or adult nonhuman primates and whether there is any risk to humans ingesting dietary MSG; (3) to assess whether hormones are released from the pituitary of nonhuman primates following ingestion of MSG or hydrolyzed protein products and whether any comparable risk to humans ingesting food containing these substances exists; and (4) to define the metabolic basis that might underlie any adverse reactions to MSG and hydrolyzed protein products.

FASEB convened an ad hoc expert panel to perform a comprehensive review of the scientific literature and adverse report submissions to both FDA and LSRO. The expert panel also considered oral and written testimony received at a 2-day open meeting held in 1993. The expert panel used a weight of evidence approach in reaching its conclusions about the evidence of adverse effects of MSG. In other words, the expert panel analyzed the data by considering the totality of the scientific evidence in a given area rather than weighing one interpretation against another.

The expert panel reported its findings to FASEB, which reviewed the expert panel's work and prepared a report entitled ''Analysis of Adverse Reactions to Monosodium Glutamate (MSG)'' (Ref. 17). The FASEB report was submitted to FDA on July 31, 1995. While FASEB found no scientifically verifiable evidence of adverse effects in most individuals exposed to high levels of MSG, it concluded that there is sufficient documentation to define an acute, temporary, and self-limiting ''MSG symptom complex'' in a subgroup of the population. The symptoms characteristic of the complex include: (1) A burning sensation of the back of the neck, forearms, and chest; (2) facial pressure or tightness; (3) chest pain; (4) headache; (5) nausea; (6) upper body tingling and weakness; (7) palpitation; (8) numbness in the back of neck, arms and back; (9) bronchospasm, i.e., constriction of the bronchial tubes

resulting in difficulty in breathing (observed in asthmatics only); and (10) drowsiness. These symptoms were judged to be related to the amount of MSG consumed and whether the MSG was consumed with or without food. FASEB identified this group of symptoms as the ''MSG symptom complex,'' stating that the previously used term, ''Chinese restaurant syndrome,'' was pejorative and did not reflect the extent or nature of the symptoms that have been associated with the myriad of exposure scenarios. FASEB concluded that ''Based on scientifically verifiable evidence, there is a subgroup of presumably healthy individuals within the general population that responds, generally within one hour of exposure, with manifestations of the MSG Symptom Complex to an oral bolus [dose] of MSG ≥ 3 g in the absence of food.''

FASEB also identified a subgroup of asthmatics reported to respond to oral doses of MSG with bronchospasm. The study conducted by Allen, Delohery, and Baker (Ref. 18) described severe bronchospasm in individuals with unstable asthmatic conditions in conjunction with symptoms of the MSG symptom complex following an oral dose of MSG. In addition, the study reported that some asthmatic subject experienced a 6 to 12 hour delayed bronchospasm without other MSG-related symptoms. While FASEB recognized and described limitations in the study design used by Allen, et al., it concluded that the study was a reasonably well-designed scientific oral dose study in asthmatic subjects, and that the study provided evidence to support the existence of a subgroup of asthmatic responders to MSG.

With regard to hydrolyzed proteins, FASEB identified no scientific reports of glutamate-related adverse effects of ingesting protein hydrolysates, whether microbial, vegetable, or animal in origin. Protein hydrolysates are used at very low levels, typically constituting only a small percentage (less than 1 percent) of a finished food.

Because of glutamate's role as a stimulatory neurotransmitter in the brain, the scientific community has speculated about the potential influence of dietary glutamate on brain glutamate metabolism and the potential role of dietary glutamate in provoking or exacerbating long-term illnesses. At FDA's request, FASEB reviewed the scientific literature on these issues. Although FASEB acknowledged the neurotoxic potential of glutamate produced in the body (as opposed to glutamate consumed in food), it found no studies or corroborating evidence linking adverse effects associated with consuming free glutamate in food to changes in brain function or to levels of glutamate in the bloodstream. Consequently, FASEB concluded that no evidence exists to support a role for dietary MSG or other forms of free glutamate consumed in food in causing or exacerbating serious, long-term medical problems resulting from degenerative nerve cell damage, such as Alzheimer's disease, Huntington's chorea, or amyotrophic lateral sclerosis, or to any other long-term or chronic illness. However, FASEB recommended that future efforts to explain reported adverse effects from ingested MSG be designed to test potential relationships between dietary glutamate and the physiological functions of the central nervous system.

FASEB also reviewed the chemical characteristics of various forms of free glutamate to determine if there was some structural or chemical difference in free glutamate occurring in the form of MSG or hydrolyzed protein products, as compared to free glutamate that naturally occurs in foods. FDA asked FASEB to include this issue in its review because of the contention by some consumers that manufactured forms of glutamate, such as MSG and hydrolyzed protein products, are in some way different from naturally occurring glutamates, and that the manufactured forms of glutamate are the only forms that trigger adverse reactions.

Free glutamate can exist in two possible stereoisomeric forms: D-glutamate and L-glutamate. L-glutamate is the predominant natural form and the only form with flavor-enhancing activity. FASEB concluded that MSG symptom complex reactions are related to L-glutamate exposure and that the chemical nature of L-glutamate is the same regardless of the source, i.e., whether manufactured or naturally occurring in the food. Thus, FASEB found no evidence to support the contention that adverse reactions occur with manufactured but not naturally occurring glutamate.

FASEB further concluded that with regard to determining glutamate levels and assessing risk from consumption of specific foods, a clear distinction must be made between free glutamate and glutamate as a component of protein (i.e., bound glutamate). Free glutamate is readily available for use in the body, whereas bound glutamate becomes available to body tissues more slowly, as the intestines chemically break down foodstuffs. FASEB also noted that the presence of food, as when MSG is consumed as part of a meal, attenuates the rise in blood glutamate levels and perhaps the effect, at least with regard to the potential for any direct central nervous system effect. However, FASEB was unable to identify any studies that have effectively compared blood glutamate levels between responders (i.e., persons who experience adverse reactions following exposure to MSG) and nonresponders, or any studies in which responders have been given a dose of MSG with a meal or 20 to 30 minutes before a meal.

FDA has reviewed the findings and conclusions contained in the FASEB report (Ref. 19). Based on FASEB's findings, FDA has tentatively concluded that requirements for label information about glutamate content may be warranted under certain conditions.

II. The Agency's Response

FASEB's conclusion that oral ingestion of 3 or more grams of MSG without food can cause adverse reactions in certain otherwise healthy individuals has prompted the agency to consider what action is necessary to protect these consumers from inadvertently ingesting levels of free glutamate that could trigger an adverse reaction. The agency believes that it may be appropriate to establish labeling requirements to alert free-glutamate-intolerant (hereinafter referred to as ''glutamate-intolerant'') consumers to the presence of free glutamate in a food.

The agency has carefully evaluated FASEB's findings and has reached several tentative conclusions regarding the basis on which any labeling policy to alert glutamate-intolerant consumers should be established.

A. Total Free Glutamate

Based on FASEB's findings that it is the free glutamate component of MSG that appears to be linked to the occurrence of the MSG symptom complex, that free glutamate is the same chemically in both its natural and manufactured forms, and that free glutamate has the same function regardless of source, i.e., free glutamate in MSG functions the same as free glutamate in hydrolyzed proteins or tomato products, the agency tentatively finds that any labeling policy it establishes should be based on the total amount of free glutamate in a serving of food, rather than on the number or kind of glutamate-containing ingredients in the food.

FDA has received correspondence suggesting that adverse reactions result only from exposure to manufactured free glutamate in food (Ref. 3). Based on FASEB's findings, the agency rejects this view. As previously discussed,

FASEB reported that all free glutamate found in food is the same regardless of the source. Further, in examining the scientific reports relating to physiological mechanisms of action, FASEB found no evidence indicating that manufactured free glutamate functions differently in the body than free glutamate naturally occurring in foods. The agency agrees with FASEB that all forms of free glutamate are chemically and functionally the same. Moreover, the agency notes that the available analytical methodology measures the total amount of free glutamate in a finished food and does not distinguish among free glutamate occurring in the form of MSG, as a constituent of ingredients such as hydrolyzed proteins, or as a natural constituent of food such as cheese, mushrooms, or meat. Accordingly, the agency tentatively finds that any labeling requirement for glutamate-containing foods should apply to foods that contain free glutamate from any source.

B. Food Matrix

Although FASEB noted that the presence of food may attenuate the rise of blood glutamate levels, the FASEB report cited no scientific evidence establishing a relationship between the occurrence of MSG symptom complex reactions and metabolic responses to ingestion of MSG, such as changes in blood glutamate levels. The agency requests data describing the effect of the food matrix (i.e., the food in which free glutamate is present or with which it is eaten) on the occurrence of the MSG symptom complex. If the food matrix does have an effect, does the effect vary depending on the type of food?

In the absence of sound scientific data demonstrating that the food matrix reduces the risk or severity of adverse effects following ingestion of free glutamate, the agency's likely approach would be to assume that the food matrix has no predictable mitigating effect on the occurrence of the MSG symptom complex and to develop a labeling policy based on the level of free glutamate reported to cause reactions when consumed without food. Because the agency does not yet have such data, this assumption is adopted for purposes of the preliminary discussion in this document.

C. Materiality

Section 403(a) of the act (21 U.S.C. 343(a)) states that a food is misbranded if its labeling is false or misleading in any particular. Under section 201(n) of the act, labeling is misleading if it ''fails to reveal facts material * * * with respect to consequences which may result from the use of the article to which the labeling or advertising relates under the conditions of use prescribed in the labeling * * * or under such conditions of use as are customary or usual.'' Thus, a food label is misleading if it does not disclose consequences that may result from consumption of the food.

The agency believes that information on the presence of free glutamate in a food becomes a material fact for the glutamate-intolerant consumer in the decision to purchase a food (and in the subsequent use of the food) when free glutamate is present at a level such that a glutamate-intolerant person who consumes the food alone or as part of a meal that includes other glutamate-containing foods may suffer an adverse reaction. The presence of free glutamate below this level is not material because it would not cause a reaction or contribute significantly toward a total intake of free glutamate that might cause a reaction. Moreover, special glutamate labeling on products that contain levels of free glutamate below the material level could cause the label statement to lose its significance for glutamate-intolerant consumers, especially if such labeling appeared on products previously consumed by such consumers without subsequent occurrence of any adverse reaction.

The level shown to elicit adverse reactions in glutamate-intolerant individuals is 3 g of MSG, according to the FASEB report. Based on this data, the agency tentatively finds that the presence of free glutamate in a serving of the food in an amount such that consumption of the food as part of a meal may expose the consumer to the equivalent of 3 g of MSG is a material fact under section 201(n) of the act. Using a conversion factor of 0.787 to correct for the inactive portion of the MSG molecule (MSG consists of free glutamate plus sodium and water), 3 g of MSG converts to approximately 2.4 g of free glutamate. Accordingly, an effective labeling policy should assist glutamate-intolerant consumers in restricting their consumption of free glutamate during a meal or snack to levels below 2.4 g.

As discussed in section I. of this document, FASEB identified a subgroup of asthmatics reported to respond to oral doses of MSG at levels of 0.5 to 2.5 g. The agency believes that the limitations of the Allen study cited by FASEB in reaching this conclusion are considerable, however (Ref. 19). For example, the study design included: (1) A 5-day pretest diet excluding chemicals known to provoke asthma (not otherwise defined), but lacked data with regard to patient compliance with the pretest diet; (2) ingestion of unidentified substances other than MSG; (3) limited placebo-control testing; and, most importantly, (4) the withdrawal of asthma medication that could have prevented or delayed an asthmatic response. Because of the questions raised by the study design and the limited data in this area, FDA's current view is that a cause-and-effect relationship has not been established between exposure to MSG at levels of 0.5 to 2.5 g and adverse reactions in this subgroup of asthmatics. The agency requests comments on this aspect of the FASEB report, as well as any new data demonstrating a relationship between exposure to free glutamate at levels below 2.4 g (3 g of MSG) and adverse reactions in asthmatics. If such data are received, FDA will be better able to evaluate the need for a labeling policy to enable glutamate-intolerant asthmatics to protect themselves from adverse reactions.

FDA's preliminary view is that a policy requiring glutamate labeling should be based on the amount of free glutamate in a serving of a food. Foods are labeled individually to reflect the nutrient content and other characteristics of the particular food. Because a food's contribution to the diet is based on an individual serving of the food, current regulations require foods to be labeled with nutrition information on a per-serving basis. Since the regulations implementing the Nutrition Labeling and Education Act (Pub. L. 101–445) became effective in 1994, consumers have become adept at using label information to monitor their intake of certain nutrients (Ref. 20). A glutamate labeling policy based on the amount of free glutamate in a serving of a food would be consistent with current labeling regulations, and FDA tentatively finds that such a policy would be useful to consumers who wish to avoid intake of free glutamate at levels that may cause an adverse reaction.

D. Labeling Threshold Approach

Applying these principles, the question then becomes how to calculate an appropriate labeling threshold, i.e., the level of free glutamate in a serving of an individual food that should trigger a labeling requirement because consumption of the food as part of a meal that may include other glutamate-containing foods could result in overall intake of free glutamate at levels that have been demonstrated to cause an adverse reaction. That is, what is the appropriate mechanism to relate a total

intake of 2.4 g of free glutamate (from all servings of foods consumed at the meal) to the contribution of an individual food?

One possible approach is to assume that the average daily consumption of a U.S. consumer is 20 servings per day, spread over approximately 3 meals and a snack. A snack is considered roughly two servings and a meal five to six servings. (The agency used a similar approach in determining disclosure levels for nutrient content claims and disqualifying levels for health claims. (56 FR 60426, 56 FR 60543–60544, 58 FR 2492, and 59 FR 24239)). Assuming that a meal consists of approximately six servings, the glutamate-intolerant consumer would be at risk if the total amount of free glutamate from all six servings in the meal were equal to or greater than 2.4 g. Spreading this amount equally over each of the six servings would suggest that each serving of food should contain no more than 0.4 g of free glutamate. Thus, one approach could be to require any food containing 0.4 g or more free glutamate per serving to bear a label statement about its free glutamate content. Such labeling would alert the glutamate-intolerant consumer to foods that contribute significant levels of free glutamate to a meal. With such information, the consumer could avoid foods with significant levels of free glutamate or, as an alternative, include limited quantities of a labeled food in the meal while being careful not to eat other glutamate-containing foods. Using 0.4 g as a labeling threshold would require foods like tomato juice and some soup mixes and canned soups to bear glutamate labeling (Ref. 21).

Although a labeling threshold or ''trigger'' of 0.4 g per serving based on average consumption estimates would adequately protect most glutamate-intolerant consumers, it might not be sufficient to protect those whose food intake is in the high range, that is, at or above the 90th percentile. According to food consumption and food frequency surveys (Refs. 22 and 23) conducted in the United States, intake at the 90th percentile for most commonly consumed foods is roughly 2 times the mean intake for that food (Ref. 24). Thus, a high-intake consumer could be exposed to levels close to 0.8 g from a single food if a regular-size serving of the food contained just under 0.4 g of free glutamate. In such a case, the food would not be required to bear a glutamate content statement, yet the amount eaten by high-intake consumers would contain a significant level of free glutamate. Taking into consideration the number of products that may contain free glutamate and the acute nature of the effects of free glutamate exposure for certain individuals, the agency is concerned that a label trigger of 0.4 g would not sufficiently protect high-intake consumers. The agency believes, therefore, that it is prudent to build in a safety factor to ensure that high-intake consumers are adequately informed of any potential risk.

Allowing for intakes up to twice the mean intake, to provide an additional margin of safety, would result in a labeling threshold of 0.2 g free glutamate (0.4 divided by 2) per serving of food. If the agency were to take this approach and require a glutamate label statement for foods that contain 0.2 or more grams free glutamate per serving, additional foods such as blue cheese, spaghetti sauce, and some brands of soy sauce and tomato paste would be required to bear a label statement about free glutamate content (Ref. 21).

FDA notes that the use of labeling thresholds is not new. Existing regulations establish labeling thresholds for certain ingredients that have been identified as causing adverse reactions either in sensitive individuals or in the general population. These regulations require special labeling for foods that exceed the labeling threshold. For example, the statement ''Excess consumption may have a laxative effect'' is required on foods that contain sorbitol when ''reasonably foreseeable'' consumption of the food could result in a daily sorbitol intake of 50 g or more (21 CFR 184.1835). To cite another example, the label statement ''Sensitive individuals may experience a laxative effect from excessive consumption of this product'' is required when a single serving of a food contains more than 15 grams of polydextrose (21 CFR 172.841). To the best of the agency's knowledge, the use of a labeling threshold has worked well in protecting consumers from adverse reactions caused by excessive consumption of sorbitol and polydextrose.

E. Request for Comments

FDA is soliciting comments on all aspects of this advance notice of proposed rulemaking (ANPRM), and specifically requests comments on the following:

1. The agency invites comments on whether additional labeling requirements should be established to protect glutamate-intolerant consumers from adverse reactions. The agency also solicits comments on the effectiveness of the regulatory approach described previously, as well as suggestions for other approaches that would adequately inform and assist glutamate-intolerant consumers to avoid exposure to levels of free glutamate that might cause a reaction. Suggestions for other approaches should include data or other information to substantiate the effectiveness of the approach. In particular, the agency solicits comments on whether the labeling threshold should be set higher or lower than 0.2 g free glutamate per serving, and on the costs and benefits of labeling policies using different possible labeling thresholds. The agency notes that regulations based on this ANPRM may have a significant impact on a substantial number of small entities. Therefore, the agency particularly requests information on the costs to small businesses of alternative MSG labeling policies and on policy options that would reduce the burden on small businesses while meeting the objectives of MSG labeling. Recognizing that foods would have to be chemically analyzed to determine the free glutamate content and that labels would have to be changed for some foods, the agency solicits data and comments on the economic impact associated with various labeling policies.

2. The agency solicits data on the levels of glutamate in foods to assist it in determining how many and what kinds of foods would be affected by various regulatory approaches.

3. The agency also solicits comments on the advantages or disadvantages of a simple label statement that the food contains free glutamate, as compared to a quantitative statement of the amount of free glutamate in a serving of the food either in absolute terms (i.e., g) or as a percentage of the intake level that might lead to adverse reactions in some consumers. As a preliminary matter, FDA's view is that quantitative labeling is not necessarily any more useful than a general label statement alerting the glutamate-intolerant consumer to the presence of free glutamate in the food when the level is significant. The agency notes that because almost all foods contain trace levels of free glutamate, quantitative labeling for all foods with detectable levels of free glutamate might cause confusion among glutamate-intolerant consumers about which foods could be consumed without risking a reaction. Consumers might unnecessarily limit their food choices by assuming that they should not eat any food labeled to contain any amount of free glutamate, however small. FDA's preliminary view is that, if quantitative labeling is required, a labeling threshold should be established to prevent this problem. The agency solicits comments on this view and on whether the optimal threshold for quantitative free glutamate labeling

would be the same as the optimal threshold for a label statement that the food contains free glutamate.

4. Finally, the agency solicits comments on the following questions regarding the content, wording, and placement of labeling for glutamate-containing foods, and on any other aspects of such labeling:

(a) What information should be included in labeling for glutamate-containing foods? How should any required label statement be worded? Should the scientifically accurate term ''free glutamate'' be used in such labeling, or should the term ''MSG'' be used for all forms of free glutamate because consumers are more familiar with it?

(b) Should a label statement such as ''contains free glutamate'' be included in the ingredient list because consumers traditionally use the ingredient list to determine if the food contains ingredients they wish to avoid? Alternatively, should such a label statement be placed adjacent to the ingredient list or elsewhere on the information panel, or should the label statement be placed on the principal display panel? Suggestions for placement of the label statement should include the comment's rationale for choosing one location over another.

(c) Is a separate label statement about free glutamate content necessary when MSG is an ingredient in the food and is therefore declared in the ingredient list? Current information in the agency's possession suggests that glutamate-intolerant consumers already identify and avoid foods that declare MSG as an ingredient, although they often fail to recognize the presence of free glutamate when it occurs in forms other than MSG (Ref. 3). Thus, the agency solicits comments on the need for a statement about free glutamate content in foods that contain MSG as a declared ingredient.

III. The ''No MSG'' Labeling Policy

A. Current Label Claims

The controversy over the use and safety of MSG in foods has prompted some food manufacturers to make label claims such as ''No MSG'' or ''No added MSG'' when MSG is not used as an ingredient in the food. Several manufacturers have opted to reformulate their products to remove MSG as an ingredient, or to substitute for MSG other ingredients that have similar flavor-enhancing properties. Many of these reformulated foods bear label claims about the absence of MSG. In some cases manufacturers replace MSG with ingredients like hydrolyzed proteins, autolyzed yeast extracts, or other flavor-enhancing ingredients that contain substantial amounts of free glutamate.

Based on correspondence submitted to the agency and arguments raised in a citizen petition submitted on behalf of Jack L. Samuels, Adrienne Samuels, John Olney, et al., (Docket No. 94P–0444), FDA recognizes that many consumers, especially those who report having adverse reactions to MSG, refer to all forms of manufactured glutamate as MSG. As previously discussed, the scientific evidence does not support the assertion that manufactured free glutamate functions differently in the body than naturally occurring free glutamate. Moreover, even though FDA has attempted to clarify the distinction between the ingredient monosodium glutamate (MSG) and other ingredients that contain free glutamate in correspondence and other FDA documents, such as FDA's Backgrounder on MSG (Ref. 25), consumers either do not fully understand or do not acknowledge this distinction. Consequently, consumers continue to use the term ''MSG'' to mean all forms of free glutamate that are added to food. For example, FDA has received numerous written and oral complaints (Ref. 3) charging manufacturers with hiding the presence of ''MSG'' by declaring the substance under other names such as ''flavorings,'' ''hydrolyzed protein,'' ''autolyzed yeast extract,'' and similar terms.

FDA tentatively finds that consumers are likely to perceive a ''No MSG'' or ''No added MSG'' claim on a label as indicating the absence of all forms of free glutamate in the food. Such claims encourage consumers wishing to avoid free glutamate to purchase a food by representing the food as free of MSG. Moreover, manufacturers of hydrolyzed proteins and other glutamate-containing ingredients often promote them to manufacturers of finished foods as functional substitutes for MSG that permit a ''clean'' ingredient statement and a ''No MSG'' claim on the label of the finished food. In this context, ''clean'' means an ingredient list that does not include ''monosodium glutamate.'' Thus, while technically such foods bearing a claim about the absence of MSG do not contain the ingredient monosodium glutamate, they frequently contain levels of free glutamate that cause claims like ''No MSG'' and ''No added MSG'' to be misleading. Some manufacturers attempt to evade the ingredient declaration requirement for MSG by reformulating their products with MSG-containing ingredients (for example, certain spice blends) that are added to the product in lieu of MSG itself. They then modify the ingredient list on the product label to delete MSG and replace it with a generic term such as ''spices.'' (As noted in section I. of this document, this practice violates existing ingredient labeling requirements; when MSG is added to a food as an ingredient of a spice blend, MSG must still be declared in the ingredient statement by its common or usual name, monosodium glutamate.) In some cases, these manufacturers also add a ''No MSG'' claim to the label.

A related problem is the use of claims such as ''No MSG'' and ''No added MSG'' on foods that contain substantial amounts of naturally occurring free glutamate, such as tomato paste and certain cheeses. Although such foods do not contain MSG itself, they contain ingredients with concentrations of free glutamate that function as flavor enhancers like MSG. Because of their free glutamate content, these foods are as likely to cause or contribute to an MSG symptom complex reaction as a food that contains a comparable amount of MSG. A claim such as ''No MSG'' is misleading because it implies that the food may be consumed by glutamate-intolerant consumers without risk of a reaction.

A food that bears a false or misleading claim about the absence of MSG is misbranded under section 403(a) of the act. FDA has repeatedly advised consumers and industry that it considers such claims as ''No MSG'' and ''No added MSG'' to be misleading when they are used on the labels of foods made with ingredients that contain substantial levels of free glutamate (Refs. 25, 26, and 27). FDA has authority to take action against such misbranded foods under existing law, but because of the proliferation of such claims on products made with ingredients that contain substantial levels of free glutamate, the agency believes that formal criteria would be useful to define more precisely the circumstances under which labels bearing claims about the absence of MSG are misleading. While such criteria are being developed, however, FDA will continue to take regulatory action as appropriate against false or patently misleading claims about the absence of MSG, such as ''No MSG'' claims on products made with MSG-containing ingredients, hydrolyzed proteins, or autolyzed yeast extracts.

B. Approaches Under Consideration

The agency is considering a variety of approaches to address misleading claims about the absence of MSG. As a

starting point, a food that contains MSG, or ingredients to which MSG has been added, is misbranded if it bears a ''No MSG'' or similar claim. Such claims are false and, therefore, their regulatory status needs no further clarification. The discussion below concerns the development of criteria to prevent misbranding because of misleading ''No MSG'' and ''No added MSG'' claims on foods that contain free glutamate but to which MSG itself has not been added, directly or indirectly.

1. Cutoff levels

One strategy the agency is considering involves establishing a ''cutoff level'' for claims about the absence of free glutamate. If the finished food contains free glutamate above the cutoff level, a ''No MSG'' or similar label statement would be prohibited. There are several ways in which such a level could be defined:

a. Quantitation limit for free glutamate. One approach would be to use the analytical limit of quantitation (LOQ) for free glutamate as the cutoff level. The enzymatic procedure of Hattula and Wallin (Ref. 28), a commonly used, collaboratively studied analytical method for determining free glutamate content, has an estimated quantitation limit of 100 parts per million (ppm) (Ref. 29). Under this approach, any food with a level of free glutamate above the LOQ, i.e., a level above 100 ppm using the Hattula and Wallin method, would be disqualified from bearing a ''No MSG'' claim. However, because glutamate is ubiquitous in the food supply and low levels of free glutamate typically occur in many raw or minimally processed foods, using the LOQ as the cutoff level would disqualify almost all foods from bearing a ''No MSG'' claim. For example, typical levels of free glutamate in canned peas and canned corn are 320 ppm (.032 g) and 470 ppm (.047 g) respectively (Ref. 30). Although these levels are lower than the level generally associated with flavor-enhancing function (500 ppm) and lower than the amount of free glutamate found in most foods containing monosodium glutamate, hydrolyzed proteins, or yeast extracts, they are above the LOQ of 100 ppm. Consequently, relying on a ''limit of quantitation'' criterion would disqualify foods like canned peas and canned corn from bearing a ''No MSG'' claim.

b. Functional level. According to the scientific literature (Ref. 31), free glutamate has a flavor-enhancing effect at levels as low as 500 ppm. Using 500 ppm as the cutoff level for claims about the absence of MSG would allow a ''No MSG'' label statement on most raw or minimally processed foods that naturally contain free glutamate, while prohibiting such claims on MSG substitutes like protein hydrolysates and autolyzed yeast extracts. Under this approach, foods such as canned peas and canned corn would be permitted to bear a ''No MSG'' claim. However, tomato sauce and fresh tomatoes, because of their relatively high natural free glutamate content, would be prohibited from bearing such a claim, as would parmesan cheese.

c. Labeling threshold. As discussed in section II. of this document, the agency is considering whether to require a label statement about free glutamate content on foods that contain 0.2 g or more free glutamate per serving. For consistency, the cutoff for claims about the absence of MSG could be set at the same level. Under this approach, a ''No MSG'' claim would be permitted on foods like canned peas and canned corn. However, bacon flavored toppings made from hydrolyzed vegetable protein would also qualify to bear a ''No MSG'' claim because the serving size for toppings is so small. Claims about the absence of MSG would be prohibited on any food required to bear a label statement about the presence of free glutamate.

The agency solicits comment on whether an approach based on a cutoff level of free glutamate in the finished food should be adopted to determine whether a food may bear a ''No MSG'' or ''No added MSG'' claim. Further, the agency solicits comment on whether such a cutoff level should be: (a) The analytical limit of quantitation for free glutamate; (b) the level at which free glutamate functions as a flavor enhancer; (c) the level of free glutamate that would trigger a label statement about the food's glutamate content; or (d) some other level.

2. Ingredients

The second approach the agency is considering would prohibit ''No MSG'' and similar claims on foods made from ingredients that contain substantial amounts of free glutamate. In the agency's opinion, ingredients like hydrolyzed vegetable proteins, autolyzed yeast extracts, soy sauce, parmesan cheese, and tomato paste contain enough free glutamate to cause a ''No MSG'' label claim to be misleading. To adopt this approach, the agency would have to define what constitutes a ''substantial'' amount of free glutamate in an ingredient. Should a ''substantial'' amount of free glutamate be defined as the amount reported to have flavor-enhancing properties, i.e., 500 ppm (Ref. 31), or in some other way?

Further, is an approach that prohibits a ''No MSG'' claim if an ingredient in a food contains a ''substantial'' amount of free glutamate equitable in all cases, or should the amount of an ingredient added to a food also be considered in determining whether a claim is misleading? For example, could ingredients like tomato paste or soy protein isolate be added to a food in trace amounts without rendering a ''No MSG'' claim misleading?

3. Combination or Other Approaches

The agency also invites comments on possibilities for combining any of the approaches described in this section to develop a comprehensive labeling policy to ensure that ''No MSG'' claims are truthful and not misleading. For example, would a labeling policy that allowed a ''No MSG'' or similar claim only on foods that: (1) Contain no ingredients that have a ''substantial'' amount of free glutamate, and (2) contain levels of total free glutamate per serving below a cutoff level of 0.2 g, be more desirable than a policy that relied on one criterion alone? This approach would permit claims about the absence of MSG on foods like canned peas and canned corn, but prohibit such claims on foods like bacon flavored toppings made with hydrolyzed protein and on foods that have a relatively high natural free glutamate content, including tomato sauce and parmesan cheese. Alternatively, is there another combination of approaches that would be more effective in ensuring that label claims about the absence of MSG are not misleading? Suggestions for other approaches or combinations of approaches should include data or other information to substantiate the effectiveness of the approach.

IV. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. National Academy of Science, ''Food Chemicals Codex,'' 4 ed., 1996, p. 260.

2. Taliaferro, P. T., ''Monosodium Glutamate and the Chinese Restaurant Syndrome: A Review of Food Additive Safety,'' *Journal of Environmental Health*, vol. 57, No. 10, pp. 8–12, 1995.

3. Satchell, F. B., Division of Programs and Enforcement Policy (HFS–158), Center for Food Safety and Applied Nutrition, memorandum to file: ''Consumer Correspondence to FDA Regarding the Use and Labeling of MSG in Foods,'' July 3, 1996.

4. Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, ''Evaluation of the Health Aspects of Certain Glutamates as Food Ingredients-Report 37a,'' (PB 283–475/AS), 1978.

5. Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, ''Evaluation of the Health Aspects of Protein Hydrolysates as Food Ingredients- Report 37b,'' (PB 283–440/AS), 1978.

6. Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, ''Evaluation of the Health Aspects of Certain Glutamates as Food Ingredients, Supplemental Review and Evaluation-Report 37a-Suppl.,'' (PB 178635), 1980.

7. Select Committee on GRAS Substances, Life Sciences Research Office, Federation of American Societies for Experimental Biology, ''Evaluation of the Health Aspects of Protein Hydrolysates as Food Ingredients, Supplemental Review and Evaluation-Report 37b-Suppl.,'' (PB80–178643), 1980.

8. FDA opinion letter from Einar T. Wulfsberg, Food and Drug Officer to Mr. Ratton B. Rogers, the Nestle Co., November 12, 1959.

9. FDA opinion letter from Einar T. Wulfsberg, Food and Drug Officer to Mr. J. Ter Marsch, August 25, 1961.

10. FDA opinion letter from D. R. Kleber, Jr., Division of Advisory Opinions Bureau of Enforcement to Yeast Products, Inc., January 22, 1962.

11. FDA opinion letter from Virgil O. Wodicka, Director, Bureau of Foods to Mr. William H. Honstead, The ESU Research Foundation, Kansas State University, 1972.

12. Advisory Committee on Hypersensitivity to Food Constituents—Proceedings Ad Hoc, May 8, 1986, pp. 13–28.

13. Reports of the Scientific Committee for Food on a First Series of Food Additives of Various Technological Functions, Commission of the European Communities, Reports of the Scientific Committee for Food, 25th series, 1991.

14. Report of the Council on Scientific Affairs, American Medical Association, ''Food and Drug Administration Regulations Regarding the Inclusion of Added L-Glutamic Acid Content on Food Labels,'' Report: D (A–92), 1992.

15. The Joint Food Agriculture Organization/World Health Organization Expert Committee on Food Additives, ''L-Glutamic Acid and its Ammonium, Calcium, Monosodium and Potassium Salts-Toxicological Evaluation of Certain Food Additives,'' WHO Food Additive Series, No. 22, pp. 97–161, 1988.

16. Gray, D., FDA memorandum, May 23, 1996.

17. Life Sciences Research Office, Federation of American Societies for Experimental Biology, ''Analysis of Adverse Reactions to Monosodium Glutamate (MSG),'' Report, 1995.

18. Allen, D. H., J. Delohery, and G. Baker, ''Monosodium L-Glutamate-Induced Asthma,'' *Journal of Allergy and Clinical Immunology*, vol. 80, pp. 530–537, 1987.

19. FDA memorandum concerning evaluation of the Federation of American Societies for Experimental Biology (FASEB) (July 1995 Report) from the Director, Division of Health Effects Evaluation to Lawrence Lin, ''Analysis of Adverse Reactions to Monosodium Glutamate (MSG),'' August 30, 1996.

20. Levy, A. S., B. M. Derby, Consumer Studies Branch, Center for Food Safety and Applied Nutrition, FDA, ''The Impact of the NLEA on Consumers: Recent Findings From FDA's Food Label and Nutrition Tracking System,'' 1996.

21. Warner, C., and D. Daniels, FDA memorandum, August 14, 1996.

22. United States Department of Agriculture, ''Continuing Survey of Food Intake by Individuals'' (1989–90, 1990–91, 1991–92), Nationwide Food Consumption Survey, 1987.

23. Market Research Corporation of America (1992), 5-Year Menu Census, 1982–87, FDA Contract No. 223–87–2088.

24. DiNovi, M., FDA memorandum, ''Basis for High-Intake Estimates,'' July 1, 1996.

25. FDA Backgrounder (BG95–16), ''Monosodium Glutamate (MSG),'' August 31, 1995.

26. FDA Warning Letter from Elaine C. Messa, District Director, Irvine, CA to Patricia Bragg, President, Live Food Products, May 29, 1996.

27. FDA correspondence from John E. Thomas to Sonja L. Valiulis, October 14, 1992.

28. Hattula, M. T., and H. C. Wallin, ''Enzymatic Determination of Free Glutamic Acid in Dried Soups and in Minced Sausages: NMKL1 Collaborative Study,'' *Journal of the Association of Official Analytical Chemists*, vol. 74, No. 6, pp. 921–925, 1991.

29. Facsimile from H. C. Wallin to C. Warner, May 6, 1996.

30. Daniels, D. H., F. L. Joe, and G. W. Diachenko, ''Determination of Free Glutamic Acid in a Variety of Foods by High-Performance Liquid Chromatography,'' *Food Additives and Contaminants*, vol. 12, No. 1, pp. 21–29, 1995.

31. Yamaguchi, S., and A. Kimizuka, ''Psychometric Studies on the Taste of Monosodium Glutamate,'' Glutamic Acid: Advances in Biochemistry and Physiology, Raven Press, New York, pp. 35–54, 1979.

V. Comments

Interested persons may, on or before November 12, 1996, submit to the Dockets Management Branch (address above) written comments regarding this ANPRM. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This advance notice of proposed rulemaking is issued under sections 5 and 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1454, 1455), sections 201, 301, 403, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 343, 371), and under the authority of the Commissioner of Food and Drugs.

Dated: August 29, 1996.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 96–23159 Filed 9–5–96; 4:43 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–106–FOR]

Virginia Regulatory Program

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

ACTION: Proposed rule; notice of opportunity for hearing or public meeting.

SUMMARY: OSM is announcing a hearing (or public meeting if only one person requests a hearing) on a portion of a proposed amendment to the Virginia regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment for which the hearing is being announced concerns the proposed use of a 28-degree angle of draw with the rebuttable presumption of causation by subsidence provision. The amendment is intended to revise the State program to be consistent with the Federal regulations as amended on March 31, 1995 (60 FR 16772).

DATES: The hearing is scheduled for Wednesday, September 18, 1996, at 7:00 p.m. at the Big Stone Gap Field Office. Requests to speak at the hearing must be received by 4:00 p.m., on September 16, 1996. If a public meeting is held instead of a hearing, it will be held on Wednesday, September 18, 1996, at the Big Stone Gap Field Office at a time to be determined.

ADDRESSES: Request to offer testimony at the hearing should be mailed or hand delivered to Mr. Robert A. Penn, Director, Big Stone Gap Field Office at the first address listed below.

Copies of the Virginia program, the proposed amendment, a listing of the scheduled public hearing (or public meeting if only one person wishes to provide testimony), and all written comments received in response to the

amendment will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requestor may receive one free copy of the proposed amendment by contacting OSM's Big Stone Gap Field Office.

Office of Surface Mining Reclamation and Enforcement, Big Stone Gap Field Office, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (703) 523–4303

Virginia Division of Mined Land Reclamation, P.O. Drawer 900, Big Stone Gap, Virginia 24219, Telephone: (703) 523–8100

FOR FURTHER INFORMATION CONTACT:

Mr. Robert A Penn, Director, Big Stone Gap Field Office, Telephone: (703) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. Background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the December 15, 1981, Federal Register (46 FR 61085–61115). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 946.12, 946.13, 946.15, and 946.16.

II. Discussion of the Proposed Amendment

By letter dated May 21, 1996 (Administrative Record No. VA–882), Virginia submitted amendments to the Virginia program concerning subsidence damage. The amendments are intended to make the Virginia program consistent with the Federal regulations as amended on March 31, 1995 (60 FR 16722). Virginia stated that the proposed amendments implement the standards of the Federal Energy Policy Act of 1992, and sections 45.1–243 and 45.1–258 of the Code of Virginia.

The proposed amendments were announced in the June 11, 1996, Federal Register (61 FR 292506). In that notice, however, OSM did not specifically point out that, at § 480–03–19.817.121(c)(4), Virginia proposes to normally use a 28-degree angle of draw presumption for the rebuttable presumption of causation by subsidence provision. The counterpart Federal provisions at 30 CFR 817.121(c)(4) provides that a 30-degree angle of draw will normally apply.

30 CFR 817.121(c0(4) also authorizes the use of a different angle of draw (other than 30 degrees) if the regulatory authority shows in writing that the proposed angle has a more reasonable basis than the 30-degree angle of draw, based on geotechnical analysis of the factors affecting potential surface impacts of underground coal mining operations in the State.

OSM reopened the public comment period on July 24, 1996 (61 FR 38422) for fifteen days. One person requested a public hearing on the 28-degree angle of draw provision.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 731.17(h), OSM is seeking comment on whether the amendment identified above satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will be come part of the Virginia program.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by close of business on September 16, 1996.

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 comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at the hearing, a public meeting, rather than a public hearing, will be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the Big Stone Gap Field Office 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 in advance at the locations listed under **ADDRESSES.** A written summary of each public meeting will be made part of the Administrative Record.

Any disabled individual who has need for a special accommodation to attend the public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

IV. Procedural Determinations.

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).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, 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 1255) and 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.

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)).

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.*).

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 which 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.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 946

Intergovermental relations, Surface mining, Underground mining.

Dated: August 28, 1996.

Vann Weaver,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 96–22968 Filed 9–11–96; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

33 CFR Part 334

Cooper River and Tributaries, Charleston, South Carolina, Danger Zones and Restricted Areas

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps is proposing to amend the regulations which establish several danger zones and restricted areas in the waters of the Cooper River and its tributaries in the vicinity of Charleston, South Carolina by establishing a new danger zone for a small arms range at the Naval Weapons Station. The small arms firing range is to be used for training by the U.S. Border Patrol Training Academy. The Corps is also correcting a coordinate that defines the boundaries of an existing danger zone and making minor editorial amendments to the regulations to clarify that persons, as well as vessels, are not allowed within the danger zones and restricted areas. This clarification would not affect the size, location or further restrict the public's use of the areas. The danger zones and restricted areas continue to be essential to the safety and security of Government facilities, vessels and personnel and protect the public from the hazards associated with the operations at the Government facilities.

DATES: Comments must be submitted on or before October 15, 1996.

ADDRESS: HQUSACE, CECW–OR, Washington, D.C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph Eppard, Regulatory Branch, CECW–OR at (202) 761–1783, or Ms. Tina Hadden of the Charleston District at (803) 727–4607.

SUPPLEMENTARY INFORMATION: Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat. 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3), the Corps proposes to amend the regulations in 33 CFR Part 334.460. The Commanding Officer, Naval Weapons Station Charleston, South Carolina, has requested an amendment to the regulations in 33 CFR 334.460(a)(2), to correct a coordinate which establishes a boundary of a danger zone in Foster Creek. The coordinate which presently reads ''Latitude 31 59′17″ N'' is corrected to read ''32 59′16″ N''. The Navy has also requested that a new danger zone be established in an unnamed tributary and associated marsh of Back River and Foster Creek to prohibit public entry into the new area ((a)(13)), and to also prohibit entry into the existing danger zone (a)(12). The purpose of the danger zone is to protect the public from the dangers associated with a small arms firing range nearby and the potential for an errant round to impact into the water. It is not the intent of the Navy to use the waters of the danger zone as an impact area for the range. The Navy proposes to erect post-mounted signs at intervals across the marsh to identify the area as a danger zone. It is believed that closure of the water area for the new danger zone will have minimal impact or no impact on the public's use of the area which is described as a marsh area not navigable by conventional watercraft nor frequented by fishermen. We also propose an editorial change to clarify that these restricted area and danger zone regulations apply to personnel as well as vessels. Other minor changes to the regulations are editorial in nature and since the revisions do not change the boundaries or increase the restrictions on the public's use or entry into the designated areas, the changes will have practically no effect on the public. In addition to the publication of this proposed rule, the Corps Charleston District Engineer is concurrently soliciting public comment on these proposed changes to the danger zone rules by distribution of a public notice to all known interested parties.

Procedural Requirements

a. Review under Executive Order 12866.

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

b. Review under the Regulatory Flexibility Act.

These proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). The Corps expects that the economic impact of the changes to the danger zones would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

c. Review under the National Environmental Policy Act.

An environmental assessment has been prepared for this action. We have concluded, based on the minor nature of the proposed additional danger zone and other editorial changes that these amendments to danger zones and restricted areas will not have a significant impact to the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the District Office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

d. Unfunded Mandates Act

This proposed rule does not impose an enforceable duty among the private sector and therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small governments will not be significantly and uniquely affected by this rulemaking.

List of Subjects in 33 CFR Part 334

Navigation (water), Transportation, Danger zones.

For the reasons set out in the preamble, we propose to amend 33 CFR part 334, as follows:

PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266; (33 U.S.C. 1) and 40 Stat. 892; (33 U.S.C. 3).

2. Section 334.460 is amended by revising paragraphs (a)(12), (b) (1), (2), (3), (4), (5), (6), (7), (9), and (11), and adding a new paragraph at (a)(13), to read as follows:

§ 334.460 Cooper River and tributaries at Charleston, SC.

(a) The areas:

(12) *Danger zone.* That portion of Foster Creek beginning at the point of the southern shoreline of an unnamed tributary of Foster Creek at its intersection with Foster Creek at latitude 32°59′16″N, longitude 79°57′23″W; thence back proceeding along the eastern shoreline to the terminus of the tributary at latitude 32°59′49″N, longitude 79°57′29″W; thence back down the western shoreline of the unnamed tributary to latitude 32°59′15″N, longitude 79°57′26″W. The waters and associated marshes in this danger zone area are subject to impact by rounds and ricochets originating from a small arms range when firing is in progress.

(13) *Danger zone.* Those portions of unnamed tributaries and associated marshes of Back River and Foster Creek that are generally described as lying south of the main shoreline and extending southward to the northern shoreline of Big Island (U.S. Naval Reservation). Specifically, the area beginning at a point on the main shoreline which is the northern shore of an unnamed tributary of Back River at latitude 32°59′19″N, longitude 79°56′52″W, southwesterly to a point on or near the northern shoreline of Big Island at latitude 32°59′11″N, longitude 79°56′59″W; thence northwesterly to a point on the main shoreline, which is the northern shore of an unnamed tributary of Foster Creek, at latitude 32°59′16″N, longitude 79°57′11″W; thence easterly along the main shoreline, which is the northern shore of the unnamed tributaries of Foster Creek and Back River, back to the point of beginning at latitude 32°59′19″N, longitude 79°56′52″W. The waters and associated marshes in this danger zone area are subject to impact by rounds and ricochets originating from a small arms range when firing is in progress.

(b) The regulations:

(1) Unauthorized personnel, vessels and other watercraft shall not enter the restricted areas described in paragraphs (a)(1), (a)(2), and (a)(4) of this section at any time.

(2) Personnel, vessels and other watercraft entering the restricted area described in paragraph (a)(5) of this section, shall proceed at normal speed and under no circumstances anchor, fish, loiter, or photograph until clear of the restricted area.

(3) Personnel, vessels and other watercraft may be restricted from using any or all of the area described in paragraphs (a)(3) and (a)(6) of this section without first obtaining an escort or other approval from Commander, Naval Base, Charleston, when deemed necessary and appropriately noticed by him/her for security purposes or other military operations.

(4) Personnel, vessels and other watercraft, other than those specifically authorized by Commanding Officer, U.S. Naval Weapons Station, Charleston, SC, entering the restricted area described in paragraph (a)(8) of this section shall proceed at normal speed, and under no circumstances anchor, fish, loiter, or photograph in any way until clear of the restricted area.

(5) Personnel, vessels and other watercraft, other than those specifically authorized by Commanding Officer, U.S. Naval Weapons Station, Charleston, SC, entering the areas described in paragraphs (a)(9) and (a)(10) of this section, are prohibited from entering within one-hundred (100) yards of the west bank of the Cooper River, in those portions devoid of any vessels or manmade structures. In those areas where vessels or man-made structures are present, the restricted area will be 100 yards from the shoreline or 50 yards beyond those vessels or other man-made structures, whichever is the greater. This includes the area in paragraph (a)(10) of this section.

(6) In the interest of National Security, Commanding Officer, U.S. Naval Weapons Station, Charleston, SC, may at his/her discretion, restrict passage of persons, watercraft and vessels in the areas described in paragraphs (a)(7) and (a)(11) of this section until such time as he/she determines such restriction may be terminated.

(7) All restricted areas and all danger zones and the approaches leading to the danger zones will be marked with suitable warning signs.

* * * * *

(9) The regulations in this section for the danger zones described in paragraphs (a)(12) and (a)(13) of this section and the regulations described in paragraphs (b) (4), (5) and (6) of this section, shall be enforced by the Commanding Officer, Naval Weapons Station Charleston, SC, and such agencies as he/she may designate.

* * * * *

(11) The unauthorized entering or crossing of the danger zones described in paragraphs (a)(12) and (a)(13) of this section by all persons, watercraft and vessels is prohibited at all times unless specifically authorized by the Commanding Officer of the U.S. Naval Weapons Station Charleston, SC.

Dated: August 29, 1996.

John P. D'Aniello,

Deputy Director of Civil Works.

[FR Doc. 96–23173 Filed 9–11–96; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 960830240–6240–01; I.D. 082796A]

RIN 0648–AH28

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Trawl Closure to Protect Red King Crab

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

ACTION: Proposed rule and supplemental proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 37 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This rule would implement trawl closure areas in portions of Bristol Bay, adjust the prohibited species catch limit for red king crab in Zone 1 of the Bering Sea, and increase observer coverage in specified areas related to the trawl closures. These measures are necessary to protect red king crab in Bristol Bay, which has declined to a level that presents a serious conservation problem for this stock. They are intended to accomplish the objectives of the North Pacific Fishery Management Council (Council) with respect to fishery management in the Bering Sea and Aleutian Islands Management area (BSAI).

DATES: Comments must be submitted by October 28, 1996.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel. Copies of the Environmental Assessment/Regulatory Impact Review/Initial Regulatory

Flexibility Analysis (EA/RIR/IRFA) prepared for the proposed rule may be obtained from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501–2252; telephone 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Kaja Brix, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the BSAI is managed by NMFS according to the FMP. The FMP was prepared by the Council under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*) (Magnuson Act), and is implemented by regulations governing the U.S. groundfish fisheries at 50 CFR part 679.

Bering Sea crab stocks are currently at relatively low levels based on 1995 NMFS bottom trawl survey data, which indicated that exploitable biomass of Bristol Bay red king crab is at about one-fifth record levels. The red king crab stock is at its lowest level since the fishery was closed after the first stock collapse in 1983. In 1994 and 1995, Bristol Bay was closed to red king crab fishing because the number of female red king crab had declined below the threshold of 8.4 million crab. Under the Fishery Management Plan for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands (Crab FMP), the commercial red king crab fishery is closed entirely when a red king crab stock component is at or near the threshold. In addition, the annual trawl surveys indicated little prospect for increased recruitment of mature males or females, and low female spawning biomass. Also, the area east of 163° W. long. was closed to Tanner crab fishing to minimize the bycatch of female red king crab.

In view of the declining red king crab stock and the need to further protect and conserve red king crab in the Bristol Bay area of the Bering Sea, NMFS issued an emergency rule in 1995 (60 FR 4866, January 25, 1995), which established and closed the Red King Crab Savings Area (RKCSA) to all trawling. At its September 1995 meeting, the Council adopted Amendment 37 to the FMP to close the RKCSA from January 20 to March 31 each year. In 1996, NMFS closed the RKCSA by inseason adjustment (60 FR 63451, December 11, 1995) from January 20 to March 31, 1996. Continued low abundance of crab stocks caused the Council to express additional concerns about opening the RKCSA and resulted in a recommendation at the January 1996 Council meeting for an extension to the 1996 inseason adjustment to close the RKCSA until June 15, 1996 (61 FR 8889, March 6, 1996), to further protect red king crab during the molting and mating period.

The Council then notified the public that it intended to revisit the previous action on Amendment 37 and requested staff to prepare additional information on potential impacts of modifying the closure time to 6 months or to a year-round closure. Based on information provided at its June 1996 meeting, the Council recommended the following expanded management measures under Amendment 37 to protect the declining stocks of red king crab in Bristol Bay:

1. A year-round closure in the RKCSA to directed fishing for groundfish by vessels using non-pelagic trawl gear. A subarea of the RKCSA between 56° and 56°10 N. lat. would open if a guideline harvest level for Bristol Bay red king crab is established. A portion of the annual red king crab prohibited species catch (PSC) limit would be specified for the RKCSA subarea (RKCSS) that, when reached, would result in closure of the RKCSS to vessels fishing with non-pelagic trawl gear;

2. A year-round closure to all trawling in the nearshore waters of Bristol Bay, with the exception that a portion of this area, between 159° and 160° W. long. and between 58° and 58°43' N. lat. would remain open to trawling during the period April 1 to June 15 each year. Existing regulations at § 679.22(a) would be removed. These regulations authorize opening the Port Moller area of reporting areas 512 and 516 to fishing for Pacific cod with trawl gear; and

3. Adjustments to the Zone 1 PSC limit for red king crab taken in trawl fisheries. The PSC limit would be specified annually based on the abundance and biomass of Bristol Bay red king crab.

Increased observer coverage is proposed on all vessels, including vessels using pot, jig, and longline gear, fishing for groundfish in the RKCSA and on trawl vessels fishing in the seasonal open area of the Bristol Bay nearshore waters closure.

Details of and justification for these measures follow:

RKCSA

Based on NMFS' survey data, the 1994 abundance index for legal-sized male Bristol Bay red king crab was 5.5 million crab compared to 7.3 million in 1993. The abundance index for mature female crab declined from 14.2 million crab in 1993 to 7.5 million crab in 1994. The number of mature female red king crab is below the threshold value of 8.4 million crab established pursuant to the Crab FMP.

The 1995 NMFS trawl survey indicated reduced numbers of large red king crab of both sexes in Bristol Bay. Additionally, the abundance of mature females was at or below threshold, and consequently, no fishery was permitted in 1995. Survey indices of abundance for juvenile males and small females were the highest observed in many years. These crab represent the cornerstone of stock rebuilding, as protection of these crab through maturity may result in increased spawning and recruitment in future years.

Analysis of crab distribution data indicates that the RKCSA provides substantial habitat for red king crab. Various size-sex-maturity groups that have been vulnerable to trawling or other commercial fishing gear have been found in the process of molting or in a soft shell condition from the last week of January through the end of June or sometimes later. The timing of molting for various groups varies considerably from year to year, which indicates the need for increased protection of red king crab.

The dates adopted by the Council in September 1995 for the RKCSA closure (January 20–March 31) do not encompass the entire molting and mating period of red king crab. Additionally, unobserved impacts of trawling on softshell crab may impact crab rebuilding and future crab harvests by pot fisheries. Therefore, extended duration of the closure period provides for increased protection of adult red king crab and their habitat.

As a result, at its June 1996 meeting, the Council recommended a year-round closure of the RKCSA to ensure conservation of the red king crab resource in the Bristol Bay area of the Bering Sea. NMFS would prohibit directed fishing for groundfish by vessels using trawl gear, other than pelagic trawl gear, in the RKCSA, that portion of the Bering Sea that is bounded by a straight line connecting the following coordinates in the order listed below:

Latitude Longitude
56°00' N., 162°00' W.
56°00' N., 164°00' W.
57°00' N., 164°00' W.
57°00' N., 162°00' W.
56°00' N., 162°00' W.

The Council also recommended that a portion of the above-described area, between 56°00' N. lat. and 56°10' N. lat. remain open to non-pelagic trawling for groundfish if a guideline harvest level for Bristol Bay red king crab is established. The RKCSS has been

productive for the rock sole fishery, and an opening of the RKCSS would allow some of the rock sole to be harvested. From 1990 through 1994, the RKCSS accounted for 13 percent to 35 percent of the annual groundfish harvest in the rock sole fishery in Zone 1. However, the RKCSS also has accounted for a relatively high percentage of the Zone 1 red king crab bycatch, ranging from 12 percent to 47 percent during the same period.

If the RKCSS reopened, an amount of the annual Zone 1 red king crab PSC limit would be specified for the RKCSS that, when reached, would result in closure of the RKCSS to vessels fishing with non-pelagic trawl gear. The amount of the Zone 1 red king crab PSC limit specified for the RKCSS would be equivalent to no more than 35 percent of the amount of the red king crab PSC limit apportioned to the rock sole fishery. Trawl vessels fishing in the RKCSS would continue to accrue any associated king crab bycatch against the red king crab bycatch allowance specified for the fishery the vessel is participating in. The RKCSS would be closed to vessels fishing with non-pelagic trawl gear when either the Zone 1 red king crab bycatch limit is reached or the amount of the PSC limit specified for the RKCSS is reached.

Determination of the actual amount of the Zone 1 red king crab bycatch limit for the RKCSS would be specified by NMFS, after consultation with the Council, and based on the need to optimize the groundfish harvest relative to red king crab bycatch.

Further details on the high fishing effort in the RKCSA and the associated high bycatch of red king crab, especially in the rock sole/other flatfish category can be found in the preamble to the 1995 emergency rule (60 FR 4866, January 25, 1995).

Nearshore Bristol Bay Trawl Closure

With the declining crab resource, the Council is also concerned about the protection of juvenile red king crab and critical rearing habitat. Therefore, the Council recommended in addition to the RKCSA closure, that all trawling be prohibited on a year-round basis in the nearshore waters of Bristol Bay in the area east of 162° W. long., which essentially encompasses all of Bristol Bay. Such a closure would also benefit juvenile halibut, seabirds, marine mammals, and spawning herring stocks. The area within 3 mi (4.83 km) of shore within Bristol Bay has been closed to trawling year-round under state regulations (5 AAC 39.165) since 1993.

The area bounded by 159°00' to 160°00' W. long. and 58°00' to 58°43' N. lat. would remain open to trawling during the period April 1 to June 15 each year. Harvest information indicates that allowing trawling in this area could yield high catches of flatfish and low bycatch of other species. The April 1 to June 15 time period is proposed to reduce bycatch rates of halibut, which move into the nearshore area in June. Sea ice generally prevents fishing operations in northern Bristol Bay before April 1.

The trawl closure north of 58°43' N. lat. is proposed to reduce the potential for high bycatch rates of Pacific herring, a prohibited species in the groundfish fisheries. Increased bycatch rates of herring could increase the potential for reaching trawl fishery bycatch allowances of herring and closure of the Herring Savings Areas under regulations at § 679.21(e)(7)(v). Increased bycatch rates of herring also would precipitate public concern within Western Alaska communities that rely on herring stocks to support subsistence fisheries.

The Council anticipates that the trawl closure area designed to protect juvenile red king crab habitat will maintain and possibly increase recruitment of red king crab. Young-of-the-year red king crab require cobble substrate or epifaunal life forms on which to settle and provide protection from predators. Much of this habitat is already protected by the Area 512 trawl closure. Additional habitat for age–0 red king crab has been found to occur in the shallow waters (<50 m) of Area 508, and in the area north of 58° N. lat.

In addition to establishing the nearshore trawl closure area, the Council also recommended that NMFS remove regulations at § 679.22(a)(1)(ii), (a)(2)(ii), and (a)(3) that allow trawling for Pacific cod in the Port Moller area. The Port Moller exemption area for trawl gear was established in 1987 by Amendment 10 to the FMP. These regulations originally provided an opportunity to fish for Pacific cod with trawl gear in portions of BSAI reporting areas 512 and 516, provided that such fishing was in compliance with a scientific data collection and monitoring program. A separate PSC limit of 12,000 red king crab applied to this area in the advent that trawl operations were allowed. Fisheries for Pacific cod occurred within these areas in 1986 to 1990. Although these regulations provide the authority to open these areas, the authority has not been invoked since 1990.

In light of the current status of red king crab and the fact that a fishery has not occurred in these areas in recent years, the Council recommended that these regulations be removed.

In addition, to maintain consistency with the Council's intent for implementation of Amendment 1 to the Fishery Management Plan for the Scallop Fishery off Alaska (Scallop FMP), NMFS also proposes to amend regulations at § 679.62(d). The Council recommended Amendment 1 to the Scallop FMP in June of 1995 and the final rule implementing this amendment was published on July 23, 1996 (61 FR 38099). Under section 2.5.5 of the Scallop FMP, the Council intended that areas closed to vessels fishing for groundfish with non-pelagic trawl gear to protect red king crab or red king crab habitat would also be closed to scallop dredging to ensure protection of red king crab. Therefore, NMFS is proposing to amend regulations at § 679.62(d), to include the RKCSA and the Nearshore Bristol Bay Trawl Closure area as areas that would also be closed to scallop dredging. Historical data indicate that scallop fishing has not occurred in the RKCSA and the Nearshore Bristol Bay Trawl Closure area; therefore, operators of scallop vessels should not be affected by these closures.

Observer Coverage

All vessels, including vessels using pot, jig, and longline gear, that fish for groundfish in the RKCSA would be required to carry an observer during 100 percent of their fishing days. This provision for increased observer coverage also would apply to vessels using non-pelagic trawl gear to fish for groundfish in the RKCSS when this subarea of the RKCSA is open to non-pelagic trawling. This increased observer requirement is necessary to ensure that operators of vessels using pelagic trawl gear adhere to the current crab performance standard for pelagic trawl gear set out at § 679.7(c)(4) and to more fully monitor crab bycatch in non-pelagic trawl and other gear fishing operations.

For the same reason, the Council also recommended 100 percent observer coverage for trawl vessels fishing for groundfish in the area of the Nearshore Bristol Bay Trawl Closure bounded by 159° and 160° W. long. and 58° and 58°43' N. lat. when this area is open to trawling from April 1 to June 15 each year. The number of vessels that may be affected by the requirement for increased observer coverage is not known and would depend on the current level of observer coverage for individual vessels as well as a vessel operator's decision on whether to fish in the areas subject to increased observer coverage. However, for those vessels that would require increased observer

coverage, the cost per vessel per day is approximately $200.

The term ''fishing days'' is defined at § 679.2 for purposes of observer coverage requirements and does not include days during which a vessel only delivers unsorted codends to a processor. Therefore, catcher vessels used only for this purpose would be exempt from increased observer coverage requirements.

The proposed increase in observer coverage outlined above is a supplement to a previous proposed rule published on August 2, 1996 (61 FR 40353), that, if approved by NMFS, would establish 1997 observer coverage levels. Pending their approval, NMFS anticipates the August 2 proposed rule will be effective prior to the effective date of increased observer coverage requirements proposed under this action.

Zone 1 PSC limit

The Council adopted a modification to the 200,000 red king crab PSC limit currently established for Zone 1 and recommended that the PSC limit be annually specified based on the population indicators of Bristol Bay red king crab outlined as follows:

a. When the number of mature female red king crab is equal to or below the threshold number of 8.4 million crab, or the effective spawning biomass (ESB) is less than 14.5 million lb (6,577 mt), the Zone 1 red king crab PSC limit would be 35,000 crabs;

b. When the number of mature female red king crab is above threshold, and the ESB is equal to or greater than 14.5 million lb (6,577 mt) but less than 55 million lb (24,948 mt), the Zone 1 red king crab PSC limit would be 100,000 crab; and

c. When the number of mature female red king crab is above threshold, and the ESB is equal to or greater than 55 million lb (24,948 mt) the Zone 1 red king crab PSC limit would be 200,000 crab.

Crab are caught incidentally during harvest operations for groundfish. One objective of the FMP is to minimize the impact of BSAI groundfish fisheries on crab and other prohibited species while providing for rational and optimal use of the region's fishery resource. All gear types used to catch groundfish have some potential to catch crab incidentally, but most of the crab bycatch occurs in trawl fisheries.

A PSC limit of 135,000 red king crab was established in 1987 for the domestic yellowfin sole/other flatfish fishery in Zone 1. This PSC limit was based on a negotiated agreement between crab and groundfish industry representatives. In 1989, the Zone 1 red king crab PSC limit was extended to the remaining trawl fisheries and increased to the current level of 200,000 crab. This PSC limit is apportioned among trawl fisheries during the annual specification process as fishery specific bycatch allowances. When a fishery attains its specified bycatch allowance, Zone 1 is closed to that fishery.

The bycatch of red king crab in BSAI groundfish fisheries totaled 48,191 in 1995, which was down significantly from a recent high of 281,023 in 1994. Most red king crab bycatch is taken in the trawl fisheries (97 percent). The rock sole/flathead sole/''other flatfish'' fishery accounts for most of the red king crab trawl bycatch. Approximately 80 percent of the red king crab bycatch has been taken from the area encompassed by the existing crab protection Zone 1.

The Council's proposed adjustment to the red king crab PSC limit is an effort to protect further the stocks of Bristol Bay red king crab by limiting the incidental take of this species when the stock is depressed. The proposed criteria for the annual specification of the PSC limit were developed by the BSAI Crab Plan Team, based on input from the Council's Scientific and Statistical Committee, and use the mature female crab threshold number established in the Crab FMP plus the effective spawning biomass annually derived by NMFS and the Alaska Department of Fish and Game as a basis for establishing an annual red king crab PSC limit.

In addition to the above, the EA/RIR/IRFA for Amendment 37 also includes information on and alternatives for bycatch limits for Tanner and snow crab. However, the Council made no recommendations, other than the status quo, on bycatch limits for Tanner and snow crab at this time. The Council indicated that action, other than status quo, may be taken in September 1996. If measures are adopted at that time, they would proceed as a separate FMP amendment.

Economic considerations

Estimates based on the Bering Sea simulation model indicate that the proposed management measures would lead to a slight decrease in the net benefits to the Nation over the status quo based on both the 1993 and 1994 data. The approximately $1.1 million decrease in net benefits (1993 data) and $1.3 million decrease in net benefits (1994 data) result in approximately a 0.4 percent and a 0.5 percent decrease of the net benefits to the Nation under status quo from 1993 and 1994 data, respectively. However, given a certain level of uncertainty inherent in the data, and in the model procedures, these predicted changes in net benefits to the Nation are probably not great enough to indicate an actual change from the status quo.

In general, time area closures cause shifts in groundfish fishery effort. With each additional bycatch restriction, options for the groundfish trawl fleets are reduced and these effort shifts could increase the bycatch of other prohibited species. To some extent, this situation occurred in the rock sole trawl fishery as a result of implementing the RKCSA in 1995 and 1996. However, these tradeoffs will occur with any protection closure that may be implemented.

Other proposed changes to the regulations

NMFS proposes to correct the regulations at § 679.21(e)(7)(iii) to remove an incorrect reference to a Zone 2 red king crab PSC limit. NMFS also proposes to clarify the regulations by rearranging regulatory text. The paragraph that closes the Chum Salmon Savings Area was originally placed in the Prohibited Species management section of regulations at § 679.21. NMFS proposes to redesignate this paragraph from the Prohibited Species Management section at § 679.21(e)(7)(vi)(A)(*1*) to § 679.22(a)(10), the Closure section. This redesignation would simply move an existing paragraph from one section to another more applicable section to maintain consistency in the placement of closure restrictions.

Classification

Section 304(a)(1)(D) of the Magnuson Act requires NMFS to publish regulations proposed by a Council within 15 days of receipt of an FMP amendment and regulations. At this time, NMFS has not determined that the FMP amendment these rules would implement is consistent with the national standards, other provisions of the Magnuson Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

The Council prepared an IRFA as part of the RIR, which describes the impact this proposed rule would have on small entities, if adopted. Many trawl vessels and processors participating in the BSAI groundfish fishery could be affected by this proposed action. Potentially, scallop vessels could also be affected by the closure areas in this action. However, historical data indicate that scallop vessels have not fished in the closed areas; therefore, they are unlikely to be affected by this action. Most

catcher vessels harvesting groundfish off Alaska are considered small entities and would be affected by the trawl closure areas. The economic impact on small entities that would result from closures could result in a reduction in annual gross revenues by more than 5 percent and would have a significant economic impact on a substantial number of small entities. The 132 catcher vessels that harvested groundfish off Alaska in 1993 are considered small entities. That many vessels could be affected by the trawl closure areas and the changes to the Zone 1 red king crab PSC limits, based on the best available information. A copy of this analysis is available from the Council (see **ADDRESSES**).

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 679

Fisheries, Reporting and recordkeeping requirements.

Dated: September 4, 1996.

N. Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*

2. In § 679.2, definitions of the ''Nearshore Bristol Bay Trawl Closure Area'', the ''Red King Crab Savings Area'', and the ''Red King Crab Savings Subarea'' are added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Nearshore Bristol Bay Trawl Closure Area of the BSAI (see § 679.22(a)(9))

* * * * *

Red King Crab Savings Area (RKCSA) of the BSAI (see § 679.22(a)(3))

Red King Crab Savings Subarea (RKCSS) of the BSAI (see § 679.21(e)(3)(ii)(B))

* * * * *

3. In § 679.7, paragraph (c)(1) is removed and paragraph (c)(2) is redesignated as paragraph (c)(1), paragraph (c)(3) is redesignated as paragraph (c)(2) and paragraph (c)(4) is redesignated as paragraph (c)(3).

4. In § 679.21 the heading of paragraph (e)(7)(vi)(A) and paragraph (e)(7)(vi)(A)(*2*) are removed, paragraph (e)(7)(vi)(A)(*2*) is redesignated as paragraph (e)(7)(vi)(A), paragraph (e)(3)(ii)(B) is redesignated as paragraph (e)(3)(ii)(C), paragraphs (e)(1)(i), (e)(6), (e)(7)(ii), (e)(7)(iii), are revised, and paragraph (e)(3)(ii)(B) is added to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e)* * * (1) * * * (i) *Red king crab in Zone 1*—The PSC limit of red king crab caught by trawl vessels while engaged in directed fishing for groundfish in Zone 1 during any fishing year will be specified annually by NMFS, after consultation with the Council, based on abundance and spawning biomass of red king crab using the criteria set out under paragraphs (e)(1)(i) (A) through (C) of this section.

(A) When the number of mature female red king crab is at or below the threshold of 8.4 million mature crab or the effective spawning biomass is less than or equal to 14.5 million lb (6,577 mt), the Zone 1 PSC limit will be 35,000 red king crab.

(B) When the number of mature female red king crab is above the threshold of 8.4 million mature crab and the effective spawning biomass is equal to or greater than 14.5 but less than 55 million lb (24,948 mt), the Zone 1 PSC limit will be 100,000 red king crab.

(C) When the number of mature female red king crab is above the threshold of 8.4 million mature crab and the effective spawning biomass is equal to or greater than 55 million lb, the Zone 1 PSC limit will be 200,000 red king crab.

* * * * *

(3)* * * (ii) * * * (B) *Red King Crab Savings Subarea (RKCSS).* (*1*) The RKCSS is the portion of the RKCSA between 56° 00' and 56° 10' N. lat. Notwithstanding other provisions of this part, vessels using non-pelagic trawl gear in the RKCSS may engage in directed fishing for groundfish in a given year if the ADF&G had established a guideline harvest level the previous year for the red king crab fishery in the Bristol Bay area.

(*2*) When the RKCSS is open to vessels fishing for groundfish with non-pelagic trawl gear under paragraph (e)(3)(ii)(B)(*1*) of this section, NMFS, after consultation with the Council, will specify an amount of the red king crab bycatch limit annually established under paragraph (e)(1)(i) of this section for the RKCSS. The amount of the red king crab bycatch limit specified for the RKCSS will not exceed an amount equivalent to 35 percent of the trawl bycatch allowance specified for the rock sole/flathead sole/''other flatfish'' fishery category under this paragraph (e)(3) and will be based on the need to optimize the groundfish harvest relative to red king crab bycatch.

* * * * *

(6) *Notification*—(i) *General.* NMFS will publish annually in the Federal Register the annual red king crab PSC limit and, if applicable, the amount of this PSC limit specified for the RKCSS, the proposed and final bycatch allowances, seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, as required under this paragraph (e).

(ii) *Public comment.* Public comment will be accepted by NMFS on the proposed annual red king crab PSC limit and, if applicable, the amount of this PSC limit specified for the RKCSS, the proposed and final bycatch allowances, seasonal apportionments thereof, and the manner in which seasonal apportionments of nontrawl fishery bycatch allowances will be managed, for a period of 30 days from the date of publication in the Federal Register.

(7) * * *

(ii) *Red king crab or C. bairdi Tanner crab, Zone 1, closure.* (A) *General.* Except as provided in paragraph (e)(7)(i) of this section, if, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs (e)(3)(iv)(B) through (F) of this section will catch the Zone 1 bycatch allowance, or seasonal apportionment thereof, of red king crab or *C. bairdi* Tanner crab specified for that fishery category under paragraph (e)(3) of this section, NMFS will publish in the Federal Register the closure of Zone 1, including the RKCSS, to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season.

(B) *RKCSS.* If during the fishing year the Regional Director determines that the amount of the red king crab PSC limit that is specified for the RKCSS under § 679.21(e)(3)(ii)(B) of this section will be caught, NMFS will publish in the Federal Register the closure of the RKCSS to directed fishing for groundfish with non-pelagic trawl gear for the remainder of the year.

(iii) *C. bairdi Tanner crab, Zone 2, closure.* Except as provided in paragraph (e)(7)(i) of this section, if, during the fishing year, the Regional Director determines that U.S. fishing vessels participating in any of the fishery categories listed in paragraphs

(e)(3)(iv)(B) through (F) of this section will catch the Zone 2 bycatch allowance, or seasonal apportionment thereof, of *C. bairdi* Tanner crab specified for that fishery category under paragraph (e)(3) of this section, NMFS will publish in the Federal Register the closure of Zone 2 to directed fishing for each species and/or species group in that fishery category for the remainder of the year or for the remainder of the season.

* * * * *

5. In § 679.22, paragraphs (a)(1), (a)(2), and (a)(3) are revised and paragraphs (a)(9) and (a)(10) are added to read as follows:

§ 679.22 Closures.

(a) * * *

(1) *Zone 1 (512) closure to trawl gear.* No fishing with trawl gear is allowed at any time in reporting Area 512 of Zone 1 in the Bering Sea subarea.

(2) *Zone 1 (516) closure to trawl gear.* No fishing with trawl gear is allowed at any time in reporting Area 516 of Zone 1 in the Bering Sea Subarea during the period March 15 through June 15.

(3) *Red King Crab Savings Area.* Directed fishing for groundfish by vessels using trawl gear other than pelagic trawl gear is prohibited at all times, except as provided at § 679.21(e)(3)(ii)(B) of this section, in that part of the Bering Sea subarea defined by straight lines connecting the following coordinates, in the order listed:

Latitude Longitude
56°00' N., 162°00' W.
56°00' N., 164°00' W.
57°00' N., 164°00' W.
57°00' N., 162°00' W.
56°00' N., 162°00' W.

* * * * *

(9) *Nearshore Bristol Bay Trawl Closure.* Directed fishing for groundfish by vessels using trawl gear in Bristol Bay, as described in the current edition of NOAA chart 16006, is closed at all times in the area east of 162°00' W. long., except that the area bounded by a straight line connecting the following coordinates in the order listed below is open to trawling from 1200 hours (A.l.t.) April 1 to 1200 hours (A.l.t) June 15 of each year:

Latitude Longitude
58°00'N., 160°00'W.
58°43'N., 160°00'W.
58°43'N., 159°00'W.
58°00'N., 159°00'W.
58°00'N., 160°00'W.

(10) Trawling is prohibited from August 1 through August 31 in the Chum Salmon Savings area defined at § 679.21(e)(7)(vi)(B).

* * * * *

6. The proposed rule published at 60 FR 40380, August 2, 1996, proposing to amend 50 CFR part 679, is further proposed to be amended by adding paragraphs (c)(1)(viii) and (c)(1)(ix) to §679.50 to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 1997.

* * * * *

(c)* * *

(1) * * *

(viii) *Red King Crab Savings Area.* (A) Any catcher/processor or catcher vessel used to fish for groundfish in the Red King Crab Savings area must carry a NMFS-certified observer during 100 percent of its fishing days in which the vessel uses pelagic trawl gear, pot, jig, or longline gear.

(B) Any catcher/processor or catcher vessel used to fish for groundfish in the Red King Crab Savings Subarea and subject to this subarea being open to vessels fishing for groundfish with non-pelagic trawl gear under § 679.21(e)(3)(ii)(B) of this part, must carry a NMFS-certified observer during 100 percent of its fishing days in which the vessel uses non-pelagic trawl gear.

(ix) *Nearshore Bristol Bay Trawl Closure.* Any catcher/processor or catcher vessel used to fish for groundfish in the Nearshore Bristol Bay Trawl Closure area must carry a NMFS-certified observer during 100 percent of its fishing days in which the vessel uses trawl gear.

* * * * *

7. In § 679.62, paragraph (d) is revised to read as follows:

§ 679.62 General limitations.

* * * * *

(d) *Closed areas.* It is unlawful for any person to dredge for scallops in any Federal waters off Alaska that are closed to fishing with trawl gear or non-pelagic trawl gear under

§ 679.22(a)(1)(i), (a)(2)(i), (a)(3), (a)(4), (a)(6), (a)(7), (a)(9), and (b).

[FR Doc. 96–23039 Filed 9–9–96; 11:40 am]
BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 61, No. 178
Thursday, September 12, 1996

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

Submission for OMB Review; Comment Request

September 6, 1996.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Department Clearance Officer, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7630. Copies of the submission(s) may be obtained by calling (202) 720–6204 or (202) 720–6746.

- Rural Utilities Service

Title: 7 CFR 1789, Use of Consultants Funded by Borrowers.

Summary: Section 18(c) of the RE Act (7 U.S.C. 918(c)) authorizes RUS to use consultants voluntarily funded by borrowers for financial, legal, engineering, and other technical services. The consultants may be used to facilitate timely action on applications by borrowers for financial assistance and for approvals required by RUS pursuant to the terms of outstanding loan or security instruments or otherwise.

Need and Use of the Information: The information will be used by RUS to determine whether it is appropriate to use a consultant voluntarily funded by the borrower to expedite a particular borrower application.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 6.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 12.

- Food Safety and Inspection Service

Title: Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems.

Summary: FSIS is establishing requirements applicable to meat and poultry establishments designed to reduce the occupance and numbers of pathogenic microorganisms on meat and poultry products, reduce the incidence of foodborne illness associated with the consumption of those products, and provide a new framework for modernization of the current system of meat and poultry inspection.

Need and Use of the Information: The HACCP process will help reduce or eliminate the presence of pathogenic microorganisms in meat and poultry products.

Description of Respondents: Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 9,079.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Daily.

Total Burden Hours: 7,904,222.

- Forest Service

Title: State and Private Forestry Accomplishment Reporting.

Summary: USDA Forest Service through its State and Private Forestry Branch conducts a number of cooperative programs within State agencies. These cooperative programs in Forest Management, Watershed Management, Insect and Disease Control, Forest Fire Control, Rural Community Fire Protection, and Resource Conservation and Development operate in all 50 states, Guam, Puerto Rico and the Virgin Islands.

Need and Use of the Information: Information is utilized for management reviews and audits of grant recipients and to determine that funds are being expended in a non-discriminatory manner.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 53.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 524.

- Farm Service Agency

Title: Annual Certification Requirements (7 CFR Parts 12 and 718), Assignment of Payments (7 CFR Part 1404, and Power of Attorney 7 CFR Part 720)—Addendum II.

Summary: These are new requirements enacted under the Federal Agriculture Improvement and Reform Act of 1996.

Need and use of the Information: The information is needed in order for the county and state committee to determine benefits available to the producer(s).

Description of Respondents: Farms.

Number of Respondents: 1,400,250.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,779,710.

- Food and Consumer Service

Title: 7 CFR Part 220—School Breakfast Program.

Summary: The School Breakfast Program provides for the appropriation of ''such sums as are necessary to enable the Secretary of Agriculture to carry out a program to assist in initiating, maintaining or expanding nonprofit breakfast programs in all schools which make application for assistance and agree to carry out a nonprofit breakfast program in accordance with this Act.''

Need and Use of the Information: Serious legal and accountability questions would be raised if this collection was not conducted.

Description of Respondents: State, Local, or Tribal Government; Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government

Number of Respondents: 66,272.

Frequency of Responses: Recordkeeping; Reporting; Monthly; Quarterly; Semi-annually; Annually; Daily.

Total Burden Hours: 3,667,170.

- Food and Consumer Service

Title: 7 CFR Part 210—National School Lunch Program.

Summary: The National School Lunch Program provides for safeguarding the health and well-being of the Nation's children and to encourage the domestic consumption of nutritious agricultural commodities and other food, by assisting the States in providing an adequate supply of food and other facilities for the establishment,

maintenance, operation , and expansion of nonprofit school lunch programs.

Need and Use of the Information: Serious legal and accountability questions would be raised if the collection of information was not collected.

Description of Respondents: State, Local, or Tribal Government; Individuals or households; Business or other for-profit; Not-for-profit institutions; Federal Government.

Number of Respondents: 114,169.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Monthly; Semi-annually; Annually; Biennially; Daily.

Total Burden Hours: 9,136,382.

• Animal and Plant Health Inspection Service

Title: National Animal Health Monitoring System (NAHMS).

Summary: Data will be collected from individuals and organizations involved in the dairy, beef, poultry, aquaculture, sheep, and equine industries, as well as from individuals or groups with knowledge of the scope, causes, and public health and/or economic consequences of new and emerging animal health issues.

Need and Use of the Information: The information collected will be used to identify baseline trends; to determine risks and consequences of new and emerging animal health issues; and to determine the economic consequences of animal diseases management and environmental practices.

Description of Respondents: Farms; State, Local, or Tribal Government.

Number of Respondents: 7,240.

Frequency of Responses: Reporting: On occasion; Monthly; Quarterly.

Total Burden Hours: 5,280.

• Agricultural Marketing Service

Title: Reporting and Record Keeping Requirements under Regulations (other than Rules of Practice) Under the Perishable Agricultural Commodities Act, 1930.

Summary: The Perishable Agricultural Commodities Act establishes a code of fair trading practices covering the marketing of fresh and frozen fruits and vegetables. It protects growers, shippers, and distributors by prohibiting unfair practices.

Need and Use of the Information: The Perishable Agricultural Commodities Act requires nearly all commission merchants, dealers, and brokers buying or selling fruits and/or vegetables in interstate or foreign commerce to be licensed. The information collected is used to administer licensing provisions under the Act.

Description of Respondents: Business or other for-profit; Individuals or households; Farms;

Number of Respondents: 15,550.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually.

Total Burden Hours: 118,476.

• Forest Service

Title: Visitor Permit and Visitor Registration Card

Summary: The visitor permit is used only where public use levels must be managed to prevent resource damage, preserve quality of the experience, or for public safety. The visitor registration card is for use as mandated by management plans.

Need and Use of the Information: Not having the permit and registration card could cause overuse and site deterioration in some environmentally sensitive areas. Not having the registration card would mean special studies to collect use data or management decisions based on little data.

Description of Respondents: Individuals or households.

Number of Respondents: 329,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 16,500.

• National Agricultural Statistics Service

Title: 1997 Census of Agriculture

Summary: The Census of Agriculture is conducted every 5 years. It covers all agricultural operations in each state, the Commonwealth of Puerto Rico, Guam, the U.S. Virgin Islands and the Commonwealth of the Northern Mariana Islands that meet the farm definition. Detailed benchmark data are provided every 5 years for the agricultural sector of the economy.

Need and Use of the Information: The Census of Agriculture provides the only source of periodic, comparable, detailed county data descriptive of the structure of the agricultural production sectors of the United States and its territories.

Description of Respondents: Farms.

Number of Respondents: 3,586,880.

Frequency of Responses: Reporting: Every 5 years.

Total Burden Hours: 1,319,438.

Larry K. Roberson,

Deputy Departmental Clearance Officer.

[FR Doc. 96–23402 Filed 9–11–96; 8:45 am]

BILLING CODE 3410–D–M

Agricultural Marketing Service

[DA–93–06]

Milk for Manufacturing Purposes and Its Production and Processing; Requirements Recommended for Adoption by State Regulatory Agencies

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: This document amends the recommended manufacturing milk requirements (Recommended Requirements) by reducing the maximum allowable bacterial estimate and somatic cell count in producer herd milk and by reducing the maximum allowable bacterial estimate in commingled milk. In addition, this amendment modifies the follow-up procedures when producer herd milk exceeds the maximum allowable bacterial estimate. The amendment to reduce somatic cell count and bacterial estimate was initiated at the request of the National Association of State Departments of Agriculture (NASDA) and was developed in cooperation with NASDA, dairy trade associations, and producer groups.

EFFECTIVE DATE: November 12, 1996.

FOR FURTHER INFORMATION CONTACT: Roland S. Golden, Dairy Products Marketing Specialist, Dairy Standardization Branch, USDA/AMS/Dairy Division, Room 2750–S, P.O. Box 96456, Washington, DC 20090–6456, (202)720–7473.

SUPPLEMENTARY INFORMATION: Under the authority of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621-1627), the U.S. Department of Agriculture maintains a set of model regulations relating to quality and sanitation requirements for the production and processing of manufacturing grade milk. These Recommended Requirements are available for adoption by the various States. The purpose of the model requirements is to promote, through State adoption and enforcement, uniformity in State dairy laws and regulations relating to manufacturing grade milk.

On July 22, 1992, the Dairy Division of NASDA passed a resolution recommending that certain milk quality requirements be tightened. The Dairy Division of NASDA requested that the maximum allowable bacterial estimate in producer herd milk be reduced from 1,000,000 per ml. to 500,000 per ml. and that the maximum allowable somatic cell count in producer herd milk be

reduced from 1,000,000 per ml. to 750,000 per ml. (The changes for somatic cell count only apply to milk from cows, not milk from goats.) The Dairy Division of NASDA also requested that the maximum allowable bacterial estimate in commingled milk be reduced from 3,000,000 per ml. to 1,000,000 per ml.

Their desire to have these changes were further reinforced in a resolution passed on July 18, 1994. In this resolution, the Dairy Division of NASDA requested that USDA expedite the printing of this amendment.

In addition, certain State regulatory agencies have requested modifications to the follow-up procedures when producer herd milk exceeds the maximum allowable bacterial estimate. Changes are made that increase uniformity with producer herd milk bacteria and somatic cell follow-up procedures. This modified follow-up program is more adaptable to computer-based recordkeeping.

In order to align the bacterial estimate and somatic cell count requirements contained in the Recommended Requirements with the resolution passed by NASDA, USDA is amending this document as follows:

1. *Reduce the maximum somatic cell count permitted in producer herd milk (no change for goat milk).* The number of leukocytes (somatic cells) present in milk increases as a result of mammary gland infection (mastitis) and provides information regarding the health of the dairy herd. The National Mastitis Council (NMC) is an organization that promotes research and provides educational materials to help dairy producers reduce the incidence of mastitis and thus enhance milk quality. In their publication entitled *Current Concepts of Bovine Mastitis* [1], the NMC states that ''Presence of more than 500,000 leukocytes per milliliter of mixed herd milk suggests a significant incidence of mastitis in a given herd.'' Changes in the Recommended Requirements will reduce the maximum somatic cell count permitted in producer herd milk (cows milk only) from 1,000,000 to 750,000 per ml. Through effective herd management, many dairy farmers have reduced the number of somatic cells well below this maximum limit. Since the number of somatic cells found in milk produced from healthy goats is normally higher than the number found in cows milk, similar reductions have not been made for goat milk.

2. *Delete the laboratory screening tests for somatic cells in producer herd milk samples (no change for goat milk).* The California Mastitis Test (CMT) and the Wisconsin Mastitis Test (WMT) were used as screening tests for somatic cells. These screening tests are accurate for samples containing 1,000,000 or more somatic cells per ml. Since this action reduces maximum somatic cell count to 750,000 per ml., the CMT and WMT tests are not accurate enough to screen cow milk at the reduced level. Since the maximum somatic cell count for goat milk remains at 1,000,000 per ml., the CMT and WMT tests may continue to be used to screen goat milk. This amendment identifies those tests that may be used for somatic cell counting and makes provisions for additional methods that may later be added to the latest edition of ''Standard Methods for the Examination of Dairy Products.''

3. *Reduce the maximum bacterial estimate permitted in producer herd milk.* The number of bacteria present in milk increases when the equipment and utensils used to collect and store the milk are improperly cleaned and sanitized. This number increases rapidly in milk that is not cooled promptly or is not maintained at refrigerated temperatures throughout storage. Enhanced milk quality can be attained when dairy equipment is properly cleaned and sanitized, and when milk is promptly cooled and stored at refrigerated temperatures. Improvements in sanitation practices and milk cooling equipment has resulted in enhanced milk quality. Changes in the Recommended Requirements reduce the maximum permissible bacteria count in producer herd milk from 1,000,000 to 500,000 per ml.

4. *Modify the follow-up procedures when producer herd milk exceeds the maximum allowable bacterial estimate.* Changes have been made that modify the follow-up procedures when producer herd milk exceeds the maximum permitted bacterial estimate. These changes now require dairy plant personnel to notify the appropriate State regulatory authority when two of the last four consecutive bacterial estimates exceed the maximum permitted. The State regulatory authority would then send a written warning letter to the producer. After 3 days but within 21 days, an additional sample of herd milk is tested. If this sample also exceeds the maximum permitted, that producer's herd milk is excluded from the market until satisfactory compliance is obtained.

These changes increase uniformity with producer herd milk bacteria and somatic cell follow-up procedures and provide greater adaptability to computer-based recordkeeping.

5. *Reduce the maximum permitted bacterial estimate in commingled milk.* Commingled milk is the combined milk from more than one producer. Reductions in the maximum bacterial estimate for producer herd milk should result in improved commingled milk quality. Changes in the Recommended Requirements are made to reflect this improved milk quality by reducing the maximum permissible bacterial estimate in commingled milk from 3,000,000 to 1,000,000 per ml.

6. *In order to provide consistency throughout the Recommended Requirements, changes in terminology and formatting have been made.* The amendment: (a) Revises the definitions for ''acceptable milk'' and ''probational milk'' by deleting the reference to bacterial estimate; (b) revises the requirements for ''excluded milk'' by incorporating provisions for milk with a history of excessive bacteria counts; (c) revises the terms of quality testing of milk from producers by including bacterial requirements; and (d) instructs dairy plant management to provide field assistance to farmers concerning excessive bacteria counts.

Public Comment

On October 6, 1994, the Department published (59 FR 50894) a notice of intent to amend the ''Milk for Manufacturing Purposes and Its Production and Processing; Recommended Requirements for Adoption by State Regulatory Agencies.'' The public comment period closed December 5, 1994. Comments were received from 52 commenters: 27 manufacturing grade milk producers, 12 dairy plant personnel, 6 State regulatory agencies, 2 private individuals, 1 national dairy trade associations, 1 national association representing State regulatory agencies, 1 veterinary association, 1 national goat association, 1 goat research center, 1 county commissioner office, and 1 State dairy association.

Discussion of Comments

1. Fifteen Commenters Stated That Current Somatic Cell Counts Do Not Pose a Public Health Hazard

Milk is defined in 21 CFR 131.110 as ''* * * the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows.'' Somatic cell levels in some milking herds (cattle) have been

[1] R.W. Brown, Current Concepts of Bovine Mastitis, Washington: National Mastitis Council, 1965, pp. 30–34.

maintained at or below 200,000. These levels indicate a healthy milking herd. Research by the National Mastitis Council (NMC) states somatic cell levels above 500,000 generally indicate the presence of mastitis in the milking herd. Mastitis is caused by an infection of the milk-producing tissue in the udder.

Somatic cell counts are a measure of the health of the lactating dairy animal and provide an indirect measure of the public health safety of the raw milk. The level at which somatic cells pose a public health hazard is not known. While the previous level of 1,000,000 somatic cells per ml. is not considered to be a public health concern, a lower level is readily obtainable and improves the milk production of the dairy cow and the quality of the dairy products.

2. Fourteen Commenters Felt That Milk Containing 1,000,000 Somatic Cells Does Not Affect Product Quality

Research published by National Mastitis Council[2] and the *Journal of Dairy Science*[3] has shown that milk protein content and cheese yield are reduced as somatic cell counts increase. Studies in these two publications also showed a corresponding increase in the frequency of quality defects in Cheddar cheese with somatic cell counts over 500,000. Research indicates that higher somatic cell counts affect product quality.

3. Twenty-Seven Commenters Expressed Concern That the Reduction in the Somatic Cell Count Requirement Would Cost the Producer More for Rejected Milk, Medication Costs and Veterinarian Fees

The effort to lower somatic cell levels in a dairy herd is primarily one of management, not cost. Some management practices which have been found effective in reducing somatic cell count include:

—proper nutrition
—maintaining a clean and safe housing and milking environment
—proper udder preparation prior to milking
—post-milking teat dipping
—maintenance, cleaning and sanitizing of milking equipment
—a regular individual cow monitoring program which includes dry cow treatment.

Better management will reduce the cost of medication, veterinarian fees, and rejected milk and will increase production because overall herd health will improve. In addition, lower somatic cell counts can also translate into price incentives for the dairy producer from the buyer of the milk. While there may be added costs to maintain a dairy herd's somatic cell count below 750,00 per ml., an increase in production and price incentives should more than offset the additional expense.

4. Eleven Commenters Expressed Dissatisfaction With the Same Somatic Cell Count Regulations for Manufacturing Grade Milk as Are Required for Higher-Priced Grade A Milk

The definition of milk in 21 CFR 131.110 does not distinguish between different grades of milk. It requires that all milk offered for sale must be obtained from ''* * * the milking of one or more healthy cows.'' Somatic cell counts are one measure of the health status of a lactating dairy animal. A healthy cow should be the basis for the production of all grades of milk. Somatic cell levels of 1,000,000 for a dairy herd indicate production of milk is originating from one or more animals with mastitis.

Somatic cell levels in international markets for products which use manufacturing grade milk influence our ability to effectively compete. The International Dairy Federation (IDF) published information from 23 countries[4] which showed the average dairy herd somatic cell count at less than 500,000 per ml. In order to have access to these international markets, it will be necessary for the United States dairy industry to establish somatic cell counts which, through effective dairy herd management, are readily attainable.

5. Four Commenters Felt That Extremely Cold Weather Results in Increased Incidence of Mastitis

The increase in somatic cell counts tends to increase under any type of stress, including environmental stress. Temperature extremes, both hot and cold, may increase somatic cell counts. Cold weather conditions require adequate housing for the milking herd and an increased management focus on environmental cleanliness. Freezing of teat ends caused by cold weather and injury to teat ends caused by close confinement need special management attention. Inadequate housing and lack of attention to the special needs of the dairy herd during cold weather periods can result in increased incidence of mastitis.

6. One Commenter Suggested the Reduction in the Bacteria Count for Producer Herd Milk Be Reduced to 750,000 per ml., Instead of 500,000 per ml.

The Department feels that a bacterial level of 500,000 per ml. is representative of the manufacturing milk produced today utilizing good management practices, adequate milking equipment, and proper cooling of the milk at the farm. A single failure to maintain bacterial levels below 500,000 per ml. will not result in regulatory action against a producer. Only after bacterial counts exceed 500,000 per ml. for three of the last five samples, does the regulatory agency begin action to exclude that milk from the market. This approach allows the dairy producer time to trouble shoot the problem and begin corrective action.

7. Three Commenters Recommended that the Implementation of These Revisions be Delayed

Twenty-three States have already established State laws to meet the bacterial and somatic cell levels proposed in this amendment. The Department understands that those States that have not already approved these changes will need some time to modify their rules, regulations, State laws and testing procedures (somatic cell count). Time will also be required by State regulatory agencies and the dairy industry to become familiar with the new requirements. Some dairy producers may need time to adapt their management practices to these new levels. For these reasons, the Department has selected the effective date for the amended manufacturing milk requirements to be 60 days after publication in the Federal Register.

8. Three Commenters Expressed Concern that if this Amendment is put into Effect, State Laws will have Tighter Requirements than USDA in the Approved Plant Program

The USDA approved plant program is a voluntary plant inspection program that establishes minimum standards in order for a plant to qualify. The changes made in this action affect the recommended requirements that state regulatory agencies utilize to regulate manufacturing grade raw milk. This action will improve the quality of manufacturing grade milk throughout the country and result in milk quality which exceeds the requirements for voluntary USDA-approved plants. Once

[2] ''Udder Topics'', National Mastitis Council Newsletter, Volume 17, No. 4, August 1994.

[3] R.J. Verdi, D.M. Barbano, Journal of Dairy Science, ''Effect of coagulants, somatic cell enzymes, and extracellular bacterial enzymes on plasminogen activation'', American Dairy Science Association, March 1991, v. 74 (3) p. 772–782.

[4] ''Mastitis Cell Count Data'', Newsletters of the International Dairy Federation No. 134, Mastitis Newsletter 18, April 1993.

the dairy industry adapts to this new level, the Department may initiate similar changes in the USDA-approved plant program.

9. One Commenter Suggested that the Specific Testing Protocols for Bacteria were not Listed in Section C11(c) of the Proposed Amendment

An inadvertent error was made in the printing of the notice of intent to amend the recommended requirements. This action has corrected that printing error.

10. One Commenter Suggested that the Direct Microscopic Clump Count be Deleted as a Method to Determine Bacterial Estimate

The direct microscopic clump count is officially recognized and published in Standard Methods for the Examination of Dairy Products, 16th Edition.[5] As such, it is an acceptable test for evaluating the bacterial count along with all other tests listed in Section C4(b).

11. One Commenter Requested that all States Adopt the Current Recommended Manufacturing Milk Requirements

The USDA Recommended Manufacturing Milk Requirements were established as minimum standards for adoption by States. The Department and the National Association of State Departments of Agriculture (NASDA) encourages all States with manufacturing grade milk production and/or processing to adopt these requirements into State law or regulation. There has been good cooperation in State adoption of past changes in the manufacturing milk requirements.

For the reasons set forth in the preamble, the Recommended Requirements which were published in the Federal Register issued April 7, 1972 (37 FR 7046) and amended August 27, 1985 (50 FR 34726) and May 6, 1993 (58 FR 86) are amended as follows:

1. Sec. B2. is amended by revising paragraphs (n) and (o) to read as follows:

* * * * *

(n) Acceptable milk. Milk that qualifies under sec. C2. as to sight and odor and that is classified No. 1 or No. 2 for sediment content (sec. C3.).

(o) Probational milk. Milk classified No. 3 for sediment content that may be accepted by plants for not over 10 days (sec. C3.).

* * * * *

[5] Standard Methods For The Examination Of Dairy Products, 16th Edition, 1992, published by American Public Health Association, 1015 Fifteenth Street, NW, Washington, DC 20005.

2. Sec. C4. is revised to read as follows:

Sec. C4. Bacterial estimate classification

(a) A laboratory examination to determine the bacterial estimate shall be made on each producer's milk at least once each month at irregular intervals. Samples shall be analyzed at a laboratory approved by the State regulatory agency.

(b) Milk shall be tested for bacterial estimate by using one of the following methods or by any other method approved by ''Standard Methods for the Examination of Dairy Products'':

(1) Direct microscopic clump count
(2) Standard plate count
(3) Plate loop count
(4) Pectin gel plate count
(5) Petrifilm™ aerobic count
(6) Spiral plate count
(7) Hydrophobic grid membrane filter count
(8) Impedance/conductance count

(c) Whenever the bacterial estimate indicates the presence of more than 500,000 bacteria per ml., the following procedures shall be applied:

(1) The producer shall be notified with a warning of the excessive bacterial estimate.

(2) Whenever two of the last four consecutive bacterial estimates exceed 500,000 per ml., the appropriate regulatory authority shall be notified and a written warning notice given to the producer. The notice shall be in effect so long as two of the last four consecutive samples exceed 500,000 per ml.

(d) An additional sample shall be taken after a lapse of 3 days but within 21 days of the notice required in paragraph (c)(2) of this section. If this sample also exceeds 500,000 per ml., subsequent milkings shall be excluded from the market until satisfactory compliance is obtained. Shipment may be resumed and a temporary status assigned to the producer by the appropriate State regulatory agency when an additional sample of herd milk is tested and found satisfactory. The producer shall be assigned a full reinstatement status when three out of four consecutive bacterial estimates do not exceed 500,000 per ml. The samples shall be taken at a rate of not more than two per week on separate days within a 3-week period.

3. Sec. C7. is amended by revising paragraphs (a), (c) and (d) to read as follows:

Sec. C7. Excluded milk

A plant shall not accept milk from a producer if:

(a) The producer's initial milk shipment to a plant is classified as No. 3 for sediment content;

(b) * * *

(c) Three of the last five milk samples have exceeded the maximum bacterial estimate of 500,000 per ml. (sec. C4.);

(d) Three of the last five milk samples have exceeded the maximum somatic cell count level of 750,000 per ml. (1,000,000 per ml. for goat milk) (sec. C11.);

* * * * *

4. Sec. C8. is amended by: revising paragraph (a)(1)(i), adding a new paragraph (a)(1)(ii), and redesignating present paragraphs (a)(1)(ii) and (iii) as (a)(1)(iii) and (iv); revising paragraph (b)(1)(i), adding a new paragraph (b)(1)(ii), and redesignating present paragraphs (b)(1)(ii) and (iii) as (b)(1)(iii) and (iv); and revising paragraph (b)(3)(i), adding a new paragraph (b)(3)(ii),and redesignating present paragraphs (b)(3)(ii), (iii), and (iv) as (b)(3)(iii), (iv) and (v) as follows:

Sec. C8. Quality testing of milk from producers

New Producers.

(1) * * *

(i) ''Acceptable milk'' (sec. C2. and C3.);

(ii) Bacterial estimate (sec. C4.);

(iii) Somatic cell count (sec. C11.); and

(iv) Drug residue level (sec. C12.).

(2) * * *

(b) Transfer producers.

(1) * * *

(i) ''Acceptable milk'' (sec. C2. and C3.);

(ii) Bacterial estimate (sec. C4.);

(iii) Somatic cell count (sec. C11.); and

(iv) Drug residue level (sec. C12.).

(2) * * *

(3) * * *

(i) The milk is currently classified ''acceptable'' for sediment;

(ii) Three of the last five consecutive milk samples do not exceed the maximum bacterial estimate;

(iii) Three of the last five consecutive milk samples do not exceed the maximum somatic cell count level requirements;

(iv) The last shipment of milk received from the producer by the former plant did not test positive for drug residue; and

(v) Milk shipments currently are not excluded from the market due to a positive drug residue test.

* * * * *

5. Sec. C10. is revised to read as follows:

Sec. C10. Field service

A representative of the plant shall arrange to promptly visit the farm of each producer whose milk tests positive for drug residue, exceeds the maximum somatic cell count level, exceeds the maximum bacterial estimate, or does not meet the requirements for acceptable milk. The purpose of the visit shall be to inspect the milking equipment and facilities, to offer assistance to improve the quality of the producer's milk, and eliminate any potential cause of drug residue. A representative of the plant should routinely visit each producer as often as necessary to assist and encourage the production of high quality milk.

6. Sec. C11. is revised to read as follows:

(a) A laboratory examination to determine the level of somatic cells shall be made on each producer's milk at least four times in each 6-month period at irregular intervals. Samples shall be analyzed at a laboratory approved by the State regulatory agency.

(b) A screening test may be conducted on goat herd milk. When a goat herd screening sample exceeds either of the following screening test results, a confirmatory test shall be conducted.

(1) California Mastitis Test—Weak Positive (CMT 1).

(2) Wisconsin Mastitis Test—WMT value of 18 mm.

(c) Milk shall be tested for somatic cell content by using one of the following procedures (confirmatory test for somatic cells in goat milk):

(1) Direct Microscopic Somatic Cell Count (Single Strip Procedure). Pyronin Y-Methyl green stain or ''New York'' modification shall be used for goat milk.

(2) Electronic Somatic Cell Count.

(3) Flow Cytometry/Opto-Electronic Somatic Cell Count.

(4) Membrane Filter DNA Somatic Cell Count.

(d) The results of the confirmatory test on goat milk for somatic cells shall be the official results.

(e) Whenever the official test indicates the presence of more than 750,000 somatic cells per ml. (1,000,000 somatic cell per ml. for goat milk), the following procedures shall be applied:

(1) The producer shall be notified with a warning of the excessive somatic cell count.

(2) Whenever two of the last four consecutive somatic cell counts exceed 750,000 per ml. (1,000,000 per ml. for goat milk), the appropriate regulatory authority shall be notified and a written warning notice given to the producer. The notice shall be in effect so long as two of the last four consecutive samples exceed 750,000 per ml. (1,000,000 per ml. for goat milk).

(f) An additional sample shall be taken after a lapse of 3 days but within 21 days of the notice required in paragraph (e) (2) of this section. If this sample also exceeds 750,000 per ml. (1,000,000 per ml. for goat milk), subsequent milkings shall be excluded from the market until satisfactory compliance is obtained. Shipment may be resumed and a temporary status assigned to the producer by the appropriate State regulatory agency when an additional sample of herd milk is tested and found satisfactory. The producer shall be assigned a full reinstatement status when three out of four consecutive somatic cell count tests do not exceed 750,000 per ml. (1,000,000 per ml. for goat milk). The samples shall be taken at a rate of not more than two per week on separate days within a 3-week period.

7. Sec. E1.8 is amended by revising paragraph (b) to read as follows:

Sec. E1.8 Raw Product Storage.

(a) * * *

(b) The bacteriological estimate of commingled milk in storage tanks shall be 1 million per ml. or lower.

Authority: 7 U.S.C. 1621–1627.

Dated: September 6, 1996.

Lon Hatamiya,

Administrator.

[FR Doc. 96–23319 Filed 9–11–96; 8:45 am]

BILLING CODE 3410–02–P

Forest Service

Oil and Gas Leasing Analysis; Helena & Deerlodge National Forests, MT

Counties: Lewis and Clark, Powell, Jefferson, Broadwater, and Meagher.

State: Montana.

AGENCIES: Forest Service, USDA & Bureau of Land Management, USDI.

ACTION: Intent to prepare a supplement to the Final Environmental Impact Statement (FEIS) for the Helena National Forest and Elkhorn Portion of the Deerlodge National Forest Oil and Gas Leasing Analysis.

SUMMARY: USDA Forest Service and USDI Bureau of Land Management will prepare a supplement to the FEIS to disclose the potential cumulative impacts of oil and gas leasing and other reasonably foreseeable projects that have arisen since the FEIS was completed in April, 1995. A year elapsed between completion of the FEIS and publication of the Record of Decision (ROD), and new project proposals had arisen in the interim. The cumulative effects of these reasonably foreseeable projects have not been fully disclosed. This information will be added to previous information for the decision makers as they reconsider their decisions. The area covered by this supplement includes National Forest and split estate lands with Federal mineral ownership within the Helena National Forest and the Elkhorn Mountains portion of the Deerlodge National Forest.

The original Notice of Intent to prepare an Environmental Statement was published in the Federal Register, December 1, 1992, Volume 57, No. 231 page 55900. An amendment to this Notice of Intent was published in the Federal Register, August 19, 1993, volume 58, No. 159 page 44159. The Record of Decision was signed on February 12, 1996 by Forest Supervisor Thomas J. Clifford; and February 14, 1996 by BLM State Director Larry E. Hamilton. The Notice of availability of the Oil & Gas leasing decisions for the Helena Forest and Elkhorn Mountain portions of the Deerlodge National Forest was filed March 5, 1996. This decision was appealed through both the Forest Service and Bureau of Land Management administrative appeals processes. The BLM filed a motion for remand on June 27, 1996 and the BLM decisions were set aside by Administrative Judge John H. Kelly on July 9, 1996. Acting Helena Forest Supervisor Jim Guest withdrew the Forest Service decisions on July 30, 1996. This will allow the potential cumulative impacts of oil and gas leasing and other reasonably foreseeable projects that have arisen since the FEIS was published to be analyzed and considered.

The purpose of the project remains the same as stated in the 1995 FEIS. The Forest Service will decide which lands are available for lease and what mitigating stipulations apply for oil and gas exploration and development. The Forest Service proposes to make minor modifications from the preferred alternative displayed in the February 14, 1996 decision. The modifications include increasing the administratively unavailable acres in the Tenmile area (Helena municipal water supply) and increasing the No Surface Occupancy acres within the Black Mountain area. These changes are proposed following discussions with appellants as part of the administrative appeals process. Other Than the above, issues and alternatives remain the same as disclosed in the 1995 FEIS.

No additional scoping to identify issues and concerns is planned prior to the release of the supplement to the

Environmental Impact Statement. However, the Forest Service and Bureau of Land Management would like to receive information relating to possible changed conditions that may affect leasing decisions and were not considered during the analysis disclosed in the original document.

The agencies are aware of the following reasonably foreseeable proposals and projects which may affect the area under consideration for leasing.

Mining/Mine Reclamation

—Diamond Hill T7N, R1W
—Santa Fe Gold T6N, R2–3N
—Charter Oak Rehabilitation, T9N, R7W
—Vosberg Reclamation T7N, R1W

Vegetation Manipulation

—Poorman T13N, R7–8N
—North Elkhorns T8–9N, R2W
—Bull Sweats T11–12N, R1–2W
—Jericho Salvage T8N, R6W
Elkhorn Travel Plan T6–9N, R1E, R1–3W
Tizer/Park Lake Exchange T8N, R5W; T7N, R2W

DATE: Written comments and suggestions on new circumstances, or new information relevant to environmental concerns with a bearing on this proposed project, or its impacts, should be received by no later than October 15, 1996. A Draft Supplement is scheduled for release in November, 1996. A Final Supplement to the EIS is scheduled for release in February, 1997.

ADDRESSES: Submit written comments and suggestions to Forest Supervisor, Helena National Forest, 2880 Skyway Drive, Helena, Mt. 59601.

FOR FURTHER INFORMATION CONTACT: Tom Andersen, Helena National Forest, 2880 Skyway Drive, Helena, Mt. 59601; phone (406) 449–5201 ext 277.

SUPPLEMENTARY INFORMATION: The Forest Supervisor for the Helena National Forest has been assigned the task of completing the Supplement. The responsible officials who will make the leasing decisions are: Thomas J. Clifford, Forest Supervisor, Helena National Forest, 2880 Skyway Drive, Helena, Mt. 59601; and Larry E. Hamilton, State Director, USDI-Bureau of Land Management, Montana State Office, 222 North 32nd Street, PO Box 36800, Billings, Mt 59107–6800.

They will decide on this proposal after considering comments, responses, and environmental consequences discussed in the FEIS (released March 4, 1996), information contained in this Supplement, (scheduled for release January, 1997) and applicable laws, regulations, and policies. The decision, rationale for the decision, and responses to comments received, will be documented in the FEIS supplement, and in a Record of Decision (ROD).

The comment period on the draft supplement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register.

The Forest Service and Bureau of Land Management believe, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft supplements must structure their participation on the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Power Corp.* v. *NRDC, 435 U.S. 519,553 (1978).* Also, environmental objections that could be raised at the draft supplement stage but that are not raised until after completion of the final supplement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wilson Heritages, Inc.* v. *Harris*, 490 F. Suppl 1334, 1338 (E.D.Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final supplement.

To assist the Forest Service and Bureau of Land Management in identifying and considering concerns on the proposed action, comments on the draft supplement should be as specific as possible. It is also helpful if comments refer to specific pages of the draft supplement. Comments may also address the adequacy of the draft supplement. Reviewers may wish to refer to the Council of Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: August 21, 1996.

James E. Guest,

Acting Forest Supervisor, Helena National Forest.

[FR Doc. 96–23337 Filed 9–11–96; 8:45 am]

BILLING CODE 3410–11–M

Grain Inspection, Packers and Stockyards Administration

Posting of Stockyards

Pursuant to the authority provided under section 302 of the Packers and Stockyards Act (7 U.S.C. 202), it was ascertained that the livestock markets named below were stockyards as defined by section 302 (a). Notice was given to the stockyard owners and to the public as required by section 302 (b), by posting notices at the stockyards on the dates specified below, that the stockyards were subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 et seq.).

Facility number, name, and location of stockyard	Date of posting
AR–171—Roden's Auction Service, DeQueen, Arkansas.	May 1, 1996.
FL–137—Hidden Creek Auction, Jacksonville, Florida.	July 25, 1996.
NC–160—Boone Stockyard, Inc., Boone, North Carolina.	August 22, 1989.
NC–169—North Carolina Horse Auction, Goldston, North Carolina.	May 9, 1996.
NC–171—Foothills Livestock Auction, Inc., Cliffside, North Carolina.	August 2, 1996.
MD–119—Kolb's Sale Barn, Woodsboro, Maryland.	June 3, 1996.
OH–150—Smokey Lane Stables, Inc., Sugarcreek, Ohio.	July 22, 1996.
OH–151—Producers Livestock Association, Gallipolis, Ohio.	June 12, 1996.
TX–345—Giddings Livestock Commission Co., Giddings, Texas.	July 9, 1996.

Done at Washington, D.C., this 4th day of September 1996.

Daniel L. Van Ackeren,

Director, Livestock Marketing Division, Packers and Stockyards Programs.

[FR Doc. 96–23307 Filed 9–11–96; 8:45 am]

BILLING CODE 3410–20–P

Natural Resources Conservation Service

Upper Tioga River Watershed, Pennsylvania; Notice of Intent To Deauthorize Federal Funding

AGENCY: USDA—Natural Resources Conservation Service.

SUMMARY: Pursuant to the Watershed Protection and Flood Prevention Act, Public Law 83–566, and the Natural Resources Conservation Service (formerly Soil Conservation Service) Guidelines (7 CFR part 622); the Natural Resources Conservation Service (formerly the Soil Conservation Service) gives notice of the intent to deauthorize Federal funding for the Upper Tioga

River Watershed project, Tioga County, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Ms. Janet L. Oertly, State Conservationist, Natural Resources Conservation Service, Suite 340, One Credit Union Place, Harrisburg, Pennsylvania 17110–2993, telephone (717) 782–2202.

SUPPLEMENTARY INFORMATION: A determination has been made by Janet L. Oertly, State Conservationist, that the proposed works of improvement for the Upper Tioga River Watershed project will not be installed. The sponsoring local organizations have concurred in this determination and agree that Federal funding should be deauthorized for the project. Information regarding this determination may be obtained from Janet L. Oertly, State Conservationist, at the above address and telephone number.

No administrative action on implementation of the proposed deauthorization will be taken until 60 days after the date of this publication in the Federal Register.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally-assisted programs and projects is applicable)

Dated: September 4, 1996.

Janet L. Oertly,

State Conservationist.

[FR Doc. 96–23379 Filed 9–11–96; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Sunshine Act Notice

September 9, 1996.

DATE AND TIME: Friday, September 20, 1996, 8:00 a.m.

PLACE: U.S. Commission on Civil Rights, 624 9th Street NW, Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of July Meeting
III. Announcements
IV. Staff Director's Report
V. ''Equal Educational Opportunity Project Series: Volume I'' Report
VI. State Advisory Committee Report The Impact of the *City of Richmond* v. *J.A. Croson* Decision Upon Minority and Female Business Programs in Selected Cities in Ohio.
VII. State Advisory Committee Appointments for District of Columbia, Maryland, Michigan, Nevada, New York, Washington, and California (interim)
VIII. Future Agenda Items

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications, (202) 376–8312.

Miguel A. Sapp,

Parliamentarian.

[FR Doc. 96–23450 Filed 9–9–96; 4:24 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–602]

Brass Sheet and Strip (BSS) From Germany; Antidumping Duty Administrative Review; Extension of Time Limit for Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the final results of this antidumping duty administrative review of BSS from Germany. The review covers the period March 1, 1994 through February 28, 1995.

EFFECTIVE DATE: September 12, 1996.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or John Kugelman, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–2704 or 482–0649, respectively.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the original time limit, the Department is extending the time limit for the completion of the final results until September 17, 1996, in accordance with Section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act. (See Memorandum to the file.)

This extension is in accordance with section 751(a)(3)(A)(iv) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(A)(3)(a)).

Dated: September 5, 1996.

Roland L. MacDonald,

Acting Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 96–23395 Filed 9–11–96; 8:45 am]

BILLING CODE 3510–DS–P

[A–583–815]

Certain Welded Stainless Steel Pipe from Taiwan, Antidumping Duty Administrative Review; Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the third administrative review of the antidumping duty order on welded stainless steel pipe from Taiwan. The review covers one manufacturer/exporter of the subject merchandise to the United States, Ta Chen Stainless Pipe Company, Ltd., and the period December 1, 1994 through November 30, 1995.

EFFECTIVE DATE: September 12, 1996.

FOR FURTHER INFORMATION CONTACT: Robert M. James at (202) 482–5222 or John Kugelman at (202) 482–0649, AD/CVD Enforcement Office Eight, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994, the Department is extending the time limit for completion of the preliminary results until December 30, 1996. See Memorandum from Joseph A. Spetrini to Robert S. LaRussa, on file in Room B–099 of the Main Commerce Building. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

Dated: September 2, 1996.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 96–23396 Filed 9–11–96; 8:45 am]

BILLING CODE 3510–DS–M

[Docket No. 960719198–6248–02]

RIN 0625.XX08

Announcement of Best Global Practices Award

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: This Notice announces the implementation of the Best Global Practices Award by the International Trade Administration (ITA) of the Department of Commerce to recognize the programs and practices of U.S. companies that have exhibited extraordinary leadership and accomplishment in corporate citizenship in overseas activities. This notice sets forth the criteria for the award, who may apply, how companies may apply, the procedures by which the Secretary of Commerce will decide on who will receive the award, and the expected timetable.

DATES: The closing date for applications is October 11, 1996. The Department of Commerce expects to announce the winner or winners of the award in the fall of 1996.

ADDRESSES: Request for Applications: Application forms will be available from ITA starting on the day this notice is published. To obtain a copy of the application form please telephone (202) 482–4501, or facsimile (202) 482–1999 (these are not toll free numbers); or send a written request with two self-addressed mailing labels to the Office of Export Promotion Coordination, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 2003, Washington, D.C. 20230. You may call 1–800–USA-TRADE and follow the voice prompt to have the application faxed directly to you. You also may go to the International Trade Administration Internet Home Page http://www.ita.doc.gov/itahome.html, click on Best Global Practices and down load the application form. You can use any of these methods to access sample codes of conduct donated by international companies and organizations interested in furthering good corporate citizenship worldwide. Only one copy of the application form will be provided to each organization requesting it, but it may be reproduced by the requester. An original and two copies of the application and supplemental material are to be sent to the Office of Export Promotion Coordination, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 2003, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: David C. Bowie, Deputy Director, Office of Export Promotion Coordination, tel. (202) 482–4501. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On May 26, 1995, President Clinton announced the adoption of Model Principles for U.S. firms in their overseas operations, as follows:

Model Business Principles

Recognizing the positive role of U.S. business in upholding and promoting adherence to universal standards of human rights, the Administration encourages all businesses to adopt and implement voluntary codes of conduct for doing business around the world that cover at least the following areas:

1. Provision of a safe and healthful workplace.

2. Fair employment practices, including avoidance of child and forced labor and avoidance of discrimination based on race, gender, national origin or religious beliefs; and respect for the right of association and the right to organize and bargain collectively.

3. Responsible environmental protection and environmental practices.

4. Compliance with U.S. and local laws promoting good business practices, including laws prohibiting illicit payments and ensuring fair competition.

5. Maintenance, through leadership at all levels, of a corporate culture that respects free expression consistent with legitimate business concerns, and does not condone political coercion in the workplace; that encourages good corporate citizenship and makes a positive contribution to the communities in which the company operates; and where ethical conduct is recognized, valued and exemplified by all employees.

In adopting voluntary codes of conduct that reflect these principles, U.S. companies should serve as models, encouraging similar behavior by their partners, suppliers, and subcontractors.

Adoption of codes of conduct reflecting these principles is voluntary. Companies are encouraged to develop their own codes of conduct appropriate to their particular circumstances. Many companies already apply standards or codes that incorporate these principles. Companies should find appropriate means to inform their shareholders and the public of actions undertaken in connection with these principles. Nothing in the principles is intended to require a company to act in violation of host country or U.S. law. ''This statement of principles is not intended for legislation.''

The Best Global Practices award will be presented to a company that has established programs that show leadership and accomplishment in meeting the goals of one or more of these five Model Principles during the company's last three years of operations.

Who may apply: Any U.S. company may apply for the award. For purposes of this award, a U.S. company is defined as one that is incorporated in the United States. A U.S. company may apply on its own behalf, and outside organizations and individuals may apply on behalf of an eligible company (with that company's consent).

Selection of award winners: The Secretary of Commerce will select a winner or winners with the advice of an interagency group consisting of representatives from the Departments of Justice, State, Labor, and the Environmental Protection Agency. The Secretary may also seek the advice of private sector experts in the fields covered by the Model Business Principles.

How to Apply: Completed applications should be sent to the Office of Export Promotion Coordination, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 2003, Washington, D.C. 20230, postmarked not later than October 11, 1996.

Each item set forth in the application form should be addressed. Failure to submit all applicable information may delay processing of the application. Supplemental materials (annual reports, documentary material, etc.) are encouraged. Inquiries regarding the application process should also be forwarded to this office. Applicants will be notified by mail of the receipt of their applications and also any deficiencies in the application. When the award process is complete, all applicants will be notified by mail.

Information collection: The information is being collected in order to allow the Department of Commerce to judge applicants for the Best Global Practices Award. The information submitted by applicants will be used by the Department and the panel of judges drawn from government agencies to select the applicant whose conduct best exemplifies the Best Global Practices. The information called for in the application is voluntary, but must be submitted in order to be considered for the Best Global Practices Award. Applicants are advised not to include business confidential information because confidentiality cannot be guaranteed.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork

Reduction Act unless that collection of information displays a currently valid OMB Control Number.

OMB Control Number 0625–0226, expiration date November 30, 1996.

Dated: September 5, 1996.

David C. Bowie,

Deputy Director, Office of Export Promotion and Coordination.

[FR Doc. 96–23250 Filed 9–11–96; 8:45 am]

BILLING CODE 3510–DR–P

Minority Business Development Agency

Solicitation of Business Development Center Applications for Louisville

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice; Solicitation of Business Development Center Applications for Louisville.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications from organizations to operate the Louisville Minority Business Development Center (MBDC).

The purpose of the MBDC Program is to provide business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of client services to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business. The MBDC will provide service in the Louisville, Kentucky Metropolitan Area. The award number of the MBDC will be 04–10–97003–01.

DATES: The closing date for applications is *October 16, 1996.* Applications must be received in the MBDA Headquarters' Executive Secretariat on or before *October 16, 1996.* A pre-application conference will be held on *October 2, 1996,* at 9:00 a.m., at the Atlanta Regional Office, 401 W. Peachtree Street, N.W., Suite 1715, Atlanta, Georgia 30308–3516, Telephone Number: (404) 730–3300. Proper identification is required for entrance into any Federal building.

ADDRESSES: Completed application packages should be submitted to the U.S. Department of Commerce, Minority Business Development Agency, Executive Secretariat, 14th and Constitution Avenue, N.W., Room 5073, Washington, D.C. 20230, Telephone Number: (202) 482–3763.

FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT: Robert Henderson at (404) 730–3300.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from January 1, 1997 to January 31, 1998, is estimated at $198,971. The total Federal amount is $169,125 and is composed of $165,000 plus the Audit Fee amount of $4,125. The application must include a minimum cost share of 15%, $29,846 in non-federal (cost-sharing) contributions for a total project cost of $198,971. Cost-sharing contributions may be in the form of cash, client fees, third party in-kind contributions, non-cash applicant contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. If the recommended applicant is the current incumbent organization, the award will be for 12 months. For those applicants who are not incumbent organizations or who are incumbents that have experienced closure due to a break in service, a 30-day start-up period will be added to their first budget period, making it a 13-month award. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the knowledge, background and/or capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points), the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award. Periodic reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

The MBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDC may charge client fees for services rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

Anticipated processing time of this award is 120 days. Executive order 12372, ''Intergovernmental Review of Federal Programs,'' is not applicable to this program. Federal funds for this project include audit funds for non-CPA recipients. In event that a CPA firm wins the competition, the funds allocated for audits are not applicable. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key

individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is 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.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.''

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, § 26.105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, § 26.605) are subject to 15 CFR Part 26, Subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, § 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

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.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-Made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase 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 103–121, Sections 606 (a) and (b).

11.800 Minority Business Development Center

(Catalog of Federal Domestic Assistance)

Dated: September 6, 1996.

Frances B. Douglas,

Alternate Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 96–23336 Filed 9–11–96; 8:45 am]

BILLING CODE 3510–21–P

Business Development Center Application: State of South Carolina

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program to operate a Statewide Minority Business Development Center (SMBDC) for approximately a 3-year period, subject to agency priorities, recipient performance and the availability of funds.

The SMBDC will provide business development services to both South Carolina's urban and rural minority business communities to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of rural minority individuals and firms; to offer a full range of management and technical assistance to both urban and rural minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

The SMBDC will operate throughout the State of South Carolina. The headquarters of the SMBDC will be located in Columbia, South Carolina. The award number for this SMBDC will be 04–10–97002–01.

DATES: The closing date for applications is October 15, 1996. Applications must be received in the MBDA Headquarters' Executive Secretariat on or before October 15, 1996. A pre-application conference to assist all interested applicants will be held on October 2, 1996, at 9:00 a.m., at the following address: U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, N.W., Room 1715, Atlanta, Georgia 30308–3516.

ADDRESSES: Completed application packages should be submitted to the U.S. Department of Commerce, Minority Business Development Agency, Executive Secretariat, 14th and Constitution Avenue, N.W., room 5073, Washington, D.C. 20230, telephone number (202) 482–3763.

FOR FURTHER INFORMATION AND AN APPLICATION PACKAGE, CONTACT: Robert Henderson, Regional Director, Atlanta Regional Office, (404) 730–3300. Proper identification is required for entrance into any Federal Building.

SUPPLEMENTARY INFORMATION: Contingent upon the availability of Federal funds, the cost of performance for the first budget period (13 months) from January 1, 1997 to January 31, 1998, is estimated at $818,277. A 30-day start-up period will be added to the first budget period, making it a 13-month award. The application must include a minimum cost-share of $122,742, (15%) of the total project cost, through non-Federal contributions. The Federal share, to be in the amount of $695,535, includes $17,388 for an annual audit fee. Cost-sharing may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American

Indian tribes and educational institutions.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (45 points); the resources available to the firm in providing both rural and urban business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (25 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDC program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

The SMBDC shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the SMBDC may charge client fees for management and technical assistance (M&TA) rendered. Fees may range from $10 to $60 per hour based on the gross receipts of the client's business.

If an application is selected for funding, DOC has no obligation to provide any additional future funding beyond the initial award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC. Awards under this program shall be subject to all Federal laws, Federal and Departmental regulations, policies and procedures applicable to Federal assistance awards.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the SMBDC's performance, the availability of funds and Agency priorities.

Anticipated processing time of this award is 120 days. Executive Order 12372, ''Intergovernmental Review of Federal Programs'', is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, or a repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal whether any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is 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.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, ''Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying.''

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR Part 26, § 26.105) are subject to 15 CFR Part 26, ''Nonprocurement Debarment and Suspension'' and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR Part 26, § 26.605) are subject to 15 CFR Part 26, Subpart F, ''Governmentwide Requirements for Drug-Free Workplace (Grants)'' and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR Part 28, § 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, ''Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions,'' and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 or the single family maximum mortgage limit for affected programs, whichever is greater.

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.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, ''Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying'' and disclosure form, SF–LLL, ''Disclosure of Lobbying Activities.'' Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-made Equipment or Products—Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase 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 103–121, Sections 606 (a) and (b).

(Catalog of Federal Domestic Assistance Number: 11.800 Minority Business Development Center)

Dated: September 9, 1996.

Donald L. Powers,

Federal Register Liaison Officer, Minority Business Development Agency.

[FR Doc. 96–23400 Filed 9–11–96; 8:45 am]

BILLING CODE 3510–21–P

National Oceanic and Atmospheric Administration

[I.D. 090396A]

Incidental Take of Marine Mammals; Bottlenose Dolphins and Spotted Dolphins

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

ACTION: Notice of issuance of letters of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA) as amended, and implementing regulations, notification is hereby given that two letters of authorization to take bottlenose and spotted dolphins incidental to oil and gas structure removal activities were issued on August 23 and 30, 1996, respectively, to the Amerada Hess Corporation and The Louisiana Land and Exploration Company, both of Houston, TX.

EFFECTIVE DATE: These letters of authorization are effective for 1 year from the date of issuance.

ADDRESSES: The applications and letters are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and the Southeast Region, NMFS, 9721 Executive Center Drive N, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055 or Charles Oravetz, Southeast Region (813) 570–5312.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term ''taking'' means to harass, hunt, capture or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of bottlenose and spotted dolphins incidental to oil and gas structure removal activities in the Gulf of Mexico were published on October 12, 1995 (60 FR 53139), and remain in effect until November 13, 2000.

Summary of Request

NMFS received requests for letters of authorization on August 21, 1996, from the Amerada Hess Corporation, and August 28, 1996, from The Louisiana Land and Exploration Company. These letters requested a take by harassment of a small number of bottlenose and spotted dolphins incidental to the described activity. Issuance of these letters of authorization is based on a finding that the total takings will have a negligible impact on the bottlenose and spotted dolphin stocks of the Gulf of Mexico.

Dated: September 6, 1996.

Rennie S. Holt,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–23403 Filed 9–11–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 090696A]

Atlantic Large Whale Take Reduction Team Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The first meeting of the Atlantic Large Whale Take Reduction Team (TRT) will be held to address bycatch of large baleen whales, specifically the northern right whale (*Eubalaena glacialis*) and the humpback whale (*Megaptera novaeangliae*) in the following fisheries: The Gulf of Maine/U.S. mid-Atlantic lobster trap/pot fishery, the mid-Atlantic coastal gillnet fishery, the southeastern U.S. Atlantic shark gillnet fishery, and the Gulf of Maine sink-gillnet fishery. The bycatch of minke whales (*Balaenoptera acutorostrata*), fin whales (*Balaenoptera physalus*), and other large whales in these fisheries will also be discussed.

DATES: The first meeting of the team will be held on September 16–17, 1996 from 9 a.m. until 5 p.m.

ADDRESSES: The meeting will be held at Tara's Ferncroft Conference Resort, 50 Ferncroft Road, Danvers, MA, 01923, (508) 777–2500.

FOR FURTHER INFORMATION CONTACT: Dr. Kathy Wang, Southeast Regional Office, NMFS, (813) 570-5312, or Dr. Sal Testaverde, Northeast Regional Office, NMFS, (508) 281-9368, or Michael Payne, Office of Protected Resources, NMFS, (301) 713-2322.

SUPPLEMENTARY INFORMATION: On August 6, 1996, NMFS published notice of the establishment of the Atlantic Large Whale TRT (61 FR 40819). Section 118(f) of the Marine Mammal Protection Act (MMPA) requires NMFS to establish a TRT to prepare a draft Take Reduction Plan designed to assist in the recovery or prevent the depletion of each strategic marine mammal stock that interacts with certain fisheries.

NMFS has scheduled the first meeting (see **DATES** and **ADDRESSES**). The TRT will be facilitated by Abby Dilley, The Keystone Center, Washington, DC. The TRT will hold at least four meetings to develop a TRP focusing on reducing bycatch in these fisheries.

TRTs are not subject to the Federal Advisory Committee Act (5 App. U.S.C.). This meeting is open to the public and is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Wang at (813) 570–5312 by September 12, 1996.

Dated: September 6, 1996.

Rennie S. Holt,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–23252 Filed 9–6–96; 3:01 pm]

BILLING CODE 3510–22–F

[I.D. 090496A]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's Groundfish

Management Team will hold a public meeting.

DATES: The meeting will be held on September 16 beginning at 1 p.m. and may go into the evening until business for the day is completed, and on September 17, 18 and 19 from 8:00 a.m. until 5:00 p.m.

ADDRESSES: The meeting will be held at the Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Jim Glock, Groundfish Fishery Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of this meeting is to review the draft stock assessments, prepare the annual stock assessment and fishery evaluation document, prepare final recommendations for management of the groundfish fisheries in 1997, including review of sablefish and Pacific whiting management plans.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: September 5, 1996.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–23255 Filed 9–11–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 090596C]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council will convene a public meeting of its salmon stock review team for Puget Sound chinook and Strait of Juan de Fuca coho salmon stocks.

DATES: The meeting will be held on September 25, 1996, beginning at 10 a.m.

ADDRESSES: The meeting will be held at the Conference Center of the Northwest Indian Fisheries Commission, 6700 Martin Way East, Olympia, WA; telephone: (360) 438–1180.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: John Coon, Fishery Management Coordinator (Salmon); telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to complete a review of the status of some Puget Sound chinook and Strait of Juan de Fuca coho stocks as required under the Council's salmon fishery management plan when a stock fails to meet its spawning escapement objective for 3 consecutive years. This is expected to be the final meeting of the group.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Eric Greene at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: September 6, 1996.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 96–23404 Filed 9–11–96; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 090696I]

Endangered Species; Permits

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

ACTION: Issuance of modification 5 to permit 848 (P507D) and modification 7 to permit 825 (P513).

SUMMARY: Notice is hereby given that NMFS has issued modifications to two permits that authorize takes of Endangered Species Act-listed species for the purpose of scientific research/enhancement, subject to certain conditions set forth therein, to the Washington Department of Fish and Wildlife (WDFW) at Olympia, WA and the Columbia River Inter-Tribal Fish Commission at Portland, OR (CRITFC).

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301-713-1401); and

Environmental and Technical Services Division, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

SUPPLEMENTARY INFORMATION: The modifications to permits were issued under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–222).

Notice was published on July 19, 1996 (61 FR 37722) that an application had been filed by WDFW (P507D) for modification 5 to scientific research/enhancement permit 848. Modification 5 to permit 848 was issued to WDFW on September 6, 1996. Permit 848 authorizes WDFW annual takes of adult and juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) associated with a supplementation program at the Tucannon River Fish Hatchery. For Modification 5, WDFW is authorized an increase in the number of hatchery smolts to be released annually in the upper watershed of the Tucannon River. Also for modification 5, WDFW is authorized to retain all of the adult, ESA-listed, natural-origin salmon that return to the hatchery adult trap each year for broodstock if the total annual adult returns to the trap is less than 105 fish. If the total annual adult returns to the trap is greater than or equal to 105 fish, WDFW is authorized to retain up to 70 percent of the adult, ESA-listed natural-origin salmon that return to the hatchery adult trap each year for broodstock and to release the remaining percentage of ESA-listed adult salmon above the hatchery trap for natural spawning. Modification 5 to permit 848 is valid for the duration of the permit. Permit 848 expires on March 31, 1998.

Notice was published on July 3, 1996 (61 FR 34800) that an application had been filed by CRITFC (P513) for modification 7 to scientific research permit 825. Modification 7 to permit 825 was issued to CRITFC on August 30, 1996. Permit 825 authorizes an annual take of adult and juvenile, threatened, Snake River spring/summer chinook salmon (*Oncorhynchus tshawytscha*) and juvenile, endangered, Snake River sockeye salmon (*Oncorhynchus nerka*) associated with several scientific research studies. For modification 7, CRITFC is authorized an annual take of juvenile, threatened, Snake River fall chinook salmon (*Oncorhynchus tshawytscha*) associated with a study designed to monitor the extent of dissolved nitrogen gas supersaturation effects on outmigrating juvenile anadromous fish in the Snake and Columbia Rivers in the Pacific Northwest. Modification 7 is valid for the duration of the permit. Permit 825 expires on December 31, 1997.

Issuance of the permit modifications, as required by the ESA, was based on a finding that such actions: (1) Were requested in good faith, (2) will not operate to the disadvantage of the ESA-

listed species that are the subject of the permits, and (3) are consistent with the purposes and policies set forth in section 2 of the ESA and the NMFS regulations governing ESA-listed species permits.

Dated: September 6, 1996.

Robert C. Ziobro,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 96–23405 Filed 9–11–96; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of a Guaranteed Access Level for Certain Wool Textile Products Produced or Manufactured in the Dominican Republic

September 5, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a guaranteed access level.

EFFECTIVE DATE: September 11, 1996.

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 this level, 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); Uruguay Round Agreements Act.

On the request of the Government of the Dominican Republic, the U.S. Government agreed to increase the 1996 Guaranteed Access Level for Category 444.

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 60 FR 65299, published on December 19, 1995). Also see 61 FR 1359, published on January 19, 1996.

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 Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 5, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 11, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on September 11, 1996, you are directed to increase the Guaranteed Access Level for Category 444 to 230,000 numbers.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 96–23251 Filed 9–11–96; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

September 9, 1996.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 16, 1996.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, 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) 927–6705. 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); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for swing and special shift.

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 60 FR 65299, published on December 19, 1995). Also see 60 FR 62399, published on December 6, 1995.

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 Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 9, 1996.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 29, 1995, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1996 and extends through December 31, 1996.

Effective on September 16, 1996, you are directed to amend the directive dated November 29, 1995 to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month Level [1]
218	14,055,844 square meters.
313	41,144,053 square meters.
314	5,678,026 square meters.
315	13,332,512 square meters.
317	32,644,657 square meters.
326	7,608,828 square meters.
334/634	135,821 dozen.

Category	Adjusted twelve-month Level [1]
335/635	461,513 dozen.
336/636	837,398 dozen.
338/339	3,807,699 dozen.
340/640	1,869,892 dozen.
341	4,065,343 dozen of which not more than 2,346,540 dozen shall be in Category 341–Y [2].
342/642	1,333,793 dozen.
345	160,606 dozen.
347/348	656,234 dozen.
351/651	258,829 dozen.
363	39,420,106 numbers.
641	1,170,973 dozen.
647/648	428,188 dozen.
Group II	
200, 201, 220–229, 237, 239, 300, 301, 330–333, 349, 350, 352, 359–362, 600–607, 611–629, 630–633, 638, 639, 643–646, 649, 650, 652, 659, 665–O [3], 666, 669, 670, and 831–859, as a group.	104,339,969 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1995.

[2] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[3] Category 665–O: all HTS numbers except 5702.10.9030, 5702.42.2020, 5702.92.0010 and 5703.20.1000.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.96–23393 Filed 9–11–96; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden on the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by November 12, 1996.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Force Management Policy/Personnel Support, Families and Education/Office of Family Policy), ATTN: Ms. Ollie M. Smith, Ballston Towers #3, Room 917, 4015 Wilson Blvd., Arlington, VA 22203–5190.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call at (703) 696–1702.

Title, Associated Forms, and OMB Nunber: Defense Outplacement Referral System (DORS) and the Public and Community Service (PACS) Registry Programs; DD Forms 2580/2580C, 2581 and 2581–1; OMB Number 0704–0324.

Needs and Uses: This information collection is used to enroll separating Service members, their spouses, and DoD civilian personnel in the Defense Outplacement Referral System (DORS). In accordance with 10 U.S.C. 1143 and 1144, the information is provided to private and public employers, including local, state, and Federal employment and outplacement agencies, as notice of available individuals with interest in potential employment. In accordance with 10 U.S.C. 1143(c), the Public and Community Service (PACS) Registry provides registered PACS organizations with information regarding the availability of individuals with interest in working in a PACS organization. The forms associated with this information collection, DD Forms 2580/2580C, 2581, and 2581–1, are used in support of the Department of Defense Programs for employment assistance.

Affected Public: Individuals or households; state, local, or tribal government, businesses or other for-profit, Federal government; not-for-profit institutions.

Annual Burden Hours: 7,767 hours.

Number of Respondents: 26,000.

Responses Per Respondent: 1.46.

Average Burden Per Response: 12.26 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

This collection is needed to satisfy Public Law 101–510, the Defense Department's Fiscal Year 1991 Authorization Act, November 5, 1990, which directed that the Secretary of Defense release to civilian employers, organizations and other appropriate entities, the names (and other pertinent information) of separating members of the Armed Forces, their spouses, and civilian employees who are seeking employment in the civilian sector. The Defense Outplacement Referral System (DORS) has been developed to assist in meeting this need. DD Form 2580/2580C are used to support this effort. This collection is also required to satisfy Public Law 102–484, the Defense Department's Fiscal Year 1993 Authorization Act, October 23, 1992, which directed the Secretary of Defense to maintain a public and community service registry in which separating Service members would be encouraged to enter. DD Forms 2581 and 2581–1 are used to support this effort.

Dated: September 5, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–23268 Filed 9–11–96; 8:45 am]

BILLING CODE 5000–04–M

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense Education Activity, Office of the Secretary of Defense.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Dependents' Education (ACDE). It also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act. Although the meeting is open to the public, because of space constraints, anyone wishing to attend the meeting should contact the point of contact listed below.

DATES: October 27–November 2, 1996.

ADDRESSES: The meeting will be preceded by visits to DoD overseas schools in Okinawa, Japan, and Korea, October 27–31. The formal meeting will be held November 1–2 at the New Sanno Hotel in Tokyo, Japan.

FOR FURTHER INFORMATION CONTACT: Ms. Marilee Fitzgerald or Ms. Amy Huffman, DoD Education Activity, 4040 N. Fairfax Drive, Arlington, Virginia 22203–1635; Telephone number: 703–696–4235, extension 101/extension 100.

SUPPLEMENTARY INFORMATION: The Advisory Council on Dependents' Education is established under title XIV, section 1411, of Public Law 95–561, Defense Dependents' Education Act of 1978, as amended by title XII, section 1204(b)(3)–(5), of Public Law 99–145, Department of Defense Authorization Act of 1986 (20 U.S.C., chapter 25A, section 929, Advisory Council on Dependents' Education). The Council is cochaired by designees of the Secretary of Defense and the Secretary of Education. In addition to a representative of each of the Departments, 12 members are appointed jointly by the Secretaries of Defense and Education. Members include representatives of educational institutions and agencies, professional employee organizations and unions, unified military commands, school administrators, parents of DoDDS students, and one DoDDS student. The Director, DoDEA, serves as the Executive Secretary of the Council. The purpose of the Council is to advise the Secretary of Defense and the DoDDS Director about effective educational programs and practices that should be considered by DoDDS and to perform other tasks as may be required by the Secretary of Defense. The agenda includes update on DoDEA math curriculum, minority recruitment, student achievement, and implementation of national standards.

Dated: September 6, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–23270 Filed 9–10–96; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Meeting of the Military Health Care Advisory Committee

AGENCY: Department of Defense, Military Health Care Advisory Committee.

ACTION: Notice.

SUMMARY: Notice is hereby given of the forthcoming meeting of the Military Health Care Advisory Committee. This is the fifth meeting of the Committee. The purpose of the meeting is to advise the Assistant Secretary of Defense (Health Affairs) and the Military Services on opportunities as well as potential solutions and strategies for the challenges facing the Military Health Services System.

A meeting session will be held and will be open to the public.

DATES: October 7, 1996.

ADDRESSES: Andrews Air Force Base, Garden Room in the Andrews Officers' Club, Bldg. 1352, Andrews Air Force Base, (Allentown Road), Washington, DC, unless otherwise published.

FOR FURTHER INFORMATION CONTACT: Mr. Gary A. Christopherson, Senior Advisor, or Commander Sidney Rodgers, MSC, USN, Special Assistant to PDASD (HA), Office of the Assistant Secretary of Defense (Health Affairs), 1200 Defense Pentagon, Room 3E346, Washington, DC 20301–1200; telephone (703) 697–2111.

SUPPLEMENTARY INFORMATION: Business sessions are scheduled between 8:00 am and 5:00 pm, on Monday, October 7, 1996. Contact Elaine L. Powell, CMP in the MHCAC Conference Support Office at (703) 575–5024, at least 24 hours prior to the meeting to gain access to the base.

Dated: September 5, 1996.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 96–23269 Filed 9–10–96; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

President's Advisory Commission on Educational Excellence for Hispanic Americans; Amendment to Notice of Meeting

AGENCY: President's Advisory Commission on Educational Excellence for Hispanic Americans, Education.

ACTION: Amendment to notice of meeting.

SUMMARY: This amends the notice of an open meeting of the President's Advisory Commission on Educational Excellence for Hispanic Americans published on August 14, 1996, in Vol. 61, No. 158, page 42235. The meeting scheduled for September 4 and 5, 1996, has been postponed. The new meeting dates and times are September 26, 1996, form 9 a.m. (EDT) until 5 p.m. (EDT), and September 27, 1996, from 9 a.m. (EDT) until 5 p.m. (EDT). The new location is not yet available, but you may call Alfred Ramirez on (202) 401–1411 closer to the date of the meeting for that information.

Dated: September 9, 1996.

Edward M. Augustus, Jr.,

Acting Assistant Secretary.

[FR Doc. 96–23484 Filed 9–11–96; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Certification of the Radiological Condition of the C.H. Schnoor Site, Springdale, Pennsylvania

AGENCY: Office of Environmental Management, Department of Energy.

ACTION: Notice of certification.

SUMMARY: The Department of Energy (DOE) has completed remedial action to decontaminate the C.H. Schnoor site in Springdale, Pennsylvania. Formerly, the property was found to contain quantities of residual radioactive material resulting from activities conducted at the site by the owner under contract to DOE's predecessors. Radiological surveys show that the property now meets applicable requirements for use without radiological restrictions.

ADDRESSES: The certification docket is available at the following locations:

Public Reading Room, Room 1E–190, Forrestal Building, U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585

Public Document Room, Oak Ridge Operations Office, U.S. Department of Energy, 200 Administration Road, Oak Ridge, Tennessee 37831, Springdale Free Public Library, 331 School Street, Springdale, Pennsylvania 15144.

FOR FURTHER INFORMATION CONTACT: John C. Lehr, Acting Director, Office of Eastern Area Programs, Office of Environmental Management, U.S. Department of Energy, Washington, D.C. 20585, (301) 903–2328 Fax: (301) 903–2385.

SUPPLEMENTARY INFORMATION: The U.S. Department of Energy (DOE), Office of Environmental Management, has conducted remedial action at the C.H. Schnoor site in Springdale, Pennsylvania, as part of the Formerly Utilized Sites Remedial Action Program (FUSRAP). The objective of the program is to identify and clean up or otherwise control sites where residual radioactive contamination remains from activities carried out under contract to the Manhattan Engineer District/Atomic Energy Commission, during the early years of the nation's atomic energy

program. In 1992, the C.H. Schnoor site was designated for remediation as part of FUSRAP.

During the 1940s, the property was owned by C.H. Schnoor and Company and was used to machine extruded uranium for the Hanford Pile Project, a project with the objective of producing an alternate charge for the Hanford Reactor in the State of Washington. The uranium operation may have continued until the spring of 1951, when the building was sold to a manufacturer of toys and coat hangers. In 1967, the property was acquired by the Unity Railway Supply Company, which founded the Premier Manufacturing Company and used the site to manufacture journal lubricators for railroad cars. The current occupant, Conviber, Inc., uses the site for the fabrication of industrial drive and conveyor belts. In October 1980, a radiological scanning survey was conducted by DOE and Argonne National Laboratory. Because much of the floor was inaccessible for surveying and because of the lack of definitive records documenting the use of the site, DOE directed that an additional more comprehensive survey be performed. This survey was conducted by Oak Ridge National Laboratory in 1989 and 1990. From October through December 1993, Oak Ridge National Laboratory and Bechtel National Inc. performed additional radiological surveys of the interior of the concrete building to thoroughly characterize the building before remediation efforts began. Most of the contamination was in the soil beneath the concrete slab, and isolated areas of surface contamination were detected on a portion of the concrete floors. Based on these characterization data, DOE conducted remedial action at the C.H. Schnoor site from August to October 1994.

Post-remedial action surveys have demonstrated and DOE has certified that radiological conditions at the subject property comply with DOE radiological decontamination criteria and standards. The standards are established to protect members of the public and occupants of the property and to ensure that future use of the property will result in no radiological exposure above applicable guidelines. Accordingly, this property is released from FUSRAP.

The certification docket will be available for review between 9:00 a.m. and 4:00 p.m., Monday through Friday (except Federal holidays) in the DOE Public Reading Room, located in Room 1E–190 of the Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585. Copies of the certification docket will also be available in the DOE Public Document Room, U.S. Department of Energy, Oak Ridge Operations Office, Oak Ridge, Tennessee 37831 and at the Springdale Free Public Library, 331 School Street, Springdale, Pennsylvania 15144.

The Department, through the Oak Ridge Operations Office, Former Sites Restoration Division, has issued the following statement:

Statement of Certification: C.H. Schnoor Site in Springdale, Pennsylvania

DOE, Oak Ridge Operations Office, Former Sites Restoration Division, has reviewed and analyzed the radiological data obtained following remedial action at the C.H. Schnoor Site, 644 Garfield Street [Parcel 733–A–182, filed in Deed/Plat Book (Colfax Plan 117), Page 281 in the records of Allegheny County, Pennsylvania]. Based on analysis of all data collected, including post-remedial action surveys, DOE certifies that any residual contamination which remains onsite falls within current guidelines for use without radiological restrictions. This certification of compliance provides assurance that reasonably foreseeable future use of the property will result in no radiological exposure above current radiological guidelines established to protect members of the general public as well as occupants of the site.

Property owned by Mr. and Mrs. Frank Pucciarelli, 644 Garfield Street, Springdale, Pennsylvania 15144.

Issued in Washington, D.C., on September 4, 1996.

James M. Owendoff,

Deputy Assistant Secretary for Environmental Restoration.

[FR Doc. 96–23353 Filed 9–11–96; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. TM97–1–48–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2, the following tariff sheets to become effective October 1, 1996:

Second Revised Volume No. 1

Fifteenth Revised Sheet No. 17
First Revised Sheet NO. 162C

Original Volume No. 2

Eighth Revised Sheet No. 14

ANR states that the above-referenced tariff sheets are being filed to reflect a decrease in the Annual Charge Adjustment (ACA) rate as permitted by Section 24 of its Second Revised Volume No. 1 FERC Gas Tariff. Pursuant to Order No. 472, the Commission has assessed ANR its ACA unit rate of $0.0020 per Dth. The new ACA rate to be charged by ANR will be effective October 1, 1996.

In addition, ANR submits in this filing First Revised Sheet No. 162C, which contains two appropriate ACA-related tariff changes to GT&C Section 24. ANR has updated its tariff to reference the new section number of the Commission's Rules and Regulations related to ACA expenditures. Also, due to the termination of several X-Rate schedules, ANR has updated the ACA reference to applicable Original Volume No. 2 sheets.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Inspection Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23288 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT96–29–000]

ANR Pipeline Company; Notice of Proposed Changes In FERC Gas Tariff

September 6, 1996.

Take notice that on September 3, 1996, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to become effective October 1, 1996:

First Revised Sheet No. 68G
Original Sheet No. 68G.1

ANR states that the above-referenced tariff sheets are being filed pursuant to the Commission's August 2, 1996 Order Authorizing Abandonment and Determining Jurisdictional Status of

Facilities, in the captioned proceeding. ANR states that the revised tariff sheets address ''Standards of Conduct'' regarding ANR's affiliate, ANR Field Services Company.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23306 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP96–369–000, RM96–14–001]

The Brooklyn Union Gas Company and Secondary Market Transactions on Interstate Natural Gas Pipelines; Notice of Application of the Brooklyn Union Gas Company to Participant in Pilot Program

September 6, 1996.

Take notice that on August 30, 1996, The Brooklyn Union Gas Company (Brooklyn Union) tendered for filing an application requesting (1) blanket authorization to release Part 284 firm transportation capacity it holds on Transcontinental Gas Pipe Line Corporation (Transco) at market-based rates, including prices which may exceed Transco's maximum tariff rates when competitive conditions in secondary markets for pipeline capacity permit or require, and (2) a limited waiver of certain terms, conditions and reporting requirements set forth in the Commission's July 31, 1996 ''proposed Experimental Pilot Program To Relax The Price Cap For Secondary Market Transactions'' in Docket No. RM96–14–001.

Any person desiring to comment on or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 (18 CFR 385.211 and 385.214). All such motions or protests must be filed within 15 days and comply with the requirements in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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. 96–23299 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP96–371–000 and RM96–14–001]

Central Hudson Gas & Electric Corporation and Secondary Market Transactions on Interstate Natural Gas Pipelines; Notice of Application of Central Hudson Gas & Electric Corporation to Participate in Pilot Program

September 6, 1996.

Take notice that on August 30, 1996, Central Hudson Gas & Electric Corporation (Central Hudson) filed an application in the above docket for permission to participate in the Commission's Experimental Pilot Program to Relax the Price Cap for Secondary Market Transactions (Pilot Program) issued in Docket No. RM96–14–001 on July 31, 1996.

Central Hudson states that it meets the Commission's requirements for participation in the Pilot Program. First, Central Hudson has filed information with the Commission showing why it cannot exercise market power in the relevant geographic area. Second, Central Hudson offers open access transmission service on its local distribution facilities pursuant to a State-required program. Finally, Central Hudson has agreed to provide the Commission with certain information required for participation in the Pilot Program.

Any person desiring to comment on or to protest the Applicants' filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protests must be filed within 15 days and comply with the requirements in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding, or wishing to participate as a party in any hearing, must file a motion to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23298 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–22–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996, CNG Transmission Corporation (CNG), tendered for filing as part of its FERC Gas Tariff, the following tariff sheets, with a proposed effective date of October 1, 1996:

Second Revised Volume No. 1

11th Revised Sheet No. 31
20th Revised Sheet No. 32
20th Revised Sheet No. 33
11th Revised Sheet No. 35
11th Revised Sheet No. 36

Original Volume No. 2

Ninth Revised Sheet Nos. 250 and 290

Original Volume No. 2A

Ninth Revised Sheet Nos. 28 and 35

CNG states that the purpose of this filing is to update CNG's ACA unit surcharge, consistent with its ACA clause (General Terms and Conditions, Section 14). As provided by Section 154.402 of the Commission's regulations, CNG asserts that it may adjust its ACA unit surcharge each year, to reflect the calculation of annual charge bills for the subsequent fiscal year. The effect of the proposed revision in this instance is to reduce CNG's usage-related surcharge, from the current level of $0.0022 per Dt, to $0.0020 per Dt.

CNG states that copies of its filing are being mailed to CNG's customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC, 20426, in accordance with 18 CFR 385.214 and 385.211 of the

Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23293 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–21–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective October 1, 1996:

Sixteenth Revised Sheet No. 25
Sixteenth Revised Sheet No. 26
Sixteenth Revised Sheet No. 27
Seventeenth Revised Sheet No. 28

On July 29, 1996 Columbia received an Annual Charge billing from the Commission for the fiscal year 1996 in the amount of $2,311,622, consisting of a computed fiscal year 1996 charge of $2,332,879 and a credit adjustment of $21,257 for decreased costs experienced by the Commission during fiscal year 1995. Said billing also indicated that the Annual Charge Adjustment (ACA) to be applied to rates commencing October 1, 1, 1996 is $0.00203 per Mcf. By the instant filing, in accordance with Section 34 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1, Columbia proposes to track the ACA Unit Surcharge for fiscal year 1996, as adjusted. The adjusted ACA Unit Surcharge, which gives effect to the Commission's prior fiscal year adjustment, is $0.00203 per Mcf or $0.0020 per Dth on Columbia's system.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23294 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–70–000]

Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective October 1, 1996.

Fourteenth Revised Sheet No. 018
Fifteenth Revised Sheet No. 019

On July 29, 1996 Columbia Gulf received an Annual Charge billing from the Commission for the fiscal year 1996 in the amount of $1,694,737, consisting of a computed fiscal year 1996 charge of $1,711,217 and a credit adjustment of $16,480 for decreased costs experienced by the Commission during fiscal year 1995. Said billing also indicated that the Annual Charge Adjustment (ACA) to be applied to rates commencing October 1, 1996 is $0.00203 per Mcf. By the instant filing, in accordance with Section 32 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1, Columbia Gulf proposes to track ACA Unit Surcharge for fiscal year 1996, as adjusted. The adjusted ACA Unit Surcharge, which gives effect to the Commission's prior fiscal year adjustment, is $0.00203 per Mcf or $0.0020 per Dth on Columbia Gulf's system.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23287 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–2–000]

East Tennessee Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996, East Tennessee Gas Transmission Company (East Tennessee) tendered for filing its current Annual Charge Adjustment (ACA).

East Tennessee states the purpose of the filing is to reflect that there is no change to the ACA surcharge to its commodity rates for the period October 1, 1996 through September 30, 1997. The ACA surcharge is currently $.0022/Dth and will remain at this level through September 30, 1997.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23280 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. TA97–1–23–000 and TM97–3–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996 Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, certain revised

tariff sheets, with a proposed effective date of November 1, 1996.

Eastern Shore states the subject filing is Eastern Shore's annual PGA filing as required by Section 21 of the General Terms and Conditions (GT & C) of Eastern Shore's FERC Gas Tariff and consists of the calculation of a current adjustment for the commodity purchased gas cost component of Eastern Shore's jurisdictional sales rates and calculations of Eastern Shore's annual demand and commodity surcharges to amortize its Account No. 191 Unrecovered Purchased Gas Cost.

Eastern Shore further states that pursuant to Section 23 of the GT & C of Eastern Shore's FERC Gas Tariff, Eastern Shore has also calculated current adjustments for the demand and commodity transportation cost component of its jurisdictional sales rates and the annual demand and commodity surcharges to amortize its Account No. 191 Unrecovered Transportation Cost.

Eastern Shore states that copies of the filing are being mailed to affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23302 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–741–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

September 6, 1996.

Take notice that on August 26, 1996, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP96–741–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new delivery point for West Florida Natural Gas Company (WFNG) under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Specifically, FGT proposes to construct, operate, and own a new delivery point at or near mile post 487.8 on its existing 30-inch mainline in Lafayette County, Florida, to accommodate natural gas deliveries to the State of Florida Mayo Prison. FGT also proposes to add the delivery point to an existing firm gas transportation service agreement by and between FGT and the State of Florida, Department of Corrections under FGT's FTS–1 Rate Schedule. FGT indicates that the delivery point will consist of a 2-inch tap, minor connecting pipe, electronic flow measurement equipment, and any related appurtenant facilities necessary for FGT to deliver gas up to 60 MMBtu per hour at line pressure. WFNG will reimburse FGT for the $57,000 estimated construction costs. FGT further states that WFNG will construct, own, and operate the meter and regulation station.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23279 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–110–000]

Iroquois Gas Transmission System, L.P.; Notice of Annual Charge Adjustment Filing

September 6, 1996.

Take notice that on August 30, 1996 Iroquois Gas Transmission System, L.P. tendered a letter to the Federal Energy Regulatory Commission advising that the Annual Charge Adjustment surcharge for the Fiscal Year commencing October 1, 1996 would remain unchanged. Iroquois states that the ACA surcharge will remain at $0.0023 per Dth

Iroquois states that copies of the filing were served upon all jurisdictional customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules of Practice and Procedures. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23283 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–99–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996, Kern River Gas Transmission (Kern River) tendered for filing as part of its FERC Gas Tariff the following tariff sheets, to become effective October 1, 1996:

First Revised Volume No. 1

Sixth Revised Sheet No. 5
Sixth Revised Sheet No. 6

Kern River states that the purpose of this filing is to update Kern River's tariff to reflect the Commission approved Annual Charge Adjustment (ACA) surcharge of $.0020 per Mcf to be

effective for the twelve-month period beginning October 1, 1996.

Any person desiring to be heard or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23284 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–137–000]

Midwest Gas Storage Inc.; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996, Midwest Gas Storage Inc., tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet, with a proposed effective date of October 1, 1996:

First Revised Sheet No. 4

Pursuant to Order No. 472, the Commission has authorized pipeline companies to track and flow through to their customers the Annual Charge Adjustment (ACA), as determined each year by the Commission. Midwest seeks to revise its tariff to reflect the 1996 ACA unit charge approved by the Commission of $0.0020 per Mcf; under Midwest's tariff, this equates to an ACA unit charge of $0.0020 per Dth.

Midwest further states that it has served a copy of this application upon all of its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23282 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–5–000]

Midwestern Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996, Midwestern Gas Transmission Company (Midwestern) tendered for filing of its FERC Gas Tariff, Second Revised Volume No. 1, Sixth Revised Sheet No. 5. Midwestern requests an effective date of October 1, 1996.

Midwestern states that the tariff sheet reflects a decrease of $.0001 per Dth in the Annual Charge Adjustment (ACA) surcharge, resulting in a new ACA surcharge of $.0022/Dth.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23300 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–16–00]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996 National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to be effective on October 1, 1996:

Seventeenth Revised Sheet No. 5
Twelfth Revised Sheet No. 5A
Fourteenth Revised Sheet No. 6
Eighth Revised Sheet No. 6A
Alt. Eighth Revised Sheet No. 6A

National declares that the purpose of this filing is to state the Annual Charge Adjustment (ACA) unit surcharge authorized by the Commission for Fiscal 1997 is $.0023 per Mcf or $.0023 per Dth when converted to National's measurement basis.

National states that copies of this filing were served on National's jurisdictional customers and on the interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protest must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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. 96–23296 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM96–8–16–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

September 6, 1996.

Take notice that on August 30, 1996, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Eleventh Revised Sheet No. 5A, with a proposed effective date of September 1, 1996.

National states that under Article II, Section 2, of the approved settlement in the above-captioned proceedings, National is required to recalculate monthly the maximum Interruptible Gathering (''IG'') rate and charge that rate on the first day of the following month if the result is an IG rate 2 cents above or below the IG rate. The recalculation produced an IG rate of 12 cents per dth.

National further states that pursuant to Article II, Section 4, National is required to file a revised tariff sheet in a Compliance Filing each time the effective IG rate is revised within 30 days of the effective date of the revised IG rate.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the 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. 96–23301 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–200–009]

NorAm Gas Transmission Company; Notice of Filing

September 6, 1996.

Take notice that on September 3, 1996, NorAm Gas Transmission Company (NGT) tendered for filing to become part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheet to be effective September 1, 1996:

Fifth Revised Sheet No. 7

NGT states that this tariff sheet is filed herewith to reflect specific negotiated rate transactions for the month of September, 1996.

Any person desiring to protest the proposed tariff sheets should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant 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. 96–23303 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–200–008]

NorAm Gas Transmission Company; Notice of Compliance Filing

September 6, 1996.

Take notice that on August 30, 1996, NorAm Gas Transmission Company (NGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheets, to be effective as shown:

Effective April 1, 1996:

Second Substitute First Revised Sheet No. 7

Effective May 1, 1996:

Substitute Second Revised Sheet No. 7

Effective June 1, 1996:

First Revised Substitute Second Revised Sheet No. 7

NGT states that these revised tariff sheets are filed herewith to comply with the Commission's order dated August 21, 1996, in Docket No. RP96–200–005.

Any person desiring to protest the proposed tariff sheets should file a protest with the Federal Energy Regulatory Commission, 888 First 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 must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23304 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–753–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

September 6, 1996.

Take notice that on August 29, 1996, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP96–753–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to install and operate a delivery point for Enron Capital and Trade Resources (ECT) in Pecos County, Texas under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to install and operate a delivery point for ECT in order to provide up to 500 MMBtu on a peak day and 40,000 MMBtu annually, under currently effective agreements, to a commercial customer in Pecos County, Texas.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23276 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–73–000]

Ozark Gas Transmission System; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996, Ozark Gas Transmission System (Ozark) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume

No. 1, the following revised tariff sheet, with a proposed effective date of October 1, 1996:

Fourteenth Revised Sheet No. 4

Ozark states that it is amending its transmission rate schedules to reflect the Commission-authorized Annual Charge Adjustment unit charge of $.0020 per MMBtu. Ozark states that this is a $.003 reduction from the currently effective ACA unit charge. Ozark states that its filing is submitted pursuant to Section 154.38(d) of the Commission's Regulations and Section 11 of the General Terms and Conditions of Ozark's FERC Gas Tariff, First Revised Volume No. 1.

Ozark states that copies of this filing were served on Ozark's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23286 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP96–352–000; Docket No. RM96–14–001]

Pacific Gas and Electric Company, Southern California Gas Company, Transwestern Pipeline Company; Secondary Market Transaction on International Natural Gas Pipelines; Notice of Application of Pacific Gas and Electric Company, Southern California Gas Company, and Transwestern Pipeline Company to Participate in Pilot Program

September 6, 1996.

Take notice that on August 30, 1996, Transwestern Pipeline Company, Southern California Gas Company, and Pacific Gas and Electric Company, pursuant to the Commission's July 31, 1996 Order in the above-referenced docket, submitted an application to participate in the pilot program lifting the price cap for release capacity, and interruptible and short-term firm capacity.

Any person desiring to comment on or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 15 days and comply with the requirements in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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. 96–23281 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–41–000]

Paiute Pipeline Company; Notice of Change in Annual Charge Adjustment

September 6, 1996.

Take notice that on August 30, 1996, Paiute Pipeline Company (Paiute) tendered for filing and acceptance to be a part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheet, with a proposed effective date of October 1, 1996:

2nd Rev. Third Revised Sheet No. 10

Paiute states that the purpose of this filing is to revise its annual charge adjustment surcharge in order to recover the Commission's annual charges for the 1996 fiscal year.

Paiute states that copies of this filing have been mailed to all jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (19 CFR 385.211, 385.214). All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23290 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–28 000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on September 3, 1996, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective October 1, 1996.

Panhandle states that the purpose of this filing, which is made in accordance with Section 154.402 of the Commission's Regulations, is to reflect the Federal Energy Regulatory Commission's change in the unit rate for the Annual Charge Adjustment surcharge to be applied to rates for recovery of 1996 Annual Charges pursuant to order No. 472 in Docket No. RM87–3–000. This filing complies with the provisions of Section 18.2 (Annual Charge Adjustment Provision) of the General Terms and Conditions of Panhandle's FERC Gas Tariff, First Revised Volume No. 1. The surcharge attributable to fiscal year 1996 program costs is $0.0020 per Mcf ($0.0020 per Dt. to reflect Panhandle's billing unit) of natural gas transported.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are

available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23292 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MG96–18–000]

Richfield Gas Storage System; Notice of Filing

September 6, 1996.

Take notice that on August 30, 1996, Richfield Gas Storage System submitted standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566 *et seq.*[2]

Richfield states that it served copies of its standards of conduct on all of its firm customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions or protests should be filed on or before September 23, 1996. Protests will be considered by the Commission in determining the appropriation 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. 96–23275 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[1] Order No. 497, 53 FR 22139 (June 14, 1988), III FERC Stats. & Regs. ¶ 30,820 (1988); Order No. 497–A *order on rehearing,* 54 FR 52781 (December 22, 1989), III FERC Stats. & Regs. 30,868 (1989); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), III FERC Stats. & Regs. ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas* v. *FERC* (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992), Order No. 497–D, *order on remand and extending sunset date,* III FERC Stats. & Regs. Preambles ¶ 30,958 (December 4, 1992), 57 FR 58978 (December 14, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), 65 FERC ¶ 61,381 (December 23, 1993), Order No. 497–F (*order denying rehearing and granting clarification*), 66 FERC ¶ 61,347 (March 24, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), III FERC Stats. & Regs. ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707, (December 21, 1994); 69 FERC ¶ 61,334 (December 14, 1994).

[Docket No. MT96–28–000]

Richfield Gas Storage System; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996, Richfield Gas Storage System (Richfield) submitted for filing as part of its FERC Gas Tariff, Substitute Volume No. 1, the following revised tariff sheets, with a proposed effective date of September 29, 1996:

First Revised Sheet No. 32
Original Sheet No. 41A

Richfield states that the above listed tariff sheets are being filed to make the language in Richfield's tariff consistent with Richfield's Statement of Standards of Conduct which is being filed concurrently herewith. Richfield also states that it is filing a Statement of Standards of Conduct to reflect that Richfield has one marketing affiliate. Richfield also states that Richfield and its marketing affiliate function independently of each other. Richfield also states that other than telephone equipment, a mainframe computer system and a Local Area Network, Richfield does not share any facilities or operating personnel with its marketing affiliate.

Richfield states that copies of the filing were served on all firm customers of Richfield and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protest must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23305 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–6–000]

Sea Robin Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996, Sea Robin Pipeline Company (Sea Robin) tendered for filing to its FERC Gas Tariff, First Revised Volume No. 1, the following revised sheet, with a proposed effective date of October 1, 1996:

Third Revised Sheet No. 7
Third Revised Sheet No. 8
Third Revised Sheet No. 9

Sea Robin states that the aforesaid tariff sheets implement the Federal Energy Regulatory Commission's (Commission) revised Annual Charge Adjustment (ACA) of .20¢ per MMBtu. This represents a decrease of .03¢ per MMBtu in the ACA charge from the current level of .23¢ per MMBtu.

Sea Robin states that copies of Sea Robin's filing were served upon all of Sea Robin's customers, affected commissions and interested parties.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (Sections 385.214, 385.211). All such petitions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23297 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT96–27–000]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

September 6, 1996.

Take notice that on August 30, 1996, Tennessee Gas Pipeline Company (Tennessee), submitted for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheet to be effective on September 30, 1996:

Third Revised Sheet No. 401

Tennessee states that the purpose of this filing is to update the listing of shared operating personnel between Tennessee and its marketing affiliates.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this 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 available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23274 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–750–000]

Texas Gas Transmission Corporation; Notice of Request Under Blanket Authorization

September 6, 1996.

Take notice that on August 28, 1996, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 43201 filed in Docket No. CP96–750–000 a request pursuant to Sections 157.205, 157.212, and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, and 157.216) for approval and permission to replace and relocate an existing delivery point in Hancock County, Kentucky, under the blanket certificate issued in Docket No. CP82–407–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Texas Gas states that it proposes to replace and relocate its Hawesville No. 1 delivery point which is used to serve customers of Western Kentucky Gas (WKG), a local distribution company in the Hawesville, Kentucky area. Texas Gas further states that the delivery point Texas Gas proposes to replace and relocate was originally constructed in 1931 by the Missouri-Kansas Pipe Line Company, a predecessor company of Texas Gas. It is asserted that the proposed relocation of this delivery point will correct certain operational and maintenance problems as the location of the side valve which serves this delivery point is subject to flooding.

Any person or Commission Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23277 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–18–000]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996, Texas Gas Transmission Corporation (Texas Gas) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets contained in Appendix A, to the filing.

Texas Gas states that the revised tariff sheets are being filed pursuant to Section 23 of the General Terms and Conditions of Texas Gas's FERC Gas Tariff, First Revised Volume No. 1, which affords Texas Gas the right to recover the costs billed to Texas Gas by the Federal Energy Regulatory Commission via the FERC ACA Unit Charge method. That unit charge, as determined by the Commission, is $.0018/Mcf ($.0018/MMBtu converted) as set forth on Texas Gas's Annual Charges Bill for fiscal year 1996, to be effective October 1, 1996.

Texas Gas states that copies of the revised tariff sheets are being mailed to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23295 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–42–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on August 30, 1996 Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective October 1, 1996:

117th Revised Sheet No. 5
22nd Revised Sheet No. 5A
14th Revised Sheet No. 5A.02
14th Revised Sheet No. 5A.03
19th Revised Sheet No. 5B

Transwestern states that the referenced tariff sheets are being filed to adjust Transwestern's Annual Charge Adjustment (ACA) pursuant to Section 23 of the General Terms and Conditions of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1.

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 be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the 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. 96–23289 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–30–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on September 3, 1996, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A attached to the filing, to be effective October 1, 1996.

Trunkline states that the purpose of this filing, which is made in accordance with Section 154.402 of the Commission's Regulations, is to reflect the Federal Energy Regulatory Commission's change in the unit rate for the Annual Charge Adjustment surcharge to be applied to rates for recovery of 1996 Annual Charges pursuant to Order No. 472 in Docket No. RM87–3–000. This filing complies with the provisions of Section 21 (Annual Charge Adjustment Provision) of the General Terms and Conditions of Trunkline's FERC Gas Tariff, First Revised Volume No. 1. The surcharge attributable to fiscal year 1996 program costs is $0.0020 per Mcf ($0.0019 per Dt. to reflect Trunkline's billing unit) of natural gas transported.

Trunkline states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23291 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP96–745–000]

Williams Natural Gas Company; Notice of Request Under Blanket Authorization

September 6, 1996.

Take notice that on August 26, 1996, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP96–745–000 a request pursuant to Section 7 of the Natural Gas Act, as amended, and Sections 157.205 and 157.216(b) for authorization to abandon by sale in place to Williams Energy Services Company approximately 52.8 miles of 12-inch pipeline located in Kay and Osage Counties, Oklahoma, and to abandon in place approximately 4.1 miles of 2-inch pipeline located in Osage County, Oklahoma, in accordance with the authority granted to WNG in its blanket certificate issued in Docket No. CP82–479–000 pursuant to 18 CFR Part 157, Subpart F of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

WNG states that customers affected by the abandonment of the pipelines have been transferred to an adjacent 16-inch pipeline or converted to propane. It is stated that the costs associated with the abandonments are estimated to be $1,000. WNG indicates that the sales price of the 12-inch pipeline is $40,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23278 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM97–1–76–000]

Wyoming Interstate Company, Ltd.; Notice of Proposed Changes in FERC Gas Tariff

September 6, 1996.

Take notice that on September 3, 1996, Wyoming Interstate Company, Ltd. (WIC) tendered for filing to become part of its FERC Gas Tariff, the following tariff sheets, with a proposed effective date of October 1, 1996:

First Revised Volume No. 1

Fifth Revised Sheet No. 5

Second Revised Volume No. 2

Fifth Revised Sheet No. 4
Seventh Revised Sheet No. 5

WIC states that the tariff sheets reflect a decrease in the ACA adjustment charge, resulting in a new ACA rate of $0.0019 per Dth based on WIC's 1996 ACA billing.

WIC requests that the new $0.0019 cent per Dth ACA charge be effective October 1, 1996.

WIC states that copies of this filing have been served on WIC's jurisdictional customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC. 20426, in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR Sections 385.214 and 385.211). All such petitions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 96–23285 Filed 9–11–96; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Issuance of Decisions and Orders for the Week of October 16 Through October 20, 1995

During the week of October 16 through October 20, 1995, the decisions and orders summarized below were issued with respect to appeals,

applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: August 29, 1996

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

Department of Energy

Office of Hearings and Appeals

Washington, D.C. 20585

Decision List No. 942

Week of October 16 through October 20, 1995.

Appeals

Cohen & Cotton, 10/18/95, VFA–0082

Cohen & Cotton filed an Appeal from a denial by the Western Area Power Administration (WAPA) of a Request for Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the document requested by Cohen & Cotton, a Preliminary Real Estate Plan, did not exist because it was not WAPA's customary practice to prepare such a document. Since no responsive document exists, the Appeal was denied.

Portland General Electric Company, 10/20/95, VFA–0084

Portland General Electric Company (PGE) filed an Appeal from a partial denial by the Bonneville Power Administration (BPA) of a Request For Information that it had submitted under the Freedom of Information Act. PGE maintained that additional responsive documents must exist. In considering the Appeal, the DOE found that BPA had misconstrued the scope of PGE's request. Accordingly, the Appeal was granted in part and the matter was remanded to BPA with directions to issue a new determination after consulting with PGE concerning the scope of its request.

Personnel Security Hearing

Albuquerque Operations Office, 10/17/95, VSO–0040

A Hearing Officer from the Office of Hearings and Appeals issued an Opinion regarding the eligibility of an individual for access authorization under the provisions of 10 C.F.R. Part 710. After carefully considering the record of the proceeding in view of the standards set forth in Part 710, the Hearing Officer found that the individual uses alcohol habitually to excess, based on his long history of alcohol dependence and evidence that he continues to drink heavily, and that his alcohol use constitutes a mental illness that causes a significant defect in judgment and reliability. The Hearing Officer also found that the individual has engaged in unusual conduct, particularly with respect to willfully breaching the terms of a plea bargain agreement, that tends to show that he is not honest, trustworthy, or reliable. The DOE's security concerns regarding these behaviors were not overcome by any evidence mitigating the derogatory information underlying the DOE's charges. Accordingly, the Hearing Officer found that the individual should not be granted access authorization.

Refund Application

Texaco Inc./L & R Texaco, 10/17/95, RF321–17243

The Department of Energy (DOE) issued a Decision and Order granting in part an application that was filed by L & R Texaco (L & R). L & R was a partnership, and the application was filed by the surviving partner and three children of the other partner, who died intestate. The DOE granted the application as it pertained to the surviving partner, but denied the application as it pertained to the children of the deceased partner, finding that, under the applicable state law, the deceased partner's refund should go to his widow, and not to the children.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Adams County Co-Op, et al	RF272–94118	10/17/95
LTV Energy Products, et al	RF272–78116	10/20/95
Racine County, WI, et al	RF272–97545	10/17/95
Simeone Corporation	RF272–77896	10/17/95
Statler Tissue Co., et al	RK272–518	10/17/95
Texaco Inc./Donald E. Foster	RF321–12205	10/20/95
Chain Oil Co	RF321–12208	
Texaco Inc./Pattersons's Texaco	RF321–20746	10/20/95
Van Brunt Texaco	RF321–20768	
Wolk Properties, et al	RF272–77655	10/17/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Crane, TX	RF272–86292
Goodhue Lumber Company	RF300–21437
Government Accountability Project	VFA–0090
Hill Brothers Atlantic	RF304–15055
Kerrville Bus Co., Inc	RF300–21357
Leonard's Texaco Service	RF321–20630
Penry's Texaco	RF321–16247
Rutland, MA	RF272–86322
Snow's Texaco	RF321–20602

[FR Doc. 96–23354 Filed 9–11–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders for the Week of November 27 Through December 1, 1995

During the week of November 27 through December 1, 1995, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: August 28, 1996.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

Department of Energy

Office of Hearings and Appeals

Washington, D.C. 20585

Decision List No. 948

Week of November 27 Through December 1, 1995

Appeals

Burlin McKinney, *11/28/95,* VFA–0094

The Department of Energy (DOE) issued a Decision and Order (D&O) denying a Freedom of Information Act (FOIA) Appeal that was filed by Burlin McKinney. In his Appeal, Mr. McKinney sought access to the deleted portions of a memorandum concerning an interview of an individual with the Office of the Inspector General (OIG). Portions of the memorandum which tended to identify the individual were deleted pursuant to Exemptions six and seven of the FOIA. In the Decision, the DOE stated that the individual's interest in remaining anonymous outweighed the public interest in disclosure. The DOE therefore concluded that the OIG properly withheld the deleted portions of the document.

National Security Archive, *11/30/95,* VFA–0095

The National Security Archive (NSA) filed an Appeal from a determination issued by the Office of Policy (Policy) of the Department of Energy (DOE) in response to a request from NSA under the Freedom of Information Act (FOIA). NSA requested documents concerning the US-Mexico oil negotiations during 1977–78. In considering the Appeal, the Office of Hearings and Appeals found that the scope of the search performed by Policy was not broad enough and that responsive documents may exist within the Office of General Counsel. Moreover, a new search was performed with additional information provided by NSA on appeal. This new search located possibly responsive documents. Accordingly, the Appeal was remanded to the Freedom of Information and Privacy Act Division of the DOE to (1) coordinate a search of the Office of General Counsel and (2) issue a determination with respect to the newly discovered documents.

Paul W. Fox, 11/30/95, VFA–0096

Paul W. Fox filed an Appeal from a partial denial by the Bonneville Power Administration (BPA) of a Request For Information that he had submitted under the Freedom of Information Act (FOIA). The request concerned negotiations between the U.S. and Canada concerning delivery of electric power pursuant to the Columbia River Treaty.

The documents at issue were withheld pursuant to the deliberative process privilege of Exemption 5, which applies to inter- or intra-agency documents.

The DOE rejected the argument that documents could not be inter- or intra-agency if they were between BPA and the Mid-Columbia Partners (MCPs), a coalition of private power companies. The DOE found that the matter should be remanded to BPA to consider the purpose for which those documents were created, as the MCPs could be government consultants (and therefore intra-agency) where the documents were created primarily for the benefit of BPA. The DOE further noted that documents created by the MCPs might fall within the scope of Exemption 4. The DOE also rejected the contention that DOE waived any privilege for documents that it provided to the MCPs, since limited disclosure to outside parties with a common interest does not waive a privilege. In addition, the DOE noted that release of certain documents could undermine BPA's negotiation position with the Canadian authorities, and consequently, they could be withheld pursuant to Exemption 5's qualified privilege for commercial information. Finally, the DOE found that certain purely factual information, such as reports of meeting between the MCPs and Canadian officials could not be withheld pursuant to Exemption 5. Accordingly, the Appeal was granted in part and the matter was remanded to BPA.

Supplemental Order

National Recovery Aide, 12/1/95, VFX–0005

The DOE issued a Decision and Order concerning National Recovery Aide. The DOE determined that National Recovery Aide will be denied the privilege of receiving refund checks on behalf of its applicants in all proceedings before the Office of Hearings and Appeals of the Department of Energy. Accordingly, refund checks will be made payable to, and sent directly to, the applicants.

Refund Applications

Georgia Kraft Company, 12/1/95, RK272–313

The DOE issued a Decision and Order granting a supplemental crude oil refund to two companies, The Mead Corporation (Mead) and Inland Container Corporation (Inland). Mead and Inland were joint owners of the original applicant company, Georgia Kraft Company (GKC), which ceased to exist in 1993. The joint venture consisted of three mills, one of which was sold to a third party, Pratt Industries (Pratt), in 1987. When submitting their Application for Supplemental Refund, the three companies also submitted a contractual agreement in which they requested that the DOE distribute the crude oil supplemental refund monies among them based on a mutually agreed upon percentage breakdown. The DOE determined that complying with the agreement between the companies would mean abdicating its statutory responsibility to identify injured parties and provide restitution. In accordance with applicable procedure, the DOE granted the supplemental refund for GKC to Mead and Inland.

Quantum Chemical Corp., 11/28/95, RF272–64273, RD272–64273, RF272–93712

Quantum Chemical Corporation applied for a crude oil overcharge refund based on purchases of gasoline, diesel fuel, fuel oils, kerosene, cyclohexane, lube oils, propane, butane, isobutylene and ethane. The DOE found that the cyclohexane and isobutylene are petrochemicals and therefore not eligible for refunds. The DOE further found that Quantum had not demonstrated that the ethane that it purchased came from a crude oil refinery. Accordingly, Quantum's request for refunds based on its purchases of that product was denied. Quantum was granted a refund of $2,734,470 for the remaining eligible products. The DOE denied a Motion for Discovery filed by a group of States and dismissed a duplicate refund application inadventently filed by Quantum.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Jimmy's Arco	RF304–15484	12/01/95
Fremont Farmers Union Corp., et al	RF272–86307	11/28/95

Globe Union, Inc	RF272–77429	12/01/95
Gulf Oil Corporation/Chief Freight Lines Co. et al	RF300–12744	11/28/95
Radcliffe Community School Distict et al	RF272–95901	11/28/95
Tajon, Inc	RF272–97076	12/01/95
Texaco Inc./Fairlawn Oil Service, Inc	RF321–20700	12/01/95
Waybec Ltd. et al	RK272–00001	12/01/95
Wise Aviation	RF272–98001	12/01/95
Zenda Grain Supply et al	RF272–97571	11/28/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Air East, Inc	RF272–98019
Pantasote, Inc	RF272–78081
The Pasha Group	RF272–97413

[FR Doc. 96–23355 Filed 9–11–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders by the Office of Hearings and Appeals; Week of December 4 Through December 8, 1995

During the week of December 4 through December 8, 1995, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: August 28, 1996.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

Decision List No. 949 for the Week of December 4 Through December 8, 1995

Refund Applications

Ellsworth Freight Lines, Inc., 12/7/95, RF272–97361

The DOE issued a Decision and Order denying an Application for Refund filed by Ellsworth Freight Lines, Inc. in the Subpart V crude oil refund proceeding. Ellsworth had filed an earlier claim for a refund from the Surface Transporters (ST) Escrow and signed a waiver which made the firm ineligible to file in the crude oil proceeding. Ellsworth's ST claim was dismissed because it lacked sufficient documentation to verify its gallonage claim. Since Ellsworth had signed a waiver in the ST proceeding, it was bound by the waiver even though the claim was dismissed. Therefore, Ellsworth's Application for Refund was denied.

Trans-Continental Express, Inc., 12/7/95, RF272–212

The DOE issued a Decision and Order granting a Motion for Reconsideration filed by Trans-Continental Express, Inc. in the Subpart V crude oil refund proceeding. Trans-Continental had failed to submit documents verifying its gallonage claim in support of its original refund application, and it was therefore denied. However, since Trans-Continental subsequently submitted those documents, and showed good cause for delay in providing the material, its refund claim was granted in the amount of $13,183.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Matt's ARCO	RF304–14389	12/04/95
Berman Moving & Storage, Inc. et al	RK272–572	12/06/95
Brentwood Union School District et al	RF272–96243	12/07/95
Halko Farms et al	RK272–692	12/06/95
Jeffrey Management Co. et al	RK272–2743	12/06/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Albuquerque Operations Office	VSA–0019
Consequential Holding Corp	RK272–00230
Ethyl Corp	RF300–21567
Federal Aviation Administration	RF300–21313
J&R Cartage	RF272–89122
Williams Energy Company	RF304–15076

[FR Doc. 96–23356 Filed 9–11–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders During the Week of December 11 Through December 15, 1995

During the week of December 11 through December 15, 1995, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: August 29, 1996.

Richard W. Dugan,

Acting Director, Office of Hearings and Appeals.

Appeals

Butler, Vines and Babb, P.L.L.C., 12/13/95, VFA–0098

Butler, Vines and Babb, P.L.C. filed an Appeal from a determination issued to it on November 2, 1995 by the Freedom of Information Act Officer (FOIA Officer) of the Oak Ridge Operations Office of the Department of Energy (DOE). In that determination, the FOIA Officer stated that no responsive documents could be found pursuant to a Freedom of Information Act request. Specifically, the FOIA Officer stated that there were no documents relating to Armstrong Contracting and Supply's sale of asbestos-containing material for use at the Oak Ridge Reservation or pertaining to contracts governing performance by Armstrong Contracting and Supply at Oak Ridge from 1958 through 1975. In considering the Appeal, the DOE discovered that there is a reasonable possibility that responsive documents may exist at a repository in Atlanta and remanded the case for a search of that repository.

Linda P. Yeatts, 12/13/95, VFA–0101

Linda P. Yeatts filed an Appeal of a determination issued by the DOE's Oak Ridge Operations Office under the Freedom of Information Act. The appellant contended that the Operations Office had not conducted an adequate search. After considering the matter, the DOE determined that the Operations Office had conducted a reasonable search for responsive documents. Accordingly, the Appeal was denied.

U.S. Ecology, 12/13/95, VFA–0099

U.S. Ecology, Inc. filed an Appeal from a partial denial by the Richland Operations Office of the U.S. Department of Energy (DOE/RL) of a Request for Information which the organization had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that one of the documents requested by U.S. Ecology related to an on-going procurement at DOE/RL and was properly labeled source selection information by DOE/RL. Because release of source selection information is prohibited by the Procurement Integrity Act, the document was properly withheld from disclosure to the requester under Exemption 3 of the FOIA. Accordingly, the Appeal was denied.

Personnel Security Hearings

Oak Ridge Operations Office, 12/13/95, VSA–0029

An individual whose access authorization was suspended filed a request for review of a DOE Hearing Officer's recommendation against restoring the authorization. The individual's access authorization had been suspended by the Department of Energy's (DOE) Oak Ridge Operations Office (Oak Ridge) upon its receipt of derogatory information indicating that the individual had been or was a user of alcohol habitually to excess, or that he had been diagnosed by a board-certified psychiatrist, or other licensed physician or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse. In his request for review, the individual claimed that he had been successfully rehabilitated from alcohol dependence. The Director of the Office of Hearings and Appeals found that: (i) The individual had not established that he had been sufficiently rehabilitated from alcohol dependence; and (ii) the nexus established between the behavior of the individual and the risk to the national security easily met the standard set forth by the federal courts. Accordingly, the Director found that the individual's access authorization should not be restored.

Rocky Flats Field Office, 12/13/95, VSA–0032

An individual whose request for access authorization was denied filed a request for review of a DOE Hearing Officer's recommendation against granting the authorization. The individual's request for access authorization had been denied by the Department of Energy's (DOE) Rocky Flats Field Office upon its receipt of derogatory information indicating that the individual had an illness or mental condition of a nature which causes or may cause a significant defect in judgment or reliability.

Upon review, the individual claimed that she did not have any illness or mental condition of the aforementioned type, and vigorously evaded any serious discussion of the derogatory information at the hearing. The Director of the Office of Hearings and Appeals found that the individual had not established that she did not suffer from an illness or mental condition causing a significant defect in judgment or reliability, and that her request for access authorization should not be granted.

Request for Exception

F.L. Baker Dist., Inc., 12/13/95, VEE–0010

F.L. Baker Dist., Inc. (Baker) filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file form EIA–782B, the ''Resellers'/Retailers' Monthly Petroleum Product Sales Report.'' In considering this request, the DOE found that the firm was not suffering gross inequity or serious hardship. Therefore, the DOE denied Baker's Application for Exception.

Refund Applications

Perry Gas Processors, Inc./State of Washington, 12/13/95, RQ183–597

The DOE issued a Decision and Order granting a second-stage refund application filed by the State of Washington. Washington requested that all remaining funds allocated to its Federally-Recognized Indian Tribes in the Perry Gas Processors special refund proceeding be used to fund the installation of a computer network. As of November 30, 1995, the allocation totaled $2,755 ($675 in principal and $2,080 in interest), but the allocation will be slightly higher at the time of disbursement. The network, to be used by the Western Washington Indian Employment and Training Program, will allow the Indian Tribes to track energy usage in tribal facilities. The DOE found that the computer network would produce timely restitutionary benefits to injured consumers of refined petroleum products. Accordingly, Washington's second-stage refund application was granted.

Marine Corps Exchange 0231 Marine Corps Exchange Service, 12/13/95, RF272–67557, RF272–70220

The DOE issued a Decision and Order denying refunds to Marine Corps Exchange 0231 and Marine Corps Exchange Service, (collectively ''the Exchange'') in the crude oil overcharge refund proceeding conducted under 10 C.F.R. Part 205, Subpart V. The Exchange applied for a refund for petroleum products it sold through retail gasoline stations on Marine Corps bases. In denying a refund, the DOE found that the Exchange was retailer of these products and was required to submit a detailed demonstration of injury from crude oil overcharges. Instead of submitting such a demonstration, the Exchange argued that (1) It suffered reduced profits because of the overcharges; (2) its prices were set lower than other gasoline retail outlets; and (3) the Exchange is similar to a cooperative because the refund would be shared with local Marine Corps recreation and morale support funds. The DOE rejected all three arguments based on its findings in earlier cases. Since the Exchange failed to submit a demonstration of injury, the DOE denied its Application for Refund.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Crude Oil Supple Ref Dist	RB272–00060	12/13/95
Crude Oil Supplemental Refund Distribution	RB272–00054	12/13/95
Crude Oil Supplemental Refund Distribution	RB272–00035	12/13/95
E & R Trucking Co., Inc. et al	RF272–77434	12/13/95
Electric Energy, Inc	RF272–65878	12/13/95
Enron Corp./Geiger Bottled Gas Company	RF340–0170	12/13/95
Southern States Utilities, Inc	RF340–0202	.....
Flasher Farmers Union Oil Co.	RR272–0199	12/13/95
George R. Brown Lease Service	RF272–78648	12/13/95
Phoenix Industries, Inc. et al	RF272–92015	12/11/95
Ranger Fuel Corporation	RF272–77226	12/13/95
Jewell Ridge Coal Corporation	RF272–77227	.....
Virginia Chemicals, Inc	RF272–77387	12/13/95

Dismissals

The following submissions were dismissed:

Name	Case No.
Birchwood Air Service	RF272–98027
On Site Fuel Oil Co., Inc.	RF300–16898
State of Wyoming	RF272–95217

[FR Doc. 96–23357 Filed 9–11–96; 8:45 am]

BILLING CODE 6450–01–P

Notice of Issuance of Decisions and Orders During the Week of January 22 Through January 26, 1996

During the week of January 22 through January 26, 1996, the decisions and orders summarized below were issued with respect to appeals, applications, petitions, or other requests filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C. 20585–0107, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system. Some decisions and orders are available on the Office of Hearings and Appeals World Wide Web site at http://www.oha.doe.gov.

Dated: August 28, 1996.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

Appeals

David R. McMurdo, 1/25/96, VFA–0109

David R. McMurdo (Appellant) filed an Appeal under the Privacy Act of a December 7, 1995 determination issued to him by the DOE's Richland Operations Office (Richland). The Appellant, who had been employed by a sub-contractor on the Hanford Reservation, had requested all medical and personnel records held by Richland concerning him. On Appeal, the Appellant contended that the DOE's search for responsive documents was inadequate. After considering his Appeal, the DOE found that Richland's search for responsive documents was adequate. Accordingly, the Appeal was denied.

Nathaniel Hendricks, 1/26/96, VFA–0106

Nathaniel Hendricks (Appellant) filed an Appeal from a determination issued by the DOE's Office of Human Radiation Experiments (OHRE) in response to a request under the Freedom of Information Act (FOIA). The request related to the alleged release of radiation in the Chicago area in the early 1940s. The Chicago Operations Office (COO) and the OHRE conducted searches for responsive documents. The Appellant did not appeal the COO's determination, but appealed the OHRE determination, claiming that the OHRE had not performed an adequate search for responsive documents. In the interests of a factually complete determination, the DOE investigated the searches of the COO and the OHRE. With respect to the COO search, conducted by its contractor, Argonne National Laboratory (Argonne), the DOE discovered that Argonne possessed 5,000 notebooks of possibly responsive material, which had been determined likely to be radioactive. According to Argonne, the notebooks had never been examined due to the high costs of conducting the

necessary radioactivity study and examination of such a large quantity of material. In its Decision, the DOE determined that it was unreasonable to require the COO to review the notebooks and concluded that the COO's search was adequate. However, the DOE concluded that the OHRE's search of the two databases available to it was inadequate because of the failure to search for certain prominent terms used in the Appellant's request. Accordingly, the DOE granted the Appeal and remanded the matter to the OHRE for further action.

Terrence Willingham, 1/22/96, VFA–0100

Terrence Willingham (Appellant) filed an Appeal from a determination issued to him by the DOE's Office of the Executive Secretariat (ES). The Appellant asserted that the ES failed to conduct an adequate search for documents responsive to two Freedom of Information Act (FOIA) requests. The Appellant requested copies of all documents containing information pertaining to various job announcements concerning the Director and Deputy Director of the DOE's Office of Civil Rights. In its determination letter, the ES produced 42 documents. The Appellant asserted that the ES conducted an inadequate search. The DOE found that the ES conducted an adequate search with regard to almost all of categories of information. The DOE further found, however, that the search concerning several of the requested categories of information was inadequate. Finally, the DOE found that a portion of one of the documents provided to the Appellant, minutes of a meeting (Minutes Document), had been deleted without providing the Appellant a statement of the reasons for the withholding. Consequently, the DOE remanded the matter for a (i) further search for responsive documents and (ii) a determination concerning whether the withheld portion of the Minutes Document was releasable.

Williams & Trine, P.C., 1/25/96, VFA–0108

William & Trine, P.C. (Appellant) filed an Appeal from denials issued by the Ohio Field Office (DOE/OH) and the FOIA/Privacy Act Division (DOE/HQ) of a Request of Information which the firm had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the requested information, documentation of the shipment of hazardous or radioactive material from any DOE facility to a facility of the Appellant's client, Cotter Corporation in Colorado, did not exist because no shipments of such material were ever made. Accordingly, the Appeal was denied.

Personnel Security Hearing

Oak Ridge Operations Office, 1/25/96, VSO–0057

An OHA Hearing Officer issued an opinion concerning the eligibility for restoration of access authorization of an individual who untruthfully stated on a Questionnaire for Sensitive Positions and in two Personnel Security Interviews that he had a college degree. The Hearing Officer found that due to this falsification the individual was untrustworthy. Accordingly, the Hearing Officer found that the individual's access authorization should not be restored.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Easy Times ARCO	RF304–13145	01/22/96
ARCO Mini Market	RF304–15479	.....
Crude Oil Supple. Refund Dist	RB272–62	01/22/96
Crude Oil Supple. Refund Dist	RB272–64	01/22/96
Crude Oil Supple. Refund Dist	RB272–63	01/22/96
Crude Oil Supple. Refund Dist	RB272–42	01/22/96
Crude Oil Supplemental Refund Dist	RB272–00033	01/24/96
Elmer Hendrix, Jr., et al	RK272–00110	01/24/96
Libby Rink, et al	RK272–01616	01/22/96
Northern Ohio Trucking, et al	RF272–85025	01/22/96
St. Patrick's Church, et al	RF272–99107	01/22/96

Dismissals

The following submissions were dismissed:

Name	Case No.
Americair, Inc	RF272–97954
Amerijet International	RF272–97948
Aviation Associates, Inc	RF272–98721
Boston and Maine Corporation	RF272–97248
Executive Airlines	RF272–97988
Flight International, Inc	RF272–97992
I.E. Miller & Company	RF272–98429
Long Island Airlines	RF272–97989
Maine Central Railroad	RF272–97251
Maxair, Inc	RF272–97990
Portland Terminal Company	RF272–97249
Springfield Terminal Railway	RF272–97250
Tanana Air Service	RF272–97994
Taylor's ARCO	RF304–14251
Wellen Oil and Chemical	RF300–18517

[FR Doc. 96–23358 Filed 9–11–96; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00195; FRL–5393–7]

Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that EPA is planning to submit the following continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections described below. The ICRs are: (1) A continuing ICR entitled ''Polychlorinated Biphenyls (PCBs): Manufacturing, Processing and Distribution in Commerce Exemptions,'' EPA ICR No. 0857, OMB No. 2070-0021, and (2) a continuing ICR entitled ''Lead-Based Paint Abatement and Repair and Maintenance Study in Baltimore,'' EPA ICR No. 1603, OMB No. 2070-0123. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9.

DATES: Written comments must be submitted on or before November 12, 1996.

ADDRESSES: Submit three copies of all written comments to: TSCA Document Receipts (7407), Rm. NE-G99, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202-260-7099. All comments should be identified by the respective administrative record numbers: comments on ICR No. 0857 should reference administrative record number 163, and comments on ICR No. 1603 should reference administrative record number 164. These ICRs are available for public review at, and copies may be requested from, the docket address and telephone number listed above.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: oppt.ncic@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 file format or ASCII file format. All comments and data in electronic form with respect to ICR No. 0857 must be identified by the administrative record number AR-163 and ICR 0857. All comments and data in electronic form with respect to ICR No. 1603 must be identified by the administrative record number AR-164 and ICR 1603. No CBI should be submitted through e-mail. Electronic comments on this document may be filed online at many Federal Depository Libraries. Additional information on electronic submissions can be found in Unit III. of this document.

FOR FURTHER INFORMATION CONTACT: For general information contact: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202-554-1404, TDD: 202-554-0551, e-mail: TSCA-Hotline@epamail.epa.gov. For technical information contact the following individuals:

For ICR No. 0857 contact Geraldine Hilton, Chemical Management Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202-260-3992, Fax: 202-260-1724, e-mail: hilton.geraldine@epamail.epa.gov.

For ICR No. 1603 contact Benjamin Lim, Chemical Management Division (7404), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: 202-260-1509, Fax: 202-260-3453, e-mail: lim.benjamin@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Electronic Availability: Electronic copies of the ICR are available from the EPA Public Access gopher (gopher.epa.gov) at the Environmental Sub-Set entry for this document under ''Rules and Regulations.''

I. Background

Entities potentially affected by this action are: with respect to ICR No. 0857, those persons who petition EPA for exemptions from the prohibition on the manufacture, processing and distribution in commerce of polychlorinated biphenyls, and with respect to ICR No. 1603, those private households in Baltimore, Maryland, that are participating in an ongoing EPA-sponsored survey to investigate abatement practices and low-cost, practical repair and maintenance approaches with respect to lead-based paint and lead-contaminated dust in residential housing. For the collection of information addressed in this notice, EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

(iii) Enhance the quality, utility, and clarity of the information to be collected.

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

II. Information Collections

EPA is seeking comments on two ICRs, which are identified and discussed separately below.

Title: Polychlorinated Biphenyls (PCBs): Manufacturing, Processing and Distribution in Commerce Exemptions, EPA ICR No. 0857, OMB No. 2070-0021, expires May 31, 1997.

Abstract: Section 6(e)(3)(A) of the Toxic Substances Control Act (TSCA) prohibits the manufacture, processing and distribution in commerce of polychlorinated biphenyls (PCBs). TSCA section 6(e)(3)(B) provides that any person may petition EPA for an exemption from these prohibitions and that EPA may grant such an exemption for a 1-year period if (1) An unreasonable risk of injury to health or environment would not result, and (2) good-faith efforts have been made to develop a substitute chemical substance for PCBs that does not present an unreasonable risk of injury to health or the environment.

Interim Procedural Rules at 40 CFR part 750, subparts B and C outline the procedures for filing exemption petitions, the procedures that EPA will follow when a petition is submitted and the procedures for filing a request to renew an exemption previously granted. Under these rules, EPA may request information from each petitioner to determine whether the petitioner meets the statutory requirements to qualify for an exemption.

Responses to the collection of information are mandatory (see 40 CFR part 750). Respondents may claim all or part of a notice confidential. However, if a petition is claimed confidential, a sanitized version must also be provided

for inclusion in the public docket. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

Burden Statement: The burden to respondents for complying with this ICR is estimated to total 15 hours per year, with an annual cost of $746. These totals are based on an average burden ranging from 2 to 8 hours per response for an estimated three respondents making one response annually. These estimates include the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Title: Lead-Based Paint Abatement and Repair and Maintenance Study in Baltimore, EPA ICR No. 1603, OMB No. 2070-0123, expires January 31, 1997.

Abstract: Prevention of childhood lead poisoning is a high priority for EPA. EPA's lead abatement program is predicated on the need for a comprehensive national approach to reducing exposure to and hazards from lead, particularly among children. Children are uniquely susceptible to permanent and irreversible neurological damage from exposure to lead. Although lead poisoning is one of the most serious environmental threats to children in this country, it is also one of the most preventable.

The EPA is sponsoring a study of private households in Baltimore, Maryland, to investigate lead-based paint abatement practices. Low-cost practical repair and maintenance approaches to the problem of lead-based paint and lead-contaminated dust in U.S. housing will also be examined. Repair and maintenance practices may provide a means of reducing lead exposure for future generations of children who occupy older housing that cannot be fully abated or rehabilitated.

From each study household EPA is periodically collecting both environmental and biological samples as well as questionnaire data over a 3-year period. EPA is collecting samples of interior surface dust, exterior soil, and drinking water from study dwellings for lead analysis, as well as collecting blood for lead analysis from children living in study dwellings. A structured questionnaire is being used to collect relevant data on occupational, behavioral, and housing characteristics that can influence lead exposure.

EPA will use this study to evaluate low-cost lead abatement strategies. The study findings will also be used by the Department of Housing and Urban Development (HUD) in preparing a report to Congress. The Centers for Disease Control (CDC) will use the study findings to help provide guidance to state and local childhood lead poisoning prevention programs. The final report may also be used directly by state and local agencies, private property owners, and managers of public and Indian housing to decide on cost-effective methods of addressing lead poisoning and lead abatement concerns.

Responses to the collection of information are voluntary. The information collected under this ICR is not considered to be confidential.

Burden Statement: The burden to respondents for complying with this ICR is estimated to total 683 hours per year, with an annual cost of $6,825. These totals are based on an average burden of approximately 6.5 total hours for 105 respondents responding to approximately four requests for information annually. These estimates include the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

III. Public Record

A record has been established for this action under docket number ''OPPTS-00195'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in the TSCA Nonconfidential Information Center, Rm. NE-B607, 401 M St., SW., Washington, DC 20460.

Electronic comments can be sent directly to EPA at:

oppt.ncic@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this action, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in ADDRESSES at the beginning of this document.

List of Subjects

Environmental protection and Information collection requests.

Dated: August 28, 1996.

Susan H. Wayland,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 96–23398 Filed 9–11–96; 8:45 am]

BILLING CODE 6560–50–F

[FRL–5608–6]

Clean Air Act Advisory Committee: Accident Prevention Subcommittee and Electronic Submission Workgroup; Series of Conference Call Meetings—September 1996–May 1997

Background

The Clean Air Act Section 112(r) required EPA to publish regulations to prevent accidental releases of chemicals and to reduce the severity of those releases that do occur. These accidental release prevention requirements build on the chemical safety work begun by the Emergency Planning and Community Right-to-Know Act (EPCRA) which sets forth requirements for industry, state and local governments. On June 20, 1996 EPA published the final rule for risk management programs to address prevention of accidental releases.

An estimated 66,000 facilities are subject to this regulation based on the quantity of regulated substances they have on-site. Facilities that are subject will be required to implement a risk management program at their facility, and submit a summary of this information to a central location specified by EPA. This information will be helpful to state and local government entities responsible for chemical emergency preparedness and prevention. It will also be useful to

environmental and community organizations, and the public in understanding the chemical risks in their communities. In addition, we hope the availability of this information will stimulate a dialogue between industry and the public to improve accident prevention and emergency response practices.

Notice

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App. 2, notice is hereby given that the Accident Prevention Subcommittee of the Clean Air Act Advisory Committee will hold a public teleconference on September 24, 1996 from 1:00 p.m. to 4:00 p.m. Eastern Time. The Accident Prevention Subcommittee will advise EPA's Chemical Emergency Preparedness and Prevention Office (CEPPO) on chemical accident prevention issues, specifically, Section 112(r) of the Clean Air Act. During the September 24th teleconference, the Subcommittee will discuss: (a) Potential FY97 Subcommittee activities; and (b) the charge of its first working group, the ''Electronic Submission (of Risk Management Plans) Workgroup''. The Electronic Submission Workgroup will make recommendations on how electronic submission of ''risk management plans'' (RMPs) can be accomplished and how the public can best access and utilize the data. The Electronic Submission Workgroup plans to hold the following teleconference meetings:

(1) September 24, 1996—2:30–4:30
(2) October 9, 1996—2:30–4:30
(3) October 23, 1996—2:00–4:00
(4) November 5, 1996—2:00–4:00
(5) November 19, 1996—2:00–4:00
(6) December 5, 1996—2:00–4:00
(7) January 8, 1997—2:00–4:00
(8) January 22, 1997—2:00–4:00
(9) February 5, 1997—2:00–4:00
(10) February 20, 1997—2:00–4:00
(11) March 5, 1997—2:00–4:00
(12) March 20, 1997—2:00–4:00
(13) April 2, 1997—2:00–4:00
(14) April 17, 1997—2:00–4:00
(15) April 30, 1997—2:00–4:00
(16) May 14, 1997—2:00–4:00
(17) May 28, 1997—2:00–4:00

Members of the public desiring additional information about these meetings, including agendas, should contact Karen Shanahan, Designated Federal Official, US EPA (5101), 401 M. St., SW, Washington DC 20460, by telephone at (202) 260–2711 or FAX at (202) 260–7906, or via the Internet at: shanahan.karen@epamail.epa.gov.

Members of the public who wish to make a brief oral presentation to the Subcommittee at the September 24th meeting, must contact Karen Shanahan in writing (by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, September 18, 1996 in order to be included on the Agenda. Written comments of any length may be submitted to the Accident Prevention Subcommittee or the Electronic Submission Workgroup up through the date of the meeting. Please address such material to Karen Shanahan at the above address.

Providing Oral and Written Comments at Accident Prevention Subcommittee Meetings

The Accident Prevention Subcommittee expects that public statements presented at its meetings will not be repetitive or previously submitted oral or written statements. In general, for teleconference call meetings, opportunities for oral comment will be limited to no more than three minutes per speaker and no more than fifteen minutes total. Written comments (twelve copies) received sufficiently prior to a meeting date (usually one week prior to a meeting or teleconference), may be mailed to the Subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the Subcommittee up until the time of the meeting.

Dated: September 6, 1996.

Jim Makris,

Chairman, Accident Prevention Subcommittee.

[FR Doc. 96–23399 Filed 9–11–96; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2151]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceedings

September 6, 1996.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, N.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed, September 27, 1996. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services. (CC Docket No. 94–54)
Number of Petition Filed: 7

Subject: Telephone Number Portability. (CC Docket No. 95–116)
Number of Petition Filed: 22

Subject: Bell Operating Company Provision of Out-of-Region Interstate, Interexchange Services. (CC Docket No. 96–21)
Number of Petition Filed: 1

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 96–23338 Filed 9–11–96; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

''FEDERAL REGISTER'' NUMBER: 96–22841.

PREVIOUSLY ANNOUNCED DATE AND TIME: Tuesday, September 10, 1996, 10:00 a.m., closed to the public.

THE FOLLOWING ITEM WAS ADDED TO THE AGENDA: Procurement Contract.

DATE AND TIME: Tuesday, September 17, 1996 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, September 19, 1996 at 10:00 a.m.

PLACE: 999 E Street, N.W. Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 96–23555 Filed 9–10–96; 2:47 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parities may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232–011170–006.

Title: RO-Ro Chartering Agreement.

Parties: Wilhelmsen Lines AB NOSAC ANS.

Synopsis: The proposed modification deletes language from Article 5.3 which provides authority for the parties to discuss and agree upon rates.

Agreement No.: 232–011401–002.

Title: TMM/H–L Space Charter and Sailing Agreement.

Parties: Transportacion Maritima Mexicana, S.A. de C.V. Hapag-Lloyd AG.

Synopsis: The proposed amendment would delete the authority of the parties to agree to charge rates and other items fixed by conferences of which they are members. The parties have requested a shortened review period.

Dated: September 6, 1996.

By order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 96–23272 Filed 9–11–96; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 96-22743) published on pages 47127 and 47128 of the issue for September 6, 1996.

Under the Federal Reserve Bank of Dallas heading, the entry for Rayford Holley Reily, Groveton, Texas, is revised to read as follows:

A. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Rayford Holley Reily, Livingston, Texas; to acquire an additional 5 percent, for a total of 28.82 percent, and Martha Lou Reily, also of Livingston, Texas, to acquire an additional .21 percent, for a total of 1.22 percent, of the voting shares of Citizens State Financial Corporation, Corrigan, Texas, and thereby indirectly acquire Citizens State Bank, Corrigan, Texas, and First Bank, Groveton, Texas.

Comments on this application must be received by September 19, 1996.

Board of Governors of the Federal Reserve System, September 6, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–23325 Filed 9–11–96; 8:45 am]

BILLING CODE 6210–01–F

Caisse Nationale de Credit Agricole, S.A. and Banque Indosuez; Application to Engage in Nonbanking Activities

Caisse Nationale de Credit Agricole, S.A., Paris, France (CNCA), has given notice pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(2) of the Board's Regulation Y (12 CFR 225.23(a)(2)) to retain its interest in Daniel Breen & Company, L.P., Houston, Texas (DBC), and thereby engage indirectly in providing investment advisory services pursuant to § 225.25(b)(4) of Regulation Y, and its interest in Indosuez Carr Futures, Inc., Chicago, Illinois (ICF), and thereby engage indirectly in acting as a futures commission merchant (FCM) and providing related investment advisory services for financial futures contracts and options on futures contracts pursuant to § 225.25(b)(18) and (19) of Regulation Y. CNCA and Banque Indosuez, Paris, France (BI) (together, Notificants) also have given notice pursuant to section 4(c)(8) of the BHC Act and § 225.23(a)(2) of Regulation Y to acquire 100 percent of the voting shares of Breen Trust Company, Houston, Texas (BTC) and thereby engage indirectly in providing trust services pursuant to § 225.25(b)(3) of Regulation Y, and pursuant to section 4(c)(8) and § 225.23(a)(3) of Regulation Y to engage indirectly through ICF in acting as a FCM and providing related investment advisory services for non-financial futures contracts and options on non-financial futures contracts.

Notificants propose to conduct the activities of DBC and BTC on a nationwide basis and the activities of ICF on a worldwide basis.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity that the Board, after due notice and opportunity for hearing, has determined by order or regulation to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the ''closely related to banking'' test if it is demonstrated that banks generally have provided the proposed service, that banks generally provide services that are operationally or functionally similar to the proposed service so as to equip them particularly well to provide the proposed service, or that banks generally provide services that are so integrally related to the proposed service as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

Notificants maintain that the Board previously has determined by regulation that several of the proposed activities, when conducted within limitations established by the Board, are closely related to banking for purposes of section 4(c)(8) of the BHC Act. *See* 12 CFR 225.25(b)(3) (performing certain functions or activities of a trust company); 12 CFR 225.25(b)(4) (providing investment and financial advice); 12 CFR 225.25(b)(18) (providing FCM services on a discount and full-service basis); and 12 CFR 225.25(b)(19) (providing investment advice on financial futures contracts and options on financial futures contracts). *See also The Bessemer Group, Incorporated*, 82 Fed. Res. Bull. 569 (1996); *Meridian Bancorp, Inc.*, 80 Fed. Res. Bull. 736 (1994) (serving as general partner of and investing in an unregistered limited partnership).

Notificants assert that the Board has determined by order that the remaining proposed activity of ICF (acting as a FCM and providing related investment advisory services for non-financial futures contracts and options on financial futures contracts), when conducted within limitations established by the Board in previous orders, also is closely related to banking. *See J.P. Morgan & Company Incorporated*, 80 Fed. Res. Bull. 151 (1994); *Bank of Montreal*, 79 Fed. Res. Bull. 1049 (1993). Notificants have stated that they would engage in these activities in accordance with the limitations and conditions established by the Board in prior cases.

In order to approve the proposal, the Board must determine that the proposed activities ''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.'' 12 U.S.C. 1843(c)(8). Notificants state that the proposal will produce public benefits that outweigh any potential adverse effects. In particular, Notificants maintain that the proposal will enhance competition and enable it to offer its customers a broader range of services. In addition, Notificants state that the proposed activities will not result in adverse effects such as an undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely to seek the views of interested persons on the issues presented by the notice and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than September 19, 1996. Any request for a hearing on this notice must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why 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.

This notice may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago.

Board of Governors of the Federal Reserve System, September 6, 1996.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 96–23324 Filed 9–11–96; 8:45 am]

BILLING CODE 6210–01–F

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.25 of Regulation Y (12 CFR 225.25) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. Once the notice 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 the proposal complies with the standards of section 4 of the BHC Act, including 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'' (12 U.S.C. 1843). Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 26, 1996.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Westamerica Bancorporation, San Rafael, California; to engage *de novo* through its subsidiary, Westamerica Commercial Credit, Inc., Fairfield, California, in making, acquiring, and servicing loans and other extensions of credit, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, September 6, 1996.

Jennifer J. Johnson

Deputy Secretary of the Board

[FR Doc. 96–23326 Filed 9–11–96; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96M–0217]

Diagnostic Products Corp.; Premarket Approval of Coat-A-Count® PSA IRMA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Diagnostic Products Corp., Los Angeles, CA, for premarket approval, under the Federal Food, Drug, and Cosmetic Act (the act), of Coat-A-Count® PSA IRMA. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 15, 1995, of the approval of the application.

DATES: Petitions for administrative review by October 15, 1996.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Peter E. Maxim, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd. Rockville, MD 20850, 301–594–1294.

SUPPLEMENTARY INFORMATION: On August 10, 1993, Diagnostic Products Corp., Los Angeles, CA 90045, submitted to CDRH an application for premarket approval of Coat-A-Count® PSA IRMA. The device

is an immunoradiometric assay intended for the quantitative measurement of prostate-specific antigen (PSA) in serum to aid in the management of prostate cancer patients.

In accordance with the provisions of section 515(c)(2) of the act (21 U.S.C. 360e(c)(2)) as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Immunology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel.

On September 15, 1995, CDRH approved the application by a letter to the applicant from the Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act authorizes any interested person to petition, under section 515(g) of the act, for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 15, 1996, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated

Dated: August 30, 1996.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 96–23408 Filed 9–11–96; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[R–190]

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New collection; *Title of Information Collection:* Hospital Standard for Potentially HIV Infectious Blood and Blood Products; *Form No.:* HCFA-R–190; *Use*: Hospitals must establish policies/procedures and document patient notification efforts if they have administered potentially HIV infectious blood and blood products. *Frequency:* On occasion; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 16; *Total Annual Responses:* 16; *Total Annual Hours Requested:* 16.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Financial and Human Resources, Management Analysis and Planning Staff, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 5, 1996.

Edwin J. Glatzel,

Director, Management Analysis and Planning Staff Office of Financial and Human Resources

[FR Doc. 96–23381 Filed 9–11–96; 8:45 am]

BILLING CODE 4120–03–P

[HCFA–588, 43, 116, 668A]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Authorization Agreement for Electronic Funds Transfer; *Form No.:* HCFA–588; *Use:*

This information is needed to allow providers to receive funds electronically in their bank. *Frequency:* On occasion; *Affected Public:* Business or other for profit, not for profit institutions; *Number of Respondents:* 78,550; *Total Annual Hours:* 9,819.

2. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Application of Health Insurance Under Medicare for Individuals with Chronic Renal Disease; *Form No.:* HCFA–43; *Use:* This form is used as a standard method of eliciting information necessary to determine entitlement to Medicare under the end stage renal disease provision of the law. *Frequency:* On occasion; *Affected Public:* Individuals and households, Federal government; *Number of Respondents:* 80,000; *Total Annual Hours:* 34,400.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Clinical Laboratory Improvement Amendments Application Form; *Form No.:* HCFA–116; *Use:* This application is completed by entities performing laboratory testing on human specimens for health purposes. *Frequency:* Biennially; *Affected Public:* Business or other for profit, not for profit institutions, Federal Government, and State, Local or Tribal Governments; *Number of Respondents:* 16,000; *Total Annual Hours:* 20,000.

4. *Type of Information Collection Request:* Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Post Laboratory Survey Questionnaire-Surveyor; *Form No.:* HCFA–668A; *Use:* This survey provides the surveyor with an opportunity to evaluation the survey process. The form is completed in conjunction with the HCFA form 668B. This information will help HCFA evaluate the entire survey process from the surveyor's prospective. *Frequency:* Biennially; *Affected Public:* Business or other for profit, not for profit institutions, Federal Government, and State, Local or Tribal Governments; *Number of Respondents:* 1,560; *Total Annual Hours:* 390.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov , or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Date: September 4, 1996.

Edwin J. Glatzel,

Director, Management Planning and Analysis Staff, Office of Financial and Human Resources, Health Care Financing Administration.

[FR Doc. 96–23327 Filed 9–11–96; 8:45 am]

BILLING CODE 4120–03–P

National Institutes of Health

National Eye Institute; Notice of the Meeting of the National Advisory Eye Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Eye Council (NAEC) on September 12, 1996, Executive Plaza North, Conference Room G, 6130 Executive Boulevard, Bethesda, Maryland.

The NAEC meeting will be open to the public on September 12 from 8:30 a.m. until approximately 11:30 a.m. Following opening remarks by the Director, NEI, there will be presentations by the staff of the Institute and discussions concerning Institute programs and policies. Attendance by the public at the open session will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting of the NAEC will be closed to the public on September 12 from approximately 11:30 a.m. until adjournment at approximately 5:00 p.m. for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lois DeNinno, Council Assistant, National Eye Institute, EPS, Suite 350, 6120 Executive Boulevard, MSC–7164, Bethesda, Maryland 20892–7164, (301) 496–9110, will provide a summary of the meeting, roster of committee members, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. DeNinno in advance of the meeting.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

(Catalog of Federal Domestic Assistant Program No. 93.867, Vision Research: National Institutes of Health)

Dated: September 9, 1996.

Paula N. Hayes,

Acting Committee Management Officer, NIH.

[FR Doc. 96–23563 Filed 9–11–96; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. FR–4126–D–01]

Designation

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of designation.

SUMMARY: This notice designates the Office of Lead-Based Paint Abatement and Poisoning Prevention, located in the Office of the Secretary, as the Office of Lead Hazard Control.

EFFECTIVE DATE: August 29, 1996.

FOR FURTHER INFORMATION CONTACT: David E. Jacobs, Director of the Office of Lead Hazard Control, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, (202) 755–1785, ext. 102. (This is not a toll-free number.) For hearing- and speech-impaired persons, this number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: Under HUD's Appropriations Act for 1992, enacted in 1991, Congress required the establishment of an ''Office of Lead-Based Paint Abatement and Poisoning Prevention'' located in the Office of the Secretary of the Department of Housing and Urban Development. The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1992, at 105 Stat. 753 (Pub. L. 102–139, October 28, 1991).

Subsequently, under the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 *et seq.*), Congress broadened considerably the scope of HUD's responsibilities for lead-based paint beyond abatement. Under

the Act, HUD became responsible for a range of lead-based paint and lead-based paint hazard evaluation and control activities including risk assessment and interim controls of lead-based paint hazards in dust and soil. As a result of this expansion of HUD's responsibilities, the name of the Office of Lead-Based Paint Abatement and Poisoning Prevention no longer fully describes HUD's lead-based paint functions.

Therefore, the Office of Lead-Based Paint Abatement and Poisoning Prevention is hereby designated as the Office of Lead Hazard Control. The Office is still located in the Office of the Secretary.

Accordingly, the Secretary designates as follows:

Section A. Designation

The Secretary of Housing and Urban Development designates the Office of Lead-Based Paint Abatement and Poisoning Prevention, located in the Office of the Secretary, as the Office of Lead Hazard Control.

Section B. Appropriated Funds

All funds appropriated for lead-based paint functions of the former Office of Lead-Based Paint Abatement and Poisoning Prevention will be administered by the Office of Lead Hazard Control.

Authority: Sec. 7(d) of the Department of HUD Act (42 U.S.C. 3535(d)).

Dated: August 29, 1996.

Henry G. Cisneros,

Secretary of Housing and Urban Development.

[FR Doc. 96–23259 Filed 9–11–96; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for Anthony's Riversnail for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a technical/agency draft recovery plan for Anthony's riversnail (*Athearnia anthonyi*). This rare freshwater snail currently has a very fragmented, relict distribution but historically was once fairly widespread in the Tennessee River system, where it was associated with shoal areas in the main stem of the Tennessee River and lower reaches of some of its tributaries in eastern Tennessee, northern Alabama, and northwestern Georgia. Many of the historic occurrences of the species have been lost as a result of impoundments and the general deterioration of water quality from siltation and other pollutants contributed by past mining activities, poor land-use practices, and waste discharges. Only two populations of Anthony's riversnail are known to survive—one in the Tennessee River in Jackson County, Alabama, and Marion County, Tennessee, extending into the lower Sequatchie River, Marion County, Tennessee; and one that is restricted to the lower reaches of Limestone Creek, Limestone County, Alabama. The potential for degradation of the water and substratum quality in the two areas where Anthony's riversnail exists is the most significant threat to the species' continued survival. Unless new populations are found or reestablished and existing populations are maintained, this species will remain in jeopardy of extinction for the foreseeable future. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before November 12, 1996 to receive consideration by the Service.

ADDRESSES: Persons wishing to review the technical/agency draft recovery plan may obtain a copy by contacting the Asheville Field Office, U.S. Fish and Wildlife Service, 160 Zillicoa Street, Asheville, North Carolina 28801 (Telephone 704/258–3939). Written comments and materials regarding the plan should be addressed to the Field Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. John Fridell, Fish and Wildlife Biologist, at the address and telephone number shown in the **ADDRESSES** section (Ext. 225).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for recognizing the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that a public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The primary species considered in this draft recovery plan is Anthony's riversnail (*Athearnia anthonyi*). The area of emphasis for recovery actions is the Tennessee River system in eastern Tennessee, northern Alabama, and northwestern Georgia. Habitat protection, reintroduction, and preservation of genetic material are the major objectives of this recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the final plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: September 6, 1996.

Brian P. Cole,

State Supervisor.

[FR Doc. 96–23334 Filed 9–11–96; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[NV–020–4191–03]

Intent To Prepare Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) for a mining Plan of Operations (POO) for the Trenton Canyon Mine project, Humboldt and Lander Counties, Nevada; and notice of scoping period and public meeting.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, and to 43 CFR 3809, the Bureau of Land Management (BLM) will be directing the preparation of an EIS for the proposed gold mine expansion in Humboldt County and Lander County, Nevada. This EIS will be prepared by contract and funded by the proponent, Santa Fe Pacific Gold Corporation. A public meeting will be held to identify issues to be addressed in the EIS, and to encourage public participation in the review process. Representatives of the BLM and Santa Fe Pacific Gold Corporation will be summarizing the POO and accepting comments from the audience. The BLM invites comments and suggestions on the scope of the analysis.

DATES: A scoping meeting will be held September 24, 1996 at the Office of the Bureau of Land Management, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada from 7–9 p.m. Written comments on the Plan of Operations and the scope of the EIS will be accepted until October 15, 1996. The Draft EIS is expected to be completed by the end of May, 1997, at which time the document will be made available for public review and comment.

ADDRESSES: Scoping comments may be sent to: District Manager, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada 89445; ATTN. Rod Herrick, Project Manager.

FOR FURTHER INFORMATION CONTACT: Rod Herrick, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada 89445 (702) 623–1500.

SUPPLEMENTARY INFORMATION: Santa Fe Pacific Gold Corporation of Albuquerque, New Mexico has submitted to the Winnemucca District Office of the BLM, a POO for expansion of the Trenton Canyon Mine. The POO describes proposed expansion of Trenton Canyon Project mining operations onto public land in Humboldt and Lander Counties, Nevada. The mining operation was previously permitted on fee land by permit from the Nevada Division of Environmental Protection, Department of Conservation and Natural Resources. About 122 million tons of oxide overburden and interburden will be removed to mine about 30 million tons of oxide ore. The proposed expansion would result in additional disturbance to public and private lands of approximately 1,872 acres. Future key production facilities would include mine pits, waste rock disposal piles, heap leach pads, solution/overflow ponds, access and haul roads, and a carbon-column circuit. Loaded carbon will be transported to the nearby Lone Tree Mine for gold stripping. Nonprocessing ancillary facilities to support the mine would include an office, shop, warehouse, water supply system, sewage system, electrical distribution system, propane system, bioremediation cells, barrel handling facilities, and explosives magazine, and various materials storage areas.

The EIS will address the issues of geology, minerals, soils, water resources, vegetation, wildlife, grazing management, air quality, aesthetics, cultural resources, paleontological resources, land use, access, recreation, social and economic values related to the mine expansion.

Federal, state, and local agencies and other individuals or organizations who may be interested in or affected by the BLM's decision on the POO are invited to participate in the scoping process. The Authorized Officer will respond to public input and comment as part of the final EIS. The decision regarding the proposal will be recorded as a Record of Decision, which is subject to appeal under 43 CFR part 4.

Dated: September 5, 1996.

Ronald B. Wenker,

District Manager, Winnemucca, Nevada.

[FR Doc. 96–23369 Filed 9–11–96; 8:45 am]

BILLING CODE 4310–HC–P

[CA–010–1430–01; CAS 1198, CACA 23586]

Termination of Recreation and Public Purposes Classification and Opening Order; California

August 23, 1996.

AGENCY: Bureau of Land Management, Interior.

SUMMARY: This notice terminates the existing recreation and public purposes classification CAS 1198. The land will be opened to the operation of the public land laws including the mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregation of record and the requirements of applicable law. The land has been and remains open to the operation of the mineral leasing laws. It should be noted however, that the subject tract shall remain segregated in support of exchange proposal CACA 36926FD.

EFFECTIVE DATE: Termination of the classification is effective on September 12, 1996. The land will be open to entry at 10 a.m. on the same date.

FOR FURTHER INFORMATION CONTACT: Folsom Resource Area Office, 63 Natoma St, Folsom, CA. 95630 (916) 985–4474.

SUPPLEMENTARY INFORMATION: On April 9, 1976, the lands described below were classified as suitable for lease or sale pursuant to the Recreation and Public Purposes (R&PP) Act, as amended (43 U.S.C. 869, 869–1 to 969–4) and the land was segregated from appropriation under the public land laws and the general mining laws:

Mount Diablo Meridian, California

T. 14N., R. 9E.,

Sec. 25, portion of lot 5 (SW¼NE¼, E½SW¼, W½SE¼), and W½NE¼NW¼SW¼, NW¼NW¼SW¼ (the subject land is now a portion of lot 14 per supplemental plat of survey approved August 22, 1996)

Capital Mountain Camp, Inc. is voluntarily relinquishing their R&PP lease CACA 23586, effective September 12, 1996, for the above described public lands.

Pursuant to the Federal Land Policy and Management Act of 1976, as amended (43 CFR 2091.7–1(B)(1). Recreation and Public Purposes Classification CAS 1198 is hereby terminated in its entirety September 12, 1996.

At 10 a.m. on September 12, 1996, the above described land will become open to the operation of the public land laws, subject to valid existing rights, the provisions of existing withdrawals, other segregation of record, and the requirements of applicable law. Because this property is included in exchange proposal CACA 36923, the subject land shall continue to be segregated. Notation to the public land law records on May 21, 1996, segregated the above tract form appropriation under the public land laws and the mineral laws for a period of five (5) years from the date of notation; said segregation is in accordance with regulations in 43 CFR 2001.1–2.

At 10 a.m. on September 12, 1996, the above described land will become open to location under the mining laws, subject to the valid existing rights, the provisions of existing withdrawals, other segregation of record, and the requirements of applicable law. Any such attempted appropriation including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with federal law. The bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts. The land will remain open to the mineral leasing laws.

Dated: August 23, 1996.

Ron Fellows,

District Manager.

[FR Doc. 96–22140 Filed 9–11–96; 8:45 am]

BILLING CODE 4310–40–M

[UT–080–96–1040–08]

Notice: Notice of Intent To Amend Diamond Mountain Resource Management Plan and Price River Management Framework Plan, Vernal and Price Field Offices, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to amend the Diamond Mountain Resource Management Plan, Vernal Field Office, and the Price River Management Framework Plan, Price field Office, Utah to provide management of acquired lands in the Nine Mile Canyon area and prepare the associated Environmental Assessment.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), the Federal Land Policy and Management Act of 1976 (FLPMA) and the Code of Federal Regulations (40 CFR 1501.7, 43 CFR 1610.5–5), notice is given that the Bureau of Land Management (BLM) will consider proposed amendments to the 1994 Diamond Mountain Resource Management Plan and the 1983 Price River Management Framework Plan.

The proposed plan amendment would address future management of acquired lands within the Nine Mile Canyon area of the Vernal and Price Field Offices. An environmental assessment would be prepared to identify the environmental consequences of this action and determine whether an Environmental Impact Statement is needed. Public comment will be actively solicited throughout the planning and environmental assessment processes.

SUPPLEMENTARY INFORMATION: In 1993 BLM received as a donation 762.44 acres, more or less, from Pacific Enterprises Oil Company, Dallas, Texas. These lands are situated in Townships 11 and 12 South, Range 18 East, Salt Lake Base and Meridian, sections 26, 27, 33, 34, 35, and section 3, respectively. Generally these lands are located near the confluence of Nine Mile Creek and the Green River, in northeastern Utah. All but 40 acres of the involved acres are within Uintah County; the remaining acreage is within Carbon County, Utah. This proposed amendment is necessary to update and expand the decisions in existing plans to include these donated lands. Decisions generated during this planning process would address the acquired land and could supersede some affected land use planning decisions presented in the RMP and MFP. At this time general planning issues to be addressed include:

1. Should the area, especially the riparian areas, be grazed, and if so, to what extent?
2. What special management is needed within the Desolation Canyon National Historic Landmark?
3. What amount and type of access should be allowed, including access to private minerals?
4. Are these lands suitable for inclusion as wilderness?
5. What is the functionality and condition of riparian lands within these acquired lands? What management should be determined to maintain and/or enhance the riparian resource?

Public scoping meetings will be held in Price and Roosevelt, Utah. These meetings will be announced in local newspapers and through other local media. Formal public participation will be requested for review of the preliminary and final RMP and MFP in 1997. Notice of availability of these documents will be published at the appropriate times.

These documents will be prepared by an interdisciplinary team which includes specialists in vegetation, cultural resources, recreation, wildlife/fisheries habitats, realty, and minerals. Other disciplines may be represented as necessary.

FOR FURTHER INFORMATION CONTACT: Ron Trogstad, Project Leader, Vernal Office, 170 South, 500 East, Vernal, Utah 84078. Business hours are from 7:45 a.m. to 4:30 p.m., Monday through Friday, except legal holidays, telephone (801) 781–4460, fax (801) 781–4410.

Dated: September 4, 1996.

David E. Little,

Associate State Director, Utah.

[FR Doc. 96–23330 Filed 9–11–96; 8:45 am]

BILLING CODE 4310–DQ–M

[OR–957–00–1420–00: G6–0251]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 28 S., R. 4 W., accepted July 25, 1996
T. 4 S., R. 6 W., accepted July 1, 1996
T. 36 S., R. 7 W., accepted July 26, 1996
T. 9 S., R. 10 W., accepted August 2, 1996
T. 13 S., R. 10 W., accepted August 13, 1996
T. 14 S., R. 10 W., accepted August 13, 1996
T. 36 S., R. 14 W., accepted August 2, 1996

Washington

T. 3 N., R. 12 E., accepted August 8, 1996
T. 31 N., R. 10 W., accepted June 28, 1996

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue,) P.O. Box 2965, Portland, Oregon 97208.

Dated: September 3, 1996.

Robert D. DeViney, Jr.,

Chief, Branch of Realty and Records Services.

[FR Doc. 96–23329 Filed 9–11–96; 8:45 am]

BILLING CODE 4310–33–M

[CA–930–1430–01; CACA 37272]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 230 acres of National Forest System land in

Tuolumne County to protect the Rainbow Pool Recreation Area. This notice closes the land for up to 2 years from mining. The land will remain open to mineral leasing and the Materials Act of 1947.

DATES: Comments and requests for a public meeting must be received by December 11, 1996.

ADDRESSES: State Director, BLM (CA–931), 2135 Butano Drive, Sacramento, California 95825–1889.

FOR FURTHER INFORMATION CONTACT: Duane Marti or Kathy Gary, BLM California State Office, 916–979–2858, or Bill Ferrell, Stanislaus National Forest, Forest Service, 209–532–3671, extension 320.

SUPPLEMENTARY INFORMATION: On August 28, 1996, the Stanislaus National Forest, Forest Service, filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws (30 U.S.C. Ch. 2), subject to valid existing rights:

Mount Diablo Meridian

T. 1 S., R. 18 E.,
Sec. 28, W½SW¼, W½SE¼SW¼;
Sec. 29, E½SE¼;
Sec. 32, NE¼NW¼NW¼, W½NE¼NW;

The area described contains approximately 230 acres in Tuolumne County.

The purpose of the proposed withdrawal is to protect the Rainbow Pool Recreation Area, which is located approximately half a mile northeast of Sweetwater.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the California State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the California State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the Federal Register at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the Federal Register, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are those which are compatible with the use of the land by Forest Service.

Dated: September 4, 1996.

David McIlnay,

Chief, Branch of Lands.

[FR Doc. 96–23380 Filed 9–11–96; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive, Environmental Response, Compensation and Liability Act (''CERCLA'')

In accordance with Departmental policy, 28 CFR 50.7, and Section 122(d)(2) of CERCLA, 42 U.S.C. 9622(d)(2) notice is hereby given that a proposed consent decree in *United States* v. *Collins & Aikman Products Co., et al.*, Civil Action No. 6:96–2659–21 was lodged on August 30, 1996, with the United States District Court for the District of South Carolina. This agreement resolves a judicial enforcement action brought by the United States against the settling defendants pursuant to Sections 106(a) and 107 of CERCLA, 42 U.S.C. 9606(a) and 9607. The settling defendants include the past and present owners and operators of the Beaunit Circular Knit and Dyeing Superfund Site (''Beaunit Site'' or ''Site'') and Site facilities in Greenville County, South Caroline.

The consent decree requires the settling defendants to pay 100 percent of all past and future response costs which the United States has incurred and will incur at the Site, and which EPA documents are not inconsistent with the National Contingency Plan. The settling defendants have also agreed under the decree to perform the final remedy for the Site which EPA set forth in its Record of Decision (''ROD'') dated September 29, 1995, and which provides for the containment of soils and sediments through placement of a cap over the lagoon area, and additional monitoring of the groundwater and soils on a regular schedule to determine the effectiveness of the cap. The ROD also provides for institutional controls as part of the remedy.

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. *Collins & Aikman Products Co., et al.*, DOJ Ref # 90–11–3–1420.

The proposed consent decree may be examined at the office of the United States Attorney, First Union Building, 1441 Main Street, Suite 500, Columbia, South Carolina, 29201; the Region 4 office of the Environmental Protection Agency, 345 Courtland Street, N.E., Atlanta, Georgia, 30365; 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 for the reproduction costs. If you want a copy of the Consent Decree without attachments, which attachments include the ROD, Statement of Work, Site Maps, and lists of Settling Defendants, then the amount of the check should be $22.75 (91 pages at 25 cents per page). If you want a copy of the Consent Decree with the above stated attachments, then the amount of the check should be $85.75 (343 pages at 25 cents per page). The check should be made payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–23371 Filed 9–11–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Partial Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a proposed Partial Consent Decree in *United States* v. *Consolidated Rail Corp. et al.*, Case No. S90–56M, was lodged with the United States District Court for the Northern District of Indiana, on August 2, 1996. The United States filed separate Complaints, later consolidated, against the Consolidated Rail Corp. and Penn Central Corp. to recover response costs incurred by the United States in connection with releases or threatened releases of hazardous substances at the Conrail Superfund site in Elkhart, Indiana, pursuant to Section 107 of the Comprehensive Environmental

Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9607, and for a declaratory judgment under Section 113(g)(2) of CERCLA, 42 U.S.C. 9613(g)(2). Under the Partial Consent Decree, the defendants will place $6,726,237.71 into escrow in reimbursement of the United States' past costs, pending resolution of two remaining aspects of the remedial action being undertaken at the site.

The Department of Justice will receive comments relating to the proposed Partial Consent Decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530. All comments should refer to *United States* v. *Consolidated Rail Corp. et al.,* D.J. Ref. 90–11–3–594.

The proposed Partial Consent Decree may be examined at the offices of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois, 60604, 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 Partial Consent Decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please enclose a check in the amount of $6.50 for the Decree (25 cents per page reproduction costs) payable to the Consent Decree Library. When requesting a copy, please refer to *United States* v. *Consolidated Rail Corp. et al.,* D.J. Ref. No. 90–11–3–594.

Bruce S. Gelber,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–23376 Filed 9–11–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree; Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a proposed consent decree in *United States* v. *Cornell-Dubilier Electronic, Inc., et al.,* Civil Action No 92–11865–REK, was lodged on August 23, 1996, with the United States District Court for the District of Massachusetts. The proposed decree resolves the United States' claims under CERCLA against defendants Coaters, Inc. and Fibre Leather Manufacturing Corporation with respect to the Sullivan's Ledge Superfund Site, in New Bedford, Massachusetts. The Defendants are alleged generators that arranged for the disposal of hazardous substances at the Site. Under the terms of the proposed decree, the Coaters, Inc. will pay $418,000 and Fibre Leather Manufacturing Corporation will pay $190,000 to the United States in reimbursement of past and future response costs incurred and to be incurred by the United States.

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. *Cornell-Dubilier Electronic, Inc., et al.,* DOJ Ref. #90–11–2–388A.

The proposed consent decree may be examined at the office of the United States Attorney, 1107 J.W. McCormack Building, POCH, Boston, Massachusetts; 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, 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, N.W., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $11.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Walker Smith,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–23370 Filed 9–11–96; 8:45 am]

BILLING CODE 4140–01–M

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Department of Justice Policy, 28 CFR 50.7, notice is hereby given that on August 30, 1996, a proposed Consent Decree was lodged with the United States District Court for the District of Alaska in *United States* v. *MAPCO Alaska Petroleum, Inc.,* Civil Action No. F96–0051CIV. The proposed Consent Decree settles claims asserted by the United States at the request of the United States Environmental Protection Agency (''EPA'') in a Complaint filed on the same day. The United States filed its complaint pursuant to Section 113(b) of the Clean Air Act (''the Act''), 42 USC 7413(b), requesting the assessment of civil penalties and injunctive relief against Defendant MAPCO Alaska Petroleum, Inc. (''Mapco'') for violations of Section 111 of the Act, 42 U.S.C. § 7411, and of the provisions of the New Source Performance Standards (''NSPS'') codified at 40 CFR Part 60, Subparts J, Kb, UU, GGG, QQQ, and XX. The United States alleges that the violations occurred in connection with certain equipment at Mapco's North Pole, Alaska refinery which is subject to the ''Standards of Performance for Petroleum Refineries,'' codified at 40 CFR Part 60, Subpart J; the ''Standards of Performance for Volatile Organic Liquid Storage Vessels,'' codified at 40 CFR Part 60, Subpart Kb; the ''Standards of Performance for Asphalt Processing and Asphalt Roofing Manufacturers,'' codified at 40 CFR Part 60, Subpart UU; the ''Standards of Performance for Equipment Leaks of VOC in Petroleum Refineries,'' codified at 40 CFR Part 60, Subpart GGG; the ''Standards of Performance for VOC Emissions from Petroleum Refinery Wastewater Systems,'' codified at 40 CFR Part 60, Subpart QQQ; and the ''Standards of Performance for Bulk Gasoline Terminals,'' codified at 40 CFR Part 60, Subpart XX.

Under the proposed Consent Decree, Mapco will pay a civil penalty of $425,000 to the United States. Mapco will also purchase equipment and devices that will be installed and operated at Mapco's North Pole facility as Supplemental Environmental Projects (''SEPs''). Mapco will also be subject to injunctive relief provisions governing the apsphalt storage tanks at its North Pole facility that are subject to the NSPS provisions codified at 40 CFR Part 60, Subpart UU. In return for the commitments made by Mapco under the Decree, the proposed Consent Decree provides that Mapco's payment of the civil penalty and performance of the other terms of the Consent Decree shall constitute full satisfaction of the claims alleged in the Complaint.

The Department of Justice will receive written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, U.S. Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *MAPCO Alaska Petroleum, Inc.,* D.J. Ref. No. 90–5–2–1–1977. The proposed Consent Decree may be examined at the Region 10 Office of EPA, 7th Floor Records Center, 1200 Sixth Avenue, Seattle, WA 98101. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decreee Library, 1120 G Street,

NW., 4th Floor, Washington, DC 20005, (202) 624–0892. In requesting copies, please enclose a check in the amount of $8.25 (25 cents per page reproduction cost) payable to the ''Consent Decree Library.''

Walker Smith,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–23375 Filed 9–11–96; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that a proposed Consent Decree in *United States* v. *Sherwood Medical Company*, Civ. No. 8:96CV486, was lodged on August 30, 1996 with the United States District Court for the District of Nebraska. The proposed Consent Decree requires Sherwood Medical Company (''Sherwood'') to implement a remedial action consistent with the Record of Decision and the Explanation of Significant Differences issued by the Environmental Protection Agency for the Sherwood Medical Company site (''site'') located in Norfolk, Nebraska. The Consent Decree also requires Sherwood to reimburse the United States for all outstanding response costs incurred and to be incurred at the site. Contemporaneously with lodging the Consent Decree, the United States filed a complaint alleging that Sherwood is an owner or operator of the site within the meaning of Sections 107(a)(1) and 107(a)(2) of the Comprehensive Environmental Response, Compensation, and Liability Act (''CERCLA''), 42 U.S.C. 9607(a)(1) and 9607(a)(2), and that Sherwood arranged for the disposal of hazardous substances at the site within the meaning of Section 107(a)(3) of CERCLA, 42 U.S.C. 9607(a)(3); and thus, is liable for cleanup and response costs incurred in remediating the site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Sherwood Medical Company*, DOJ Reference Number 90–11–2–993.

The proposed Consent Decree may be examined at the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; and at 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. In requesting a copy please refer to the referenced case and enclose a check in the amount of $31.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 96–23377 Filed 9–11–96; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

United States v. Brush Fibers, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the Eastern District of Pennsylvania in the above-captioned case.

On August 29, 1996, the United States filed a civil antitrust Complaint to prevent and restrain Brush Fibers, Inc., from conspiring to lessen and eliminate competition for tampico fiber sold in the United States in violation of Section 1 of the Sherman Act (15 U.S.C. 1). Tampico fiber is a vegetable fiber grown in Mexico and used as a filler in industrial and consumer brushes. The complaint alleges that the defendant agreed with its co-conspirator supplier to resell tampico fiber at prices fixed by the supplier and other co-conspirators.

The proposed Final Judgment would prohibit the defendant from directly or indirectly agreeing with a supplier to fix the price at which tampico fiber may be resold by the defendant or any other distributor. The proposed Final Judgment also would prohibit the defendant from entering into any agreement or understanding with any other distributor or with any supplier of tampico fiber for (1) raising, fixing, or maintaining the price or other terms or conditions for the sale or supply of tampico fiber; (2) allocating sales, territories, or customers for tampico fiber; (3) eliminating or discouraging new entry into the tampico fiber market; and (4) eliminating or otherwise restricting the supply of tampico fiber to any customer. Finally, the proposed Final Judgment would also prohibit the exchange of current and future price information, information regarding sales volume, or the location or identity of customers with any other distributor of tampico fiber or with any supplier other than its own.

Public comment is invited within the statutory sixty (60) day period. Such comments will be published in the Federal Register and filed with the Court. Comments should be addressed to Robert E. Connolly, Chief, Middle Atlantic Office, U.S. Department of Justice, Antitrust Division, The Curtis Center, 6th and Walnut Streets, Suite 650 West, Philadelphia, PA 19106, (telephone number 215–597–7405).

Rebecca P. Dick,

Deputy Director of Operations.

Stipulation

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

(1) The parties consent that a final judgment in the form hereto attached may be filed and entered by the Court at any time after the expiration of the sixty (60) day period for public comment provide by the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b)–(h), without further notice to any party or other proceedings, either upon the motion of any party or upon the Court's own motion, provided that plaintiff has not withdrawn its consent as provided herein;

(2) The plaintiff may withdraw its consent hereto at any time within said period of sixty (60) days by serving notice thereof upon the other party hereto and filing said notice with the Court;

(3) In the event the plaintiff withdraws its consent hereto, this stipulation shall be of no effect whatever in this or any other proceeding and the making of this stipulation shall not, in any manner, prejudice any consenting party to any subsequent proceedings.

Dated:

Respectfully submitted,

For the Plaintiff:
Joel I. Klein,
Acting Assistant Attorney General.
Rebecca P. Dick,
Deputy Director of Operations.
Robert E. Connolly,
Chief, Middle Atlantic Office.
Edward S. Panek
Michelle A. Pionkowski
Roger L. Currier
Joseph Muoio,
Attorneys, Antitrust Division, U.S. Department of Justice, Middle Atlantic Office, The Curtis Center, Suite 650W, 7th & Walnut Streets, Philadelphia, PA 19106, Tel.: (215) 597–7401.
For the Defendant:
Ian Moss,
President, Brush Fibers, Inc.

Final Judgment

Plaintiff, the United States of America, filed its complaint on . Plaintiff and defendant, by their respective attorneys, have consented to the entry of this final judgment without trial or adjudication of any issue of fact or law. This final judgment shall not be evidence against or an admission by any party to any issue of fact or law. Defendant has agreed to be bound by the provisions of this final judgment pending its approval by the Court.

Therefore, before the taking of any testimony and without trial or adjudication of any such issue of fact or law herein, and upon consent of the parties, it is hereby ORDERED, ADJUDGED, AND DECREED as follows.

I

Jurisdiction

This Court has jurisdiction of the subject matter of this action and of each of the parties consenting hereto. The complaint states a claim upon which relief may be granted against defendant under Section 1 of the Sherman Act, 15 U.S.C. 1.

II

Definitions

As used in this final judgment:

A. ''Agreement'' means any contract, agreement or understanding, whether oral or written, or any term or provision thereof.

B. ''Person'' means any individual, corporation, partnership, company, sole proprietorship, firm or other legal entity.

C. ''Tampico fiber'' is a natural vegetable fiber produced by the lechuguilla plant and grown in the deserts of northern Mexico. It is harvested by individual farmers, processed, finished and exported to the United States and worldwide, where it is used as brush filling material for industrial and consumer brushes. It is available in natural white, bleached white, black, gray and a wide variety of mixtures.

D. ''Resale price'' means any price, price floor, price ceiling, price range, or any mark-up, formula or margin of profit relating to tampico fiber sold by distributors.

III

Applicability

A. This final judgment applies to the defendant and to its officers, directors, agents, employees, subsidiaries, successors and assigns, and to all other persons in active concert or participation with any of them who shall have received actual notice of this final judgment by personal service or otherwise.

B. The defendant shall require, as a condition of any sale or other disposition of all, or substantially all, of its stock or assets used in the manufacture or sale of tampico fiber, that the acquiring party or parties agree to be bound by the provisions of this final judgment, and that such agreement be filed with the Court.

IV

Prohibited Conduct

As to tampico fiber imported into or sold in the United States, the defendant is enjoined and restrained from:

A. directly or indirectly entering into, adhering to, maintaining, furthering, enforcing or claiming any rights under any contract, agreement, arrangement, understanding, plan, program, combination or conspiracy with any other distributor or with any supplier of tampico fiber to:

(1) raise, fix, or maintain the prices or other terms or conditions for the sale or supply of tampico fiber;

(2) allocate sales volumes, territories or customers for tampico fiber;

(3) discourage or eliminate any new entrant into the tampico fiber market; and

(4) restrict or eliminate the supply of tampico fiber to any customer;

B. communicating to, requesting from or exchanging with any distributor or supplier (other than its own supplier) of tampico fiber any current or future price, price change, discount, or other term or condition of sale charged or quoted or to be charged or quoted to any customer or potential customer for tampico fiber, whether communicated in the form of a specific price or in the form of information from which such specific price may be computed;

C. distributing to any distributor or supplier (other than its own supplier) of tampico fiber price lists or other pricing material that is used, has been used, or will be used in computing prices or terms or conditions of sale charged or to be charged for tampico fiber;

D. communicating to, requesting from or exchanging with any distributor or supplier (other than its own supplier) of tampico fiber information regarding the volume of sales of tampico fiber or the locatIon or identity of customers;

E. directly or indirectly entering into, adhering to, maintaining, furthering, enforcing or claiming any right under any contract, agreement, understanding, plan or program with any supplier to fix or maintain the prices at which tampico fiber may be resold or offered for sale by defendant or any other distributor; and

F. participating or engaging directly or indirectly through any trade association, organization or other group in any activity which is prohibited in Section IV (A)–(E) above.

V

Permitted Conduct

A. Other than Section IV(A) of this final judgment, nothing contained in this final judgment shall prohibit the defendant from negotiating or communicating with any distributor or supplier of tampico fiber or with any agent, broker or representative of such distributor or supplier solely in connection with *bona fide* proposed or actual purchases of tampico fiber from, or sale of tampico fiber to, that distributor or supplier.

B. Nothing contained in this final judgment shall prohibit the defendant from unilaterally deciding to resell tampico at prices suggested by its supplier. However, any instance in which a supplier suggests the prices at which the defendant should resell tampico shall be reported in writing with a copy to the defendant's Antitrust Compliance Officer. This report shall state the date, time and place of the communication, whether it was oral or written, the name and title of the other person or persons involved in the communication, briefly describe the pricing information provided, and if the communication was written, have attached a copy of the document containing the reference to the suggested resale prices. Such reports shall be retained in the files of the defendant, and copies thereof shall be delivered to the Antitrust Division by the defendant on or about such anniversary date of this final judgment.

VI

Compliance Program

The defendant shall establish within thirty (30) days of entry to this final judgment and shall, thereafter, maintain a program to insure compliance with this final judgment, which program shall include at a minimum the following:

A. designating an Antitrust Compliance Officer responsible, on a continuing basis, for achieving compliance with this final judgment and promptly reporting to the Department of Justice any violation of the final judgment;

B. within sixty (60) days after the date of entry of this final judgment, furnishing a copy thereof to each of its own, its subsidiaries' and its affiliates' (1) officers, (2) directors, and (3) employees or managing agents who are engaged in, or have responsibility for or authority over, the pricing of tampcio fiber; and advising and informing each such person that his or her violation of this final judgment could result in a conviction for contempt of court and imprisonment and/or fine;

C. within seventy five (75) days after the date of entry of this final judgment, certifying to the plaintiff whether it has designated an Antitrust Compliance Officer has been distributed the final judgment in accordance with Sections VI (A) and (B) above;

D. within thirty (30) days after each such person becomes an officer, director, employee or agent of the kind described in Section VI(B), furnishing to him or her copy of this final judgment together with the advice specified in Section VI(B);

E. annually distributing the final judgment to each person described in Sections VI (B) and (D);

F. annually briefing each person described in Sections VI (B) and (D) as to the defendant's policy regarding compliance with the Sherman Act and with this final judgment, including the advice that defendant will make legal advice available to such persons regarding any compliance questions or problems;

G. annually obtaining (and maintaining) from each person described in Sections (VI) (B) and (D) a certification that he or she:

(1) has read, understands, and agrees to abide by the terms of this final judgment;

(2) has been advised of and understands the company's policy with respect to compliance with the Sherman Act and the final judgment;

(3) has been advised and understands that his or her non-compliance with the final judgment may result in conviction for criminal contempt of court and imprisonment and/or fine; and

(4) is not aware of any violation of the final judgment that has not been reported to the Antitrust Compliance Officer; and

H. on or about each anniversary date of the entry of the final judgment, submitting to the plaintiff an annual declaration as to the fact and manner of its compliance with this final judgment, including any reports responsive to Section V of this final judgment.

VII

Inspection and Compliance

For the purpose of determining or securing compliance with this final judgment and subject to any legally recognized privilege, from time to time:

A. duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the defendant made to its principal office, be permitted:

(1) access, during the defendant's office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant, which have counsel present, relating to any matters contained in this final judgment; and

(2) subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, employees and agents of the defendant, who may have counsel present, regarding any such matters;

(B) upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, the defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this final judgment, as may be requested;

C. no information or documents obtained by the means provided in this Section VII of the final judgment shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this final judgment, or as otherwise required by law;

D. if at the time information or documents are furnished by the defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and such defendant marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then ten (10) days notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the defendant is not a party; and

E. nothing set forth in this final judgment shall prevent the Antitrust Division from utilizing other investigative alternatives, such as Civil Investigative Demand process provided by 15 U.S.C. 1311–1314 or a federal grand jury, to determine if the defendant has complied with this final judgment.

VIII

Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling either of the parties to this final judgment to apply to this Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this final judgment, for the modification of any of the provisions hereof, for this enforcement of compliance herewith, and for the punishment of violations hereof.

IX

Ten-Year Expiration

This final judgment will expire on the tenth anniversary of its date of entry.

X

Public Interest

Entry of this final judgment is in the public interest.

Dated:

_____

UNITED STATES DISTRICT JUDGE

Competitive Impact Statement

Pursuant to Section 2 of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b), the United States files this Competitive Impact Statement relating to the proposed final judgment as to *United States* v. *Brush Fibers, Inc.*, submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceedings

On , the United States filed a civil antitrust complaint alleging that under Section 4 of the Sherman Act, as

amended, 15 U.S.C. 4, certain companies and individuals, including the above-named defendant, combined and conspired from at least as early as January 1990 to April 1995, to lessen and eliminate competition in the sale of tampico fiber in the United States, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

Specifically, BFI agreed with its supplier to fix and maintain resale prices for tampico fiber in the United States at amounts set by the supplier. Moreover, the complaint alleges, BFI continued to adhere to the resale price agreement even after learning that it was part of a larger agreement involving its supplier and other co-conspirators, including the only other major United States distributor of tampico fiber. The overall conspiracy, which also included an allocation of sales and production levels, had the effect of cartelizing nearly all sales of tampico fiber in the United States and artificially inflating the price of tampico fiber.

The complaint seeks a judgment by the Court declaring that the defendant engaged in an unlawful combination and conspiracy in restraint of trade in violation of the Sherman Act. It also seeks an order by the Court to enjoin and restrain the defendant from any such activities or other activities having a similar purpose or effect in the future.

The United States and the defendant have stipulated that the proposed final judgment may be entered after compliance with the APPA, unless the United States withdraws its consent.

The Court's entry of the proposed final judgment will terminate this civil action against the defendant, except that the Court will retain jurisdiction over the matter for possible further proceedings to construe, modify or enforce the judgment, or to punish violations of any of its provisions.

II

Description of The Practices Giving Rise to the Alleged Violations of the Antitrust Laws

As defined in the complaint, tampico fiber is a natural vegetable fiber produced by the lechuguilla plant and grown in the deserts of northern Mexico. It is harvested by individual farmers, processed, finished and exported worldwide, where it is used as brush filling material for industrial and consumer brushes. It is available in natural white, bleached white, black, gray and a wide variety of mixtures.

The complaint further alleges that the defendant accounted for aggregate United States sales of tampico fiber of approximately $10 million during the period from January of 1990 through April of 1995. During this time, the defendant obtained from a Mexican processor, through an intermediary company, substantial quantities of tampico fiber. The defendant, acting as the Mexican processor's exclusive United States distributor, sold this tampico fiber to its customers throughout the United States, including those located in the Eastern District of Pennsylvania, in a continuous and uninterrupted flow of interstate commerce. Similarly, the complaint alleges that non-defendant co-conspirators sold and shipped additional substantial quantities of tampico fiber in a continuous and uninterrupted flow of interstate commerce from another processing facility in Mexico through their exclusive United States distributor to customers throughout the United States, including some located in the Eastern District of Pennsylvania.

The complaint alleges that the defendant and co-conspirators engaged in an agreement, the effect of which was to fix the resale prices of tampico fiber sold in the United States. Resale price sheets were provided to the defendant and another co-conspirator United States distributor by their respective co-conspirator suppliers. As a condition of becoming and remaining a United States distributor of tampico fiber, the defendant agreed by written contract with its supplier to sell at the prices listed on the price sheet. From at least January 1990 on, the defendant and the other United States' distributor of tampico fiber had identical price sheets prepared by their respective co-conspirator suppliers, and the majority of sales were made by the distributors at these list prices or other agreed-upon prices.

The defendant continued to observe the resale price maintenance scheme even after learning of collusive agreements between the two Mexican suppliers of tampico fiber. The resale price scheme had the effects of fixing and stabilizing the resale prices of tampico fiber. The defendant's conduct also lessened or eliminated competition between the two principal United States distributors of tampico fiber. The anticompetitive effects of the defendant's conduct were heightened because it was one of only two significant United States distributors of tampico fiber. The defendant's adherence to the resale price maintenance scheme together with other acts of its co-conspirators had the effect of cartelizing nearly all sales of tampico fiber in the United States and artificially inflating the prices of tampico fiber. BFI's supplier in this scheme has already plead guilty and agreed to enter a consent decree in response to criminal and civil charges relating to the entire agreement.

III

Explanation of the Proposed Final Judgment

The United States and the defendant have stipulated that a final judgment, in the form filed with the Court, may be entered by the Court at any time after compliance with the APPA, 15 U.S.C. 16 (b)–(h). The proposed final judgment provides that the entry of the final judgment does not constitute any evidence against or an admission by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the APPA, entry of the proposed final judgment is conditioned upon the Court finding that its entry will be in the public interest.

The proposed final judgment contains two principal forms of relief. First, the defendant is enjoined from repeating the conduct it undertook in connection with the tampico fiber conspiracy and from certain other conduct that could have similar anticompetitive effects. Second, the proposed final judgment places affirmative burdens on the defendant to pursue an antitrust compliance program directed toward avoiding a repetition of the tampico fiber conspiracy.

A. Prohibited Conduct

Section IV of the proposed final judgment broadly enjoins the defendant from conspiring to fix prices, allocate sales, discourage new entrants, or otherwise restrict or eliminate the supply of tampico fiber sold to any customer in the United States, or from communicating certain pricing or sales information that could further such a conspiracy (IV (A), (B), (C) and (D)); from agreeing with a supplier to set or control the resale prices of defendant or any other distributor to its customers (IV (E)); and from joining any group whose aims or activities are prohibited by Sections IV (A)–(E) of the final judgment (IV (F)).

Specifically, as regards tampico fiber sold in the United States, Sections IV (A)–(F) of the proposed final judgment provides as follows. Section IV (A) of the proposed final judgment enjoins the defendant from directly or indirectly agreeing with any other distributor or with any supplier of tampico fiber to (1) raise, fix or maintain the prices or other terms or conditions for the sale or supply of tampico fiber; (2) allocate sales volumes, territories or customers for tampico fiber; (3) discourage or

eliminate any new entrant into the tampico fiber market; and (4) restrict or eliminate the supply of tampico fiber to any customer.

Section IV(B) of the proposed final judgment enjoins the defendant from communicating to, requesting from or exchanging with any distributor or supplier (other than its own supplier) of tampico fiber any current or future price, price change, discount or other term or condition of sale charged or quoted, or to be charged or quoted to any customer or potential customer for tampico fiber, whether communicated in the form of a specific price or in the form of information from which such specific price may be computed.

Section IV(C) of the proposed final judgment enjoins the defendant from distributing to any distributor or supplier (other than its own supplier) of tampico fiber price lists or other pricing material that is used, has been used, or will be used in computing prices or terms or conditions of sale charged or to be charged for tampico fiber.

Section IV(D) of the proposed final judgment enjoins the defendant from communicating to, requesting from or exchanging with any distributor or supplier (other than its own supplier) of tampico fiber information regarding the volume of sales of tampico fiber or the location or identity of customers.

Section IV(E) of the proposed final judgment enjoins the defendant from directly or indirectly entering into, adhering to, maintaining, furthering, enforcing or claiming any right under any contract, agreement, understanding, plan or program with any supplier to fix or maintain the prices at which tampico fiber may be resold or offered for sale by defendant or any other distributor.

Section IV(F) of the proposed final judgment enjoins the defendant from participating or engaging, directly or indirectly, through any trade association, organization or other group, in any activity which is prohibited in Sections IV (A)–(E) of the proposed final judgment.

B. Permitted Conduct

Two exceptions to the broad prohibitions of Section IV of the proposed final judgment are contained in Section V. Section V(A) permits any necessary negotiations or communications with any distributor or supplier, or any agent, broker or representative of such distributor or supplier in connection with *bona fide* proposed or actual purchases of tampico fiber from or sales of tampico fiber to that distributor or supplier. Section V(B) makes it clear that the final judgment does not prohibit the defendant from unilaterally deciding to resell tampico fiber at prices suggested by its supplier. However, the defendant is obliged to make and retain written reports as to any suggestion by its supplier as to appropriate resale prices and deliver copies of the written reports to the Antitrust Division on or about each anniversary date of the final judgment.

C. Defendant's Affirmative Obligations

Section VI requires that within thirty (30) days of entry of the final judgment, the defendant adopt or pursue an affirmative compliance program directed toward ensuring that its employees comply with the antitrust laws. More specifically, the program must include the designation of an Antitrust Compliance Officer responsible for compliance with the final judgment and reporting any violations of its terms. It further requires that the defendant furnish a copy of the final judgment to each of its officers and directors and each of its employees who is engaged in or has responsibility for or authority over pricing of tampico fiber within sixty (60) days of the date of entry, and to certify that it has distributed those copies and designated an Antitrust Compliance Officer within seventy-five (75) days. Copies of the final judgment also must be distributed to anyone who becomes such an officer, director or employee within thirty (30) days of holding that position and to all such individuals annually.

Furthermore, Section VI requires the defendant to brief each officer, director and employee engaged in or having responsibility over pricing of tampico fiber as to the defendant's policy regarding compliance with the Sherman Act and with the final judgment, including the advice that his or her violation of the final judgment could result in a conviction for contempt of court and imprisonment, a fine, or both, and that the defendant will make legal advice available to such persons regarding compliance questions or problems. The defendant annually must obtain (and maintain) certifications from each such person that the aforementioned briefing, advice and a copy of the final judgment were received and understood and that he or she is not aware of any violation of the final judgment that has not been reported to the Antitrust Compliance Officer. Finally, the defendant must submit to the plaintiff an annual declaration as to the fact and manner of its compliance with the final judgment, including any reports responsive to Section V of the final judgment.

Under Section VII of the final judgment, the Justice Department will have access, upon reasonable notice, to the defendant's records and personnel in order to determine defendant's compliance with the judgment.

D. Scope of the Proposed Judgment

(1) Persons Bound by the Decree

The proposed judgment expressly provides in Section III that its provisions apply to the defendant and each of its officers, directors, agents and employees, subsidiaries, successors and assigns and to all other persons who receive actual notice of the terms of judgment.

In addition, Section III of the judgment prohibits the defendant from selling or transferring all or substantially all of its stock or assets used in its tampico fiber business unless the acquiring party files with the Court its consent to be bound by the provisions of the judgment.

(2) *Duration of the Judgment*

Section IX provides that the judgment will expire on the tenth anniversary of its entry.

E. Effect of the Proposed

Judgment on Competition

The prohibition terms of Section IV of the final judgment are designed to ensure that the defendant will act independently in determining the prices and terms and conditions at which it will sell or offer to sell tampico fiber, and that there will be no anticompetitve restraints (horizontal or vertical) in the tampico fiber market. The affirmative obligations of Sections VI and VII are designed to insure that the corporate defendant's employees are aware of their obligations under the decree in order to avoid a repetition of behavior that occurred in the tampico fiber industry during the conspiracy period. Compliance with the proposed judgment will prevent price collusion, allocation of sales, markets and customers, concerted activities in restricting new entrants and customers, and resale price restraints by the defendant with other tampico fiber distributors and such distributors' suppliers.

IV

Remedies Available to Potential Private Plaintiffs

After entry of the proposed final judgment, any potential private plaintiff who might have been damaged by the alleged violation will retain the same right to sue for monetary damages and any other legal and equitable remedies which he or she may have had if the proposed judgment had not been

entered. The proposed judgment may not be used, however, as *prima facie* evidence in private litigation, pursuant to Section 5(a) of the Clayton Act, as amended, 15 U.S.C. 16(a).

V

Procedures Available for Modification of the Proposed Consent Judgment

The proposed final judgment is subject to a stipulation between the government and the defendant which provides that the government may withdraw its consent to the proposed judgment any time before the Court has found that entry of the proposed judgment is in the public interest. By its terms, the proposed judgment provides for the Court's retention of jurisdiction of this action in order to permit any of the parties to apply to the Court for such orders as may be necessary or appropriate for the modification of the final judgment.

As provided by the APPA (15 U.S.C. 16), any person wishing to comment upon the proposed judgment may, for a sixty-day (60) period subsequent to the publishing of this document in the Federal Register, submit written comments to the United States Department of Justice, Antitrust Division, Attention: Robert E. Connolly, Chief, Middle Atlantic Office, Suite 650 West, 7th and Walnut Streets, Philadelphia, Pennsylvania 19106. Such comments and the government's response to them will be filed with the Court and published in the Federal Register. The government will evaluate all such comments to determine whether there is any reason for withdrawal of its consent to the proposed judgment.

VI

Alternative to the Proposed Final Judgment

The alternative to the proposed final judgment considered by the Antitrust Division was a full trial of the issues on the merits and on relief. The Division considers the substantive language of the proposed judgment to be of sufficient scope and effectiveness to make litigation on the issues unnecessary, as the judgment provides appropriate relief against the violations alleged in the complaint.

VII

Determinative Materials and Documents

No materials or documents were considered determinative by the United States in formulating the proposed final judgment. Therefore, none are being filed pursuant to the APPA, 15 U.S.C. 16(b).

Dated:

Respectfully submitted,

Joel I. Klein,

Acting Assistant Attorney General.

Rebecca P. Dick,

Deputy Director of Operations.

Robert E. Connolly,

Chief, Middle Atlantic Office.

Edward S. Panek,

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[FR Doc. 96–23378 Filed 9–11–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; HDP User Group International, Inc.

Notice is hereby given that, on August 20, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), HDP User Group International, Inc., an Arizona non-profit corporation, filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change of membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Alcatel, Zaventom, BELGIUM; International Business Machines, Hopewell Junction, NY; and MCC, Austin, TX have left the group.

No other changes have been made in either the membership or planned activities of this joint venture.

On September 14, 1994, the HDP User Group filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register on March 23, 1995 (60 FR 15306–7).

The last notification was filed on April 23, 1996. A notice was published in the Federal Register on May 14, 1996 (61 FR 24331).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–23374 Filed 9–11–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Minnesota Mining and Manufacturing Company

Notice is hereby given that, on August 12, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Minnesota Mining and Manufacturing Company (''3M'') filed a written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to a research and development venture and (2) the nature and objectives of the venture. The notification was filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are 3M, St. Paul, MN and Actuarial Sciences Associations, Inc. (''ASA''), Somerset, NJ.

The purpose of the venture is to develop technology to define episodes of treatment for the diseases and conditions found in the enrolled population of typical managed care organizations (MCOs). By utilizing episode definitions, MCOs will better understand and evaluate physician performance in terms of care provided to a patient for a particular set of problems, leading to better control of costs of individual services, days of care, and hospital admissions.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–23373 Filed 9–11–96; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on August 16, 1996, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Portland Cement Association (''PCA'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Continental Cement Company, Chesterfield, MO has resigned from PCA and Hawaiian Cement, Honolulu, Hawaii will resign

from PCA effective September 1, 1996. Additionally, Roan Industries Inc., Holly Hill, SC has become an Associate Member of PCA.

No other changes have been made in either the membership or planned activities of the PCA.

On January 7, 1985, PCA filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the Federal Register pursuant to Section 6(b) of the Act on February 5, 1985 (50 FR 5015). The last notification was filed with the Department on July 3, 1996. A notice was published in the Federal Register on July 30, 1996 (61 FR 39667).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 96–23372 Filed 9–11–96; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act: Indian and Native American Employment and Training Programs; Solicitation for Grant Application: Final Designation Procedures for Grantees for Program Years 1997–98

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Notice of final designation procedures for grantees.

SUMMARY: This document contains the procedures by which the Department of Labor (DOL) will designate potential grantees to receive two-year grants for Indian and Native American Employment and Training Programs under the Job Training Partnership Act (JTPA), and to exempt grantees participating in the Public Law 102–477 Demonstration Project from designation cycle competition. The designations will be for JTPA Program Years (PYs) 1997 and 1998 (July 1, 1997 through June 30, 1999). This notice provides necessary information to prospective grant applicants to enable them to submit appropriate requests for designation.

DATES: Optional Advance Notices of Intent must be postmarked no later than October 11, 1996. Final Notices of Intent must be postmarked no later than January 1, 1997.

ADDRESSES: Send an original and two copies of the Advance and Final Notices of Intent to Mr. Thomas Dowd, Chief, Division of Indian and Native American Programs, Room N–4641 FPB ATTN: MIS Desk, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

SUPPLEMENTARY INFORMATION: The procedures are basically the same as the previous procedure used for PYs 1995 and 1996, except that the waiver of competition provisions of Sec. 401(l) of the Act will not be utilized for this designation cycle. JTPA section 401 grantees who are presently operating under Pub. L. 102–477, Indian Employment, Training, and Related Services Demonstration Act of 1992, must submit a Final Notice of Intent for redesignation under this procedure in order to maintain their service area designation and eligibility for funds under this title. They are, however, exempt from competition for the current service areas covered in their ''477 Plan'', assuming all other designation requirements continue to be met.

Job Training Partnership Act: Indian and Native American Programs; Final Designation Procedures for Program Years 1997–98

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Introduction: Scope and Purpose of Notice

Section 401 of the Job Training Partnership Act (JTPA) authorizes programs to serve the employment and training needs of Indians and Native Americans.

Requirements for these programs are set forth in the JTPA and in the regulations at 20 CFR Part 632. The specific organization eligibility and application requirements for designation are set forth at 20 CFR 632.10 and 632.11. Pursuant to these requirements, the Department of Labor (DOL) selects entities for funding under section 401. It designates such entities as potential Native American section 401 grantees which will be awarded grant funds contingent upon all other grant award requirements being met. This notice describes how DOL will designate potential grantees who may apply for grants for Program Years 1997 and 1998. A designated entity may apply for grant funds for PY 1997 and PY 1998 without further competition.

The designation process has two parts. The Advance Notice of Intent (see Part II, below) is optional although strongly recommended. The Final Notice of Intent (see Part III, below) is mandatory for all applicants. Any organization interested in being designated as a Native American section 401 grantee should be aware of and comply with the procedures in these parts.

The amount of JTPA section 401 funds to be awarded to designated Native American section 401 grantees is determined under procedures described at 20 CFR 632.171 and not through this designation process. The grant application process is described at 20 CFR 632.18 through 632.20.

I. General Designation Principles

Based on JTPA and applicable regulations, the following general principles are intrinsic to the designation process:

(1) All applicants for designation shall comply with the requirements found at 20 CFR Part 632, Subpart B, regardless of their apparent standing in the preferential hierarchy (see Part IV, Preferential Hierarchy For Determining Designations, below). The basic eligibility, application and designation requirements are found in 20 CFR Part 632, Subpart B.

(2) The nature of this program is such that Indians and Native Americans are entitled to program services and are best served by a responsible organization directly representing them and designated pursuant to the applicable regulations. The JTPA and the governing regulations give clear preference to Native American-controlled organizations. That preference is the basis for the steps which will be followed in designating grantees.

(3) A State or Federally-recognized tribe, band or group *on its reservation* is given absolute preference over any other organization if it has the capability to administer the program and meets all regulatory requirements. This preference applies only to the area within the reservation boundaries. Such ''reservation'' organization which may have its service area given to another organization will be given a future opportunity to reestablish itself as the ''preference'' grantee.

In the event that such a tribe, band or group (including an Alaskan Native entity) is not designated to serve its reservation or geographic service area, the DOL will consult with the governing body of such entities when designating alternative service deliverers, as provided at 20 CFR 632.10(e). Such consultation may be accomplished in writing, in person, or by telephone, as time and circumstances permit. When it

is necessary to select alternative service deliverers, the Grant Officer will continue to utilize input and recommendations from the Division of Indian and Native American Programs (DINAP).

(4) In designating Native American section 401 grantees for off-reservation areas, DOL will provide preference to Indian and Native American-controlled organizations as described in 20 CFR 632.10(f) and as further clarified in Part VIII (1) *Indian or Native American-Controlled Organization* of this notice. As noted in (3) above, when vacancies occur, the Grant Officer will continue to utilize input and recommendations from DINAP when designating alternative service deliverers.

(5) Incumbent and non-incumbent applicants seeking additional areas must submit evidence of significant support from other Native American-controlled organizations within the communities (geographic service areas) which they are currently serving or requesting to serve. See Part III, Final Notice of Intent, below, for more details.

(6) The Grant Officer will make the designations using a two-part process:

(a) Those applicants described in Part IV(1) of the Preferential Hierarchy For Determining Designations will be designated on a noncompetitive basis *if* all preaward clearances, responsibility reviews, and regulatory requirements are met.

(b) All applicants described in Part IV, (2), (3), and (4) of the Preferential Hierarchy for Determining Designations will be *considered on a competitive basis* for such areas, and only information submitted with the Final Notice of Intent, as well as preaward clearances, responsibility reviews, and all regulatory requirements will be considered.

(7) Special employment and training services for Indian and Native American people have been provided through an established service delivery network for the past 22 years under the authority of JTPA section 401 and its predecessor, section 302 of the repealed Comprehensive Employment and Training Act (CETA). The DOL intends to exercise its designation authority to preserve the continuity of such services and to prevent the undue fragmentation of existing geographic service areas. Consistent with the present regulations and other provisions of this notice, this will include preference for those Native American organizations with an existing capability to deliver employment and training services within an established geographic service area. Such preference will be determined through input and recommendations from the Chief of DOL's Division of Indian and Native American Programs (DINAP) and the Director of DOL's Office of Special Targeted Programs (OSTP), and through the use of the rating system described in this Notice. Unless a non-incumbent applicant in the same preferential hierarchy as an incumbent applicant grantee can demonstrate that it is significantly superior overall to the incumbent, the incumbent will be designated, if it otherwise meets all of the requirements for redesignation.

(8) In preparing application for designation, applicants should bear in mind that the purpose of JTPA, as amended, is ''to establish programs to prepare youth and adults facing serious barriers to employment for participation in the labor force by providing job training and other services that will result in increased employment and earnings, increased education and occupational skills, and decreased welfare dependency, thereby improving the quality of the work force and enhancing the productivity and competitiveness of the Nation.''

II. Advance Notice of Intent

The purpose of the Advance Notice of Intent process is to provide section 401 applicants, prior to the submission of a Final Notice of Intent, with information relative to potential competition. While DOL encourages the resolution of competitive request at the local level prior to final submission, the Advance Notice of Intent process also serves to alert those whose differences cannot be resolved of the need to submit a complete Final Notice of Intent.

Although the Advance Notice of Intent process is not mandated by the regulations, participation in the advance notice process by prospective section 401 applicants is strongly recommended. The Advance Notice of Intent process allows the applicant to identify potential incumbent and non-incumbent competitors, to resolve conflicts if possible and to prepare a Final Notice of Intent with advance knowledge of potential competing requests.

It should be emphasized, however, that the Advance Notice of Intent process does not ensure that all potential competitors have been identified. Some applicants may opt not to submit an Advance Notice of Intent; others may change geographic service area requests in the Final Notice of Intent. Therefore, as noted above, submissions should be prepared with these possibilities in mind. Although the regulations permit incumbents to submit no Advance Notice of Intent and to submit as a Final Notice of Intent no more than a Standard Form 424 ''Application for Federal Assistance'' (SF 424) for their existing geographic service areas, *this choice may not be in the incumbent's best interests in the event of unanticipated competition.*

The SF 424 is not to be used for the advance notification process. As in the PY 1995–1996 designation process, DOL will utilize the Advance Notice of Intent to expedite the identification of potentially competitive applicants.

All organizations interested in being designated as section 401 grantees should submit an Advance Notice of Intent. The Advance Notice is to be postmarked no later than October 11, 1996, or 15 calendar days after the date of publication of this Federal Register Notice, whichever occurs later. An organization may submit only one Advance Notice of Intent for any and all areas for which it wants to be considered. The Advance Notice of Intent is to be sent to the Chief, Division of Indian and Native American Programs, at the address cited above. Incumbents will receive a description of their present geographic service area as cited above.

DOL's first step in the designation process is to determine which areas have more than one potential applicant for designation. For those areas for which more than one organization submits an Advance Notice of Intent, each such organization will be notified of the situation, and will be apprised of the identity of the other organization(s) applying for that area. Such notification will consist of providing affected applicants (including incumbents who have not submitted Advance Notices of Intent) with copies of all Advance Notices submitted for their requested areas. The notification will state that organizations are encouraged to work out any conflicting requests among themselves, and that a final Notice of Intent should be submitted by the required postmark deadline of January 1, 1997 (see Part III, Final Notice of Intent, below).

Under the Advance Notice of Intent process, it is DOL policy that, to the extent possible within the regulations, a geographic service area and the applicant which will operate a section 401 program in that area are to be determined by the Native American community to be served by the program. In the event the Native American community cannot resolve differences, applicants should take special care with their final Notices of Intent to ensure that they are complete and fully responsive to all matters covered by the preferential hierarchy and rating systems discussed in this notice.

Information provided in the Advance Notice of Intent process shall not be considered as a final submission as referenced at 20 CFR 632.11. The Advance Notice of Intent is a procedural mechanism to facilitate the designation process. The regulations do not provide for formal application for designation through the Advance Notice of Intent. Although tribes and organizations participating in the employment and training demonstration project under Pub. L. 102–477 qualify for exemption from designation competition under Sec. 401(l) of JTPA, they still must submit a Final Notice of Intent to continue to receive funds under the JTPA.

III. Final Notice of Intent

Even though an ANOI has been submitted, all applicants must submit an original and two copies of a Final Notice of Intent, postmarked not later than January 1, 1997, consistent with the regulations at 20 CFR 632.11. Final Notices of Intent may also be delivered in person not later than the close of business on the first business day of the designation year. Exclusive of charts or graphs and letters of support, the Notice of Intent should not exceed *75* pages of double-space unreduced type.

Final Notices of Intent are to be sent to the Chief, Division of Indian and Native American Programs (DINAP), at the address cited above.

Final Notice of Intent Contents: (as outlined at 20 CFR 632.11)

- A completed and signed SF–424, ''Application for Federal Assistance'';
- An indication of the applicant's legal status, including articles of incorporation or consortium agreement as appropriate;
- A clear indication of the territory being applied for, in the same format as the ANOI;
- Evidence of community support from Native American-controlled organizations; and
- Other relevant information relating to capability, such as service plans and previous experience which the applicant feels will strengthen its case, including information on any unresolved or outstanding administrative problems.

Final Notices of Intent must contain evidence of community support. Incumbent and non-incumbent State and Federally-recognized tribes need not submit such evidence regarding their own reservations. However, such entities are required to provide such evidence for any area which they wish to serve beyond their reservation boundaries.

The regulations permit current grantees requesting their existing geographic service areas to submit an SF 424 in lieu of a complete application, including those grantees currently participating in the demonstration under Public Law 102–477 who are exempt from designation cycle competition. As noted earlier in this notice, current grantees, other than tribes, bands or groups (including Alaskan Native entities) requesting their existing areas, are encouraged to consider submitting a full Final Notice of Intent (even if their geographic service area request has not changed) in the event that competition occurs. Tribes, bands or groups (including Alaskan Native entities) should consider submitting a full Final Notice of Intent if they currently serve areas beyond their reservation boundaries.

Applicants are encouraged to modify the geographic service area requests identified in their Advance Notice of Intent to avoid competition with other applicants. Applicants are discouraged from adding territory to the geographic service area requested and identified in the Advance Notice of Intent. Any organization applying by January 1, 1997, for non-contiguous geographic service areas shall prepare a separate, complete Final Notice of Intent for each such area unless currently designated for such area(s).

It is DOL's policy that no information affecting the panel review process will be solicited or accepted past the regulatory postmarked or hand-delivered deadlines (see Part V, Use of Panel Review Procedure, below). All information provided before the deadline must be in writing.

This policy does not preclude the Grant Officer from requesting additional information independent of the panel review process.

IV. Preferential Hierarchy for Determining Designation

In cases in which only one organization is applying for a clearly identified geographic service area and the organization meets the requirements at 20 CFR 632.10(b) and 632.11(d), DOL shall designate the applying organization as the grantee for the area. In cases in which two or more organizations apply for the same area (in whole or in part), DOL will utilize the order of designation preference described in the hierarchy below. The organization will be designated, assuming all other requirements are met. The preferential hierarchy is:

(1) Indian tribes, bands or groups on Federal or State reservations for their reservation; Oklahoma Indians only as specified in Part VII, Special Designation Situations, below; and Alaskan Native entities only specified in Part VII, Special Designation Situations, below.

(2) Native American-controlled, community-based organizations as defined in Part VIII (1) of the glossary in this notice, with significant support from other Native American-controlled organizations within the service community. This includes tribes applying for geographic service areas other than their own reservations.

When a non-incumbent can demonstrate in its application, by verifiable information, that it is potentially significantly superior overall to the incumbent, a formal competitive process will be utilized which may include a panel review. Such potential will be determined by the consideration of such factors as the following: completeness of the application and quality of the contents; documentation of relevant experience; Native American-controlled organizational support; understanding of area training and employment needs and approach to addressing such needs; and the capability of the incumbent. If there is no incumbent, new applicants qualified for this category would compete against each other.

(3) Organizations (private nonprofit or units of State or local governments) having significant Native American control, such as a governing body or administration chaired or headed by a Native American and having a majority membership of Native Americans.

(4) Non-Native American-controlled organizations. In the event such an organization is designated, it must develop a Native American advisory process as a condition for the award of a grant.

The Chief, DINAP, will make determinations regarding hierarchy, geographic service areas, eligibility of new applicants and the timeliness of submissions. He may convene a task force to assist in making such determinations. The role of the task force is that of a technical advisory body.

The Chief, DINAP, will ultimately advise the Grant Officer in reference to which position an organization holds in the designation hierarchy. Within the regulatory time constraints of the designated process, the Chief, DINAP, will utilize whatever information is available.

The applying organization must supply sufficient information to permit the determination to be made. Organizations must indicate the category which they assume is

appropriate and must adequately support that assertion.

V. Use of Panel Review Procedure

A formal competitive process may be utilized under the following circumstances:

(1) The Chief, DINAP, advises that a new applicant qualified for the second category of the hierarchy appears to be potentially significantly superior overall to an incumbent Native American-controlled, community-based organization with significant local Native American community support.

(2) The Chief, DINAP, advises that more than one new applicant is qualified for the second category of the hierarchy, and the incumbent grantee has not reapplied for designation.

(3) The Chief, DINAP, advises that two or more organizations have equal status in the third or fourth categories of the hierarchy, when there are no applicants qualified for the first and second categories.

When competition occurs, the Grant Officer may convene a review panel of Federal Officials to score the information submitted with the Final Notice of Intent. The purpose of the panel is to evaluate an organization's capability, *based on its application,* to serve the area in question. The panel will be provided only the information described at 20 CFR 632.11 and submitted with the Final Notice of Intent. The panel will not give weight to undocumented assertions. Any information must be supported by adequate and verifiable documentation, e.g., supporting references must contain the name of the contact person, an address and telephone number.

The factors listed below will be considered in evaluating the capability of the applicant. In developing the Final Notice of Intent, the applicant should organize his documentation of capability to correspond with these factors.

(1) Operational Capability—40 points. (20 CFR 632.10 and 632.11)

(a) previous experience in successfully operating an employment and training program serving Indians and Native Americans of a scope comparable to that which the organization would operate if designated—20 points.

(b) Previous experience in operating other human resources development programs serving Indians or Native Americans or coordinating employment and training services with such programs—10 points.

(c) Ability to maintain continuity of services to Indian or Native American participants with those previously provided under JTPA—10 points.

(2) Identification of the training and employment problems and needs in the requested area and approach to addressing such problems and needs—20 points. (20 CFR 632.2)

(3) Planning Process—20 points. (20 CFR 632.11)

(a) Private sector involvement—10 points.

(b) Community support as defined in Part VIII (1), Designation Process Glossary, and documentation as provided in Part I (5), General Designation Principles—10 points. (4) Administrative Capability—20 points. (20 CFR 632.11)

(a) Previous experience in administering public funds under DOL or similar administrative requirements—15 points.

(b) Experience of senior management staff to be responsible for a DOL grant—5 points.

VI. Notification of Designation/Nondesignation

The Grant Officer will make the final designation decision giving consideration to the following factors: the review panel's recommendation, in those instances where a panel is convened; input from DINAP, the Office of Special Targeted Programs, the DOL Employment and Training Administration's Office of Grant and Contracts Management and Office of Management Services, and the DOL Office of the Inspector General; and any other available information regarding the organization's financial and operational capability, and responsibility. The Grant Officer will make decisions by March 1, 1997, and will provide them to all applicants as follows:

(1) *Designation Letter.* The designation letter signed by the Grant Officer will serve as official notice of an organization's designation. The letter will include the geographic service area for which the designation is made. It should be noted that the Grant Officer is not required to adhere to the geographical service area requested in the Final Notice of Intent. The Grant Officer may make the designation applicable to all of the area requested, a portion of the area requested, or if acceptable to the designee, more than the area requested.

(2) *Conditional Designation Letter.* Conditional designations will include the nature of the conditions, the actions required to be finally designated and the time frame for such actions to be accomplished.

(3) *NONDESIGNATION Letter.* Any organization not designated, in whole or in part, for a geographic service area requested will be notified formally of the NONDESIGNATION and given the basic reasons for the determination. An applicant for designation which is refused such designation, in whole or in part, may file a Petition for Reconsideration in accordance with 20 CFR 632.13, and subsequently, may appeal the NONDESIGNATION to an administrative law judge under the provisions of 20 CFR Part 636.

If an area is not designated for service through the foregoing process, alternative arrangements for service will be made in accordance with 20 CFR 632.12.

VII. Special Designation Situations

(1) *Alaskan Native Entities.* DOL has established geographic service areas for Alaskan Native employment and training based on the following: (a) The boundaries of the regions defined in the Alaskan Native Claims Settlement Act (ANCSA); (b) the boundaries of major subregional areas where the primary provider of human resource development related services is an Indian Reorganization Act (IRA)-recognized tribal council; and (c) the boundaries of the one Federal reservation in the State. Within these established geographic service areas, DOL will designate the primary Alaskan Native-controlled human resource development services provider or an entity formally designated by such provider. In the past, these entities have been regional nonprofit corporations, IRA-recognized tribal councils, and the tribal government of the Metlakatla Indian Community. DOL intends to follow these principles in designating Native American grantees in Alaska for Program Years 1997 and 1998.

(2) *Oklahoma Indians.* DOL has established a service delivery system for Indian employment and training programs in Oklahoma based on a preference for Oklahoma Indians to serve portions of the State. Generally, geographic service areas have been designated geographically as countywide areas. In cases in which a significant portion of the land area of an individual county lies within the traditional jurisdiction(s) of more than one tribal government, the service area has been subdivided to a certain extent on the basis of tribal identification information contained in the most recent Federal Decennial Census of Population. Wherever possible, arrangements mutually satisfactory to grantees in adjoining or overlapping geographic service areas have been

honored by DOL. DOL intends to follow these principles in designating Native American grantees in Oklahoma for Program Years 1997 and 1998, to preserve continuity and prevent unnecessary fragmentation.

VIII. Designation Process Glossary

In order to ensure that all interested parties have the same understanding of the process, the following definitions are provided:

(1) *Indian or Native American-Controlled Organization.* This is defined as any organization with a governing board, more than 50 percent of whose members are Indians or Native Americans. Such an organization can be a tribal government, Native Alaskan or Native Hawaiian entity, consortium, or public or private nonprofit agency. For the purpose of hierarchy determinations, the governing board must have decision-making authority for the section 401 program.

(2) *Service Area.* This is defined as the geographic area described as States, counties, and/or reservations for which a designation is made. In some cases, it will also show the specific population to be served. The service area is defined by the Grant Officer in the formal designation letter. Grantees must ensure that all eligible population members have equitable access to employment and training services within the service area.

(3) *Community Support.* This is evidence of active participation and/or endorsement from Indian or Native American-controlled organizations within the geographic service area for which designation is requested.

While applicants are not precluded from submitting attestations of support from individuals, the business community, State and local government offices, and community organizations that are not Indian or Native American-controlled, they should be aware that such endorsements do not meet DOL's definitional criteria for community support.

Signed at Washington, DC, this 29th day of August, 1996.

Thomas M. Dowd,

Chief, Division of Indian and Native American Programs.

Paul A. Mayrand,

Director, Office of Special Targeted Programs.

James C. DeLuca,

Grant Officer, Office of Grants and Contracts Management, Division of Acquisition and Assistance.

[FR Doc. 96–23386 Filed 9–11–96; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 96–11]

NASA Advisory Council, Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: September 26, 1996, 8 a.m. to 4 p.m.

ADDRESSES: NASA Headquarters Room 9H40 (9th Floor Program Review Center), 300 E Street SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas, III, Office of Small and Disadvantaged Business Utilization, National Aeronautics and Space Administration, Room 9K70, 300 E Street SW, Washington, DC 20546, (202) 358–2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Call to Order
—Reading of Minutes
—Update on NASA SDB Program
—Report from the Chairman
—Public Comment
—Proposed MBRAC Recommendations
—Subcommittee Reports
—New Business
—Adjourn

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: September 6, 1996.

Leslie M. Nolan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 96–23407 Filed 9–11–96; 8:45 am]

BILLING CODE 7510–01–M

[Notice 96–112]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that UbiquiTex Technologies Corporation, of 2200 Space Park Drive, Suite 200, Houston, Texas 77058, has requested an exclusive license to practice the invention disclosed in NASA Case No. MSC–21487–4, entitled ''Atomic Oxygen Reactor Having At Least One Side Arm Conduit,'' for which a U.S. Patent Application was filed on July 26, 1994, and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. Hardie R. Barr, Patent Attorney, Johnson Space Center.

DATE: Responses to this notice must be received by November 12, 1996.

FOR FURTHER INFORMATION CONTACT: Mr. Hardie R. Barr, Patent Attorney, Johnson Space Center, Mail Code HA, Houston, TX 77058–3696; telephone (713) 483–1003.

Dated: September 9, 1996.

Edward A. Frankle,

General Counsel.

[FR Doc. 96–23406 Filed 9–11–96; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–9 (50–267)]

Notice of Issuance of Amendment to Materials License SNM–2504; Public Service Company of Colorado, Fort St. Vrain Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment 3 to Materials License No. SNM–2504 held by the Public Service Company of Colorado (PSCo) for the receipt, possession, storage, and transfer of spent fuel at the Fort St. Vrain (FSV) independent spent fuel storage installation (ISFSI), located in Weld County, Colorado. The amendment is effective as of the date of issuance.

By application dated June 27, 1996, PSCo requested an amendment to its ISFSI license to add an action statement to the seismic instrumentation specification, Technical Specification 3.4, for the ISFSI.

This amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules

and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

In accordance with 10 CFR 72.46(b)(2), a determination has been made that the amendment does not present a genuine issue as to whether public health and safety will be significantly affected. Therefore, the publication of a notice of proposed action and an opportunity for hearing or a notice of hearing is not warranted. Notice is hereby given of the right of interested persons to request a hearing on whether the action should be rescinded or modified.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.22(c)(10)(ii), an environmental assessment need not be prepared in connection with issuance of the amendment.

Documents related to this action are available for public inspection at the Commission's Public Document Room located at the Gelman Building, 2120 L Street, NW, Washington, DC 20555, and at the Local Public Document Room at the Weld Library District, Lincoln Park Branch, 919 7th Street, Greeley, Colorado 80631.

Dated at Rockville, Maryland, this 29th day of August 1996.

For the Nuclear Regulatory Commission.

Charles J. Haughney,

Deputy Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 96–23363 Filed 9–11–96; 8:45 am]

BILLING CODE 7590–01–P

[Docket Nos. 50–272 and 50–311]

Public Service Electric and Gas Company; Salem Nuclear Generating Station, Units 1 and 2; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–70 and DPR–75 issued to Public Service Electric and Gas Company (the licensee) for operation of the Salem Nuclear Generating Station, Units 1 and 2, located in Salem County, New Jersey.

The proposed amendment would delete License Condition 2.C.(24)(a) for Unit 2, which required establishment by June 3, 1981, of regularly scheduled 8-hour shifts without reliance on routine use of overtime. The proposed amendment also modifies Technical Specification 6.2.2 for both units to incorporate limits on overtime.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

The proposed change does not involve a physical or procedural change to any structure, system, or component that significantly affects the probability or consequences of any accident or malfunction of equipment important to safety previously evaluated in the Updated Final Safety Analysis Report (UFSAR). The proposed changes will permit the use of 12-hour shifts which average 40 hours per week and also satisfy the guideline in Generic Letter 82–12 for operating shifts.

This change is administrative in nature and has no significant impact on the probabilities or consequences of any evaluated accident or malfunction of safety important equipment.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed revision involves no physical changes in the plant or to the manner in which plant systems are operated. The change modifies the working hours per shift for operating personnel without significantly changing the hours worked per week and retains the current limitations on excessive overtime. The proposed changes are administrative in nature; therefore, no new or different accident is created.

3. The proposed change does not involve a significant reduction in a margin of safety.

This is an administrative change and does not affect any margins of safety. Plant operation with the proposed revision to shift working hours has been found to improve operator morale and performance.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By October 15, 1996, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the

Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available 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 Salem Free Public Library, 112 West Broadway, Salem, New Jersey. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mark J. Wetterhahn, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated August 27, 1996, 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 Salem Free Public Library, 112 West Broadway, Salem, New Jersey.

Dated at Rockville, Maryland, this 6th day of September 1996.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Senior Project Manager, Project Directorate I–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 96–23365 Filed 9–11–96; 8:45 am]

BILLING CODE 7590–01–P

Meeting on DG–1053

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission staff with its contractors will meet to discuss DG–1053, ''Calculational and Dosimetry Methods for Determining Pressure Vessel Fluence,'' including changes made from earlier issuance as DG–1025 and discussion of submitted public comments.

DATES: Wednesday, September 18, 1996.

TIME: 9:00 a.m.–3:00 p.m.

ADDRESSES: National Institute for Standards and Technology, 270 & Quince Orchard Road, Administration Building—Green Auditorium, Gaithersburg, MD.

FOR FURTHER INFORMATION CONTACT: Carolyn Fairbanks, Electrical, Materials, and Mechanical Engineering Branch, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–6719.

Dated at Rockville, Maryland, this 6th day of September, 1996.

For the Nuclear Regulatory Commission.

Michael E. Mayfield,

Chief, Electrical, Materials, and Mechanical Engineering Branch.

[FR Doc. 96–23364 Filed 9–11–96; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549.

New

Proposed Rule 10A–1 SEC File No. 270–425 OMB Control No. 3235–NEW

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (Commission or SEC) has submitted to the Office of Management and Budget a request for approval of proposed Rule 10A–1 under the General Rules and Regulations under the Securities Exchange Act of 1934.

Proposed Rule 10A–1 would implement the reporting requirements in Section 10A of the Exchange Act, which was enacted by Congress on December 22, 1995 as part of the Private Securities Litigation Reform Act of 1995, Public Law No. 104–67. Likely respondents are those registrants filing audited financial statements under the Securities Exchange Act of 1934 and the Investment Company Act of 1940. Under section 10A (and proposed Rule 10A–1) reporting would occur only if a registrant's board of directors receives a report from its auditors that (1) there is an illegal act material to the registrant's financial statements, (2) senior management and the board have not taken timely and appropriate remedial action, and (3) the failure to take such action is reasonably expected to warrant the auditor's modification of the audit report or resignation from the audit engagement. The board of directors must notify the Commission within one business day of receiving such a report. If the board fails to provide that notice, then the auditor, within the next business day, must provide the Commission with a copy of the report that it gave to the board. It is expected that satisfaction of these conditions precedent to the reporting requirements will be rare. It is estimated that the proposed amendments, if adopted, may result in an aggregate additional reporting burden of 10 hours.

General comments regarding the estimated burden hours should be directed to the OMB Clearance Officer 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 Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Clearance Officer, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: August 26, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23314 Filed 9–11–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26568]

Filings Under the Public Utility Holding Company Act of 1935, As Amended (''Act'')

September 6, 1996.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 30, 1996, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Northeast Utilities, et al. (70–8895)

Northeast Utilities, 174 Brush Hill Avenue, West Springfield, Massachusetts 01090–0010, a registered holding company, and five subsidiary companies, The Connecticut 06037, Western Massachusetts Electric Company, 174 Brush Hill Avenue, West Springfield, Massachusetts 01090–0010, Public Service Company of New Hampshire, 1000 Elm Street, Manchester, New Hampshire 03101, North Atlantic Energy Corporation (''NAEC''), 1000 Elm Street, Manchester, New Hampshire 03101 and Holyoke Water Power Company, 1 Canal Street, Holyoke, Massachusetts 01040, have filed an application-declaration under sections 6(a), 7, 9(a) and 10 of the Act and rule 54 thereunder.

The applicants request authority to enter into, and perform the obligations arising under, agreements for various interest rate management instruments, including interest rate swaps, caps, floors, collars and forward rate agreements or any other similar instruments (''Interest Rate Management Instruments'' or ''IRMI''), from time to time through the period ending December 31, 2001, in connection with existing and future debt. The applicants propose that the term of the IRMI would not exceed the maximum maturity of the underlying debt or the maturity of anticipated specific future debt issuances, proportionate to the amount of debt at each maturity level.

Each applicant, other than NAEC, undertakes that the total notional principal amount of its IRMI will not exceed 25% of its total outstanding debt at any one time. NAEC would make the identical undertaking, but subject to a 65% debt limitation. In no case would the notional principal amount of any IRMI exceed that of the underlying debt instrument and related interest rate exposure.

Each applicant would enter into IRMI transactions with each proposed counterparty pursuant to a separate written agreement. The applicants will enter into IRMI with counterparties whose senior secured debt ratings, as published by Standard & Poor's Corporation (''S&P''), are greater than or equal to ''BBB+'' or an equivalent rating from another rating agency, and at least 75% of the outstanding principal amount of IRMI will be held by counterparties with S&P credit ratings of ''A'' or higher, or an equivalent rating.

New England Electric System (70–8901)

New England Electric System (''NEES''), 25 Research Drive, Westborough, Massachusetts 01582, a registered holding company, has filed an declaration under sections 6(a) and 7 of the Act and rule 54 thereunder.

NEES proposes to issue and sell up to a maximum aggregate outstanding principal amount of $100 million of short-term notes to banks from time-to-time through October 31, 2001. The notes will mature in less than one year from the date of issuance. NEES will negotiate with banks the interest costs of such borrowings. The effective interest cost of borrowings will not exceed the effective interest cost of borrowings at the greater of the bank's base or prime lending rate, or the rate published by the Wall Street Journal as the high federal funds rate plus, in either case, 1%. NEES pays fees to the banks in lieu of compensating balance arrangements. Certain of the borrowings may be without prepayment privileges. Based upon the current base lending rate of 8.25% and an equivalent or lower federal funds rates, the effective interest cost would not exceed 9.25% per annum.

NEES currently does not expect to incur short-term borrowings under this authority. However, NEES believes the requested authority in necessary in order for it to act quickly in response to an emergency affecting it or more or more of its subsidiaries.

Entergy Corporation (70–8903)

Entergy Corporation (''Entergy''), 639 Loyola Avenue, New Orleans, Louisiana 70113, a registered holding company, has filed a declaration under sections 6(a) and 7 of the Act and rule 53 thereunder.

By prior Commission order (HCAR No. 26343; July 27, 1995), Entergy was authorized to enter into a credit agreement with one or more banks to effect borrowings and reborrowings from time-to-time, for a period not to exceed three years, in an aggregate principal amount outstanding at any one time not to exceed $300 million. Entergy was to use the proceeds of the credit agreement for general corporate purposes, including the acquisition of the outstanding common stock and investments in''exempt wholesale generators'' (''EWGs'') and ''foreign utility companies'' (''FUCOs''), as those terms are respectively defined in sections 32 and 33 of the Act, and related non-utility businesses, subject to any required Commission approvals.

Entergy entered into a $300 million credit agreement (''Credit Agreement''), dated as of October 10, 1995, among Entergy, as borrower, certain banks named therein as lender banks, and Citibank, N.A., as agent. The indebtedness currently outstanding under the Credit Agreement is approximately $270 million, which was drawn to complete the acquisition of CitiPower Limited.

Entergy now proposes to enter into an amendment, modification or supplement of the Credit Agreement and/or one or more additional credit facilities (collectively, ''Credit Facilities'') with one or more banks that would permit Entergy to effect borrowings and reborrowings, from time-to-time no later than December 31, 2002, of not more than $500 million at any one time outstanding, by issuing to participating banks (''Banks'') its unsecured promissory notes payable no later than December 31, 2002. The names of the Banks, the maximum amount of the aggregate commitment of such Banks, (which will not exceed $500, million and the maximum amounts of their respective participations (collectively, the ''Commitments'') in the proposed borrowings by Entergy will be supplied by filing under rule 24.

Entergy proposes that each borrowing could either be made *pro rata* among the Banks according to their respective Commitments, or be allocated among one or more of the Banks in such proportions as the Banks and Entergy shall agree. Each payment by Entergy with respect to a borrowing would be made *pro rata* among the Banks according to their respective ratable portions of such borrowings. The Commitments would remain in effect until no later than December 31, 2002, subject to the right of Entergy at any time upon proper notice to terminate the Commitments or from time-to-time to reduce the Commitments then in effect. Any such reduction of the Commitments would be accompanied by prepayment of the outstanding borrowings and accrued interest to the extent that the aggregate principal amount then outstanding exceeded the reduced Commitments of the Banks.

Under the proposed arrangements, each borrowing would bear interest from the date thereof on the unpaid principal amount at a rate per annum selected by Entergy, from time-to-time, from a number of specified interest rate options. Such interest rate options will include but not be limited to some or all of the following: (1) The prime commercial loan rate of a specified Bank (or an average of such rates of some or all of the Banks) (''Prime Rate'') from time-to-time in effect; (2) the sum of (A) specified offered rates for certificates of deposit of a specified Bank (or an average of such rates of some or all of the Banks) for amounts equivalent to such borrowing and for selected interest periods, appropriately adjusted for the cost of reserves and F.D.I.C. insurance and (B) a margin not in excess of 1% per annum (''CD Rate''); (3) the sum of (A) specified rates offered for U.S. dollar deposits by or to a specified Bank (or an average of such rates of some or all of the Banks) in the interbank eurodollar market for amounts equivalent to such borrowing and for selected interest periods, appropriately adjusted for the cost of reserves and (B) a margin not in excess of 1% per annum (''LIBOR Rate''); or (4) a rate negotiated at the time of borrowing with one or more Banks, which would not in any event exceed a maximum rate of the Prime Rate plus 2% per annum, appropriately adjusted for the cost of bidding or negotiation (''Auction Advance Rate'').

In general, interest on Prime Rate borrowings would be payable quarterly, and interest on CD Rate and LIBOR Rate borrowings would be payable at the end of selected interest periods for such borrowings, or, depending upon the length of such selected interest periods, at specified intervals within such periods and at the end of such periods. Interest on Auction Advance Rate borrowings would be payable on such dates as are agreed to by Entergy and Banks funding such borrowings.

Entergy has stated that it may agree to pay to each Bank a facility fee for the period from the commencement of the borrowing arrangements to and including December 31, 2002, or any earlier date of termination of the Commitments, computed at a rate not in excess of ¼ of 1% per annum of the total Commitments in effect during the period for which payment is made. Entergy may also agree to pay to the agent Bank, if any, an agent fee for the period from the commencement of the borrowing arrangements to and including December 31, 2002, or any earlier date of termination of the Commitments, not in excess of $200,000 per annum. The facility fee and agent fee would be payable on an annual or a quarterly basis and on the date upon which Entergy shall terminate the Commitments. Entergy may also agree to pay to the Banks an up-front fee not in excess of 1% of the total Commitments.

Entergy presently intends to repay the proposed borrowings out of internally generated funds and/or the proceeds of such forms of financing as are hereafter approved by the Commission and/or other funds that become available to Entergy. The proposed borrowings

would be prepayable upon proper notice in whole or in part.

The proceeds of the borrowings under the proposed arrangements will be used by Entergy for general corporate purposes, including, among other things: (1) The acquisition of shares of Entergy's outstanding common stock; (2) further investments by Entergy in related non-utility businesses, subject to receipt of any further Commission approval, if necessary, under the Act in separate filings made at an appropriate time, and (3) investments in existing or future exempt wholesale generators and foreign utility companies as permitted by sections 33 and 34 of the Act or otherwise approved by the Commission.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23351 Filed 9–11–96; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–22200; File No. 811–8554]

UST Master Variable Series, Inc.

September 5, 1996.

AGENCY: The Securities and Exchange Commission (the ''Commission'').

ACTION: Notice of application for an order under the Investment Company Act of 1940 (''1940 Act'').

APPLICANT: UST Master Variable Series, Inc. (''Applicant'').

RELEVANT 1940 ACT SECTIONS: Order requested under Section 8(f) of the 1940 Act.

SUMMARY OF THE APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company, as defined by the 1940 Act.

FILING DATES: The application was filed on July 30, 1996.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the SEC and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 30, 1996, and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, UST Master Variable Series, Inc., 114 West 47th Street, New York, New York 10036.

FOR FURTHER INFORMATION CONTACT: Veena K. Jain, Attorney, or Patrice M. Pitts, Special Counsel, Office of Insurance Products (Division of Investment Management), at (202) 942–0670.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the SEC.

Applicant's Representations

1. Applicant, incorporated in Maryland, is an open-end management company designed as a funding vehicle for variable annuity contracts and variable life insurance policies offered by the separate accounts of certain life insurance companies. All portfolios of Applicant, except for the International Bond Portfolio, are diversified under the 1940 Act.

2. Applicant filed a notification of registration under Section 8(a) of the 1940 Act, and a registration statement pursuant to Section 8(b) of the 1940 Act and under the Securities Act of 1933, registering an indefinite number of shares on June 7, 1994. The registration statement became effective October 14, 1994, and Applicant commenced an initial public offering on January 17, 1995.

3. On February 9, 1996, Applicant's Board of Directors approved the liquidation and deregistration of Applicant.

4. On March 26, 1996, Applicant had 2,166,111 shares outstanding, having an aggregate net asset value of $12,040,561. On March 26, 1996, dividends were declared and capital gains and income distributions were made to the Applicant's security holders. The liquidation of Applicant was effected by April 26, 1996, when all security holders of Applicant had voluntarily redeemed their shares at net asset value. No brokerage commissions were paid in connection with the liquidation.

5. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

6. The expenses incurred by the Applicant in connection with the liquidation have been or will be paid by Applicant's investment adviser, U.S. Trust Company of New York.

7. At the time of the application, Applicant had no shareholders, assets or liabilities, and Applicant is not a party to any litigation or administrative proceeding.

8. Within the last 18 months, Applicant has not transferred its assets to a separate trust, the beneficiaries of which were or are the shareholders of Applicant.

9. Upon being granted an order to deregister as an investment company under the 1940 Act, Applicant will terminate its existence as a Maryland corporation.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23316 Filed 9–11–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37642; File No. SR–CBOE–96–46]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by Chicago Board Options Exchange, Incorporated Related to Tolling of the Time Period for Settlement of Disciplinary Cases Pursuant to Interpretation and Policy .01(d) Under Exchange Rule 17.8

September 5, 1996.

On July 23, 1996,[1] the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder.[3] The proposed rule change would amend Interpretation and Policy .01(d) under CBOE Rule 17.8 (''Interpretation .01(d)'') to allow the Exchange staff thirty days to respond to a Respondent's document request before tolling the Respondent's settlement period. The proposed rule change also would amend Interpretation .01(d) to provide that in no event will a Respondent have less than seven days after the receipt of requested documents within which to submit an offer of settlement.

Notice of the proposed rule change, together with the substance of the proposal, was issued by Commission release (Securities Exchange Act Release

[1] The proposed rule change was originally filed with the Commission on July 10, 1996. The CBOE subsequently submitted Amendment No. 1 to the filing. Amendment No. 1 was a minor technical amendment. *See* Letter from Arthur B. Reinstein, Senior Attorney, CBOE, to Karl Varner, Staff Attorney, Division of Market Regulation, SEC, dated July 23, 1996.

[2] 15 U.S.C. 78s(b)(1) (1988).

[3] 17 CFR 240.19b–4 (1993).

No. 37496, July 30, 1996) and by publication in the Federal Register (61 FR 40689, August 5, 1996). No comment letters were received. This order approves the proposed rule change.

One purpose of the change to Interpretation .01(d) is to allow the Exchange staff thirty days to respond to a Respondent's document request before tolling the Respondent's settlement period. Pursuant to CBOE Rule 17.8, after a Respondent is served with a statement of charges for an alleged rule violation, that Respondent has 120 days to attempt to resolve the charges by submitting a written offer of settlement. Pursuant to CBOE Rule 17.4(c), within 60 days after a statement of charges has been served, a Respondent may make a written request for access to all documents concerning the case that are in the investigative file of the Exchange except for staff investigation and examination reports and materials prepared by the staff in connection with such reports or in anticipation of a disciplinary hearing or other privileged materials. If a Respondent requests access to the investigative file, Interpretation .01(d) currently provides that the 120-day time period for submitting a written offer of settlement shall be tolled during the number of days in excess of seven calendar days that it takes staff to provide access to documents in response to the Respondent's request.

The Exchange staff has found that, in most cases, it needs longer than seven days to respond to a request. Before providing access to documents, Exchange staff must review and organize the investigative file to remove privileged documents or information that is not discoverable and to remove information that may identify the complainant. There have been occasions where Exchange staff has spent more than 7 days preparing the investigative file for access, but after gaining the benefit of tolling, the Respondent submits an offer of settlement without ever reviewing the file. The rule change approved today reduces this potential for delay in concluding a disciplinary case by limiting a Respondent's ability to toll the 120-day settlement period.

The rule change also amends Interpretation .01(d) to deal with the situation where a Respondent has elected to proceed in an expedited manner pursuant to Rule 17.3 in an effort to resolve a matter by entering into a letter of consent prior to the issuance of charges, but is unsuccessful in negotiating a letter of consent.

Interpretation and Policy .01(b) under Rule 17.8 provides that if a Respondent is unsuccessful in an effort to reach agreement with Exchange staff upon a letter of consent and charges are issued, any time in excess of 30 days spent in attempting to negotiate a letter of consent is deducted from the 120-day settlement period, but that in any event a Respondent will always have at least 14 days after service of charges within which to submit an offer of settlement. The existing provision of Interpretation .01(d) tolls the settlement period after seven days when a document request has been made. Therefore, if a Respondent makes a document request on the first day of the 14-day settlement period, that Respondent currently has at least seven days remaining of the 14-day settlement period after the documents are provided within which to submit an offer of settlement.

However, Interpretation .01(d) as amended would not toll the settlement period until 30 days elapsed from the time that the respondent makes a document request. Thus, the settlement period could expire even though the Exchange has not yet responded to the document request. To assure that the settlement period does not expire before the Exchange has responded to the document request, and to further assure that a Respondent has a meaningful opportunity to review the requested documents, the rule change approved today also amends Interpretation .01(d) to provide that in no event will a Respondent have less than seven days after the receipt of requested documents within which to submit an offer of settlement.

The Commission believes that the proposed rule change is consistent with and furthers the objectives of Section 6(b)(7) of the Act in that it improves the Exchange's procedures for the discipline of members and persons associated with members. The Commission believes the proposed change will make the review process more fair and efficient by reducing the potential for delay in concluding a disciplinary case resulting from Respondents, or their attorneys, requesting access to documents solely to gain an extension of the 120-day settlement period through tolling.

As noted above, the 120 day settlement period is frequently tolled under Interpretation .01(d) while Exchange staff responds to the Respondent's request for documents. The Commission believes that, by tolling the 120 day settlement period only if exchange staff takes more than 30 days to respond to a Respondent's request, the proposed change provides a Respondent with access to a documents in accordance with Rule 17.4(c) while discouraging access requests made for the purpose of extending the 120 days settlement period.[4]

The Commission also believes that it is consistent with the objectives of Section 6(b)(7) of the Act to amend Interpretation .01(d) to provide that in no event will a Respondent have less than seven days after the receipt of requested documents within which to submit an offer of settlement. The Commission believes that the proposed amendment to Interpretation .01(d) will make the review process more fair and efficient by continuing to provide a Respondent with a minimum of seven days after Respondent's receipt of requested documents within which to submit an offer of settlement.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change, SR–CBOE–96–46 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23311 Filed 9–11–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37646; File No. SR–CBOE–96–47]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating To Permitting a Subject of an Exchange Investigation To Submit a Videotaped Response in Lieu of or in Addition to a Written Response

September 5, 1996.

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 July 10, 1996, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[4] The CBOE believes that, under the proposed rule change, access requests by Respondents typically should not extend the 120-day settlement period because the Exchange staff generally will be able to respond within 30 days to an access request.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to permit the subject of an Exchange investigation (''Subject'') to submit a videotaped presentation to the Exchange's Business Conduct Committee (''BCC'') in response to Exchange staff's notice given pursuant to Rule 17.2(d). That notice describes the general nature of allegations and specific rules that appear to have been violated by the Subject. This videotaped presentation could be submitted by the Subject to the BCC in lieu of, or in addition to, submitting a written statement as permitted by Rule 17.2(d).

The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to permit subjects of Exchange investigations to submit a videotaped presentation to the BCC in response to Exchange staff's notice given pursuant to Rule 17.2(d). That notice describes the general nature of allegations against, and of specific rules that appear to have been violated by, the Subject of the Exchange investigation. This videotaped presentation could be submitted to the BCC in lieu of, or in addition to, submitting a written statement as permitted by Rule 17.2(d).

Under existing Rule 17.2, if, after conducting an investigation, Exchange staff finds that there are reasonable grounds to believe that a rule violation has been committed, the Exchange staff submits a written report to the BCC.[1] Prior to submitting the report to the BCC, the Exchange staff notifies the Subject of the general nature of the allegations and the specific provisions of the rules or regulations that appear to have been violated. Pursuant to Rule 17.2(d), except when the BCC determines that expeditious action is required, the Subject then has fifteen (15) days from the date of the Exchange staff's notice to submit a written statement to the BCC explaining why no disciplinary action should be taken.

The proposed rule change would permit the Subject's statement to be made in a videotaped format instead of, or in addition to, submitting a written response. The Exchange decided to propose this change because a number of members have indicated that they would be more comfortable presenting their position orally, rather than attempting to draft a persuasive response letter. The Exchange believes that permitting a Subject of an investigation to respond on videotape, which could then be viewed by BCC members at their convenience, would be beneficial to the BCC and the Subject.

The proposal grants the Exchange the discretion to set a time limit on the videotaped response. Initially, the Exchange will set a time limit of fifteen minutes on a videotaped response. The videotaped response would also have to be submitted in a format approved by the Exchange. Initially, the Exchange will require that a videotaped response be in a VHS format. The Exchange may change the foregoing time limit and format requirements from time to time, and will publish the applicable time limit and format requirements in a regulatory circular to the Exchange membership.

2. Statutory Basis

By permitting Subjects of Exchange investigations to submit a response in a videotaped format, the Exchange believes the disciplinary process can be enhanced by giving Subjects more flexibility in responding to a Rule 17.2(d) notice. For this reason, this policy furthers the objectives of Section 6(b)(7) of the Act in that it is designed to provide a fair procedure for the disciplining of members and persons associated with members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments 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 longer period: (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–96–47 and should be submitted by October 3, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23315 Filed 9–11–96; 8:45 am]

BILLING CODE 8010–01–M

[1] Exchange staff may draft and submit a report to the BCC if it finds that there are not reasonable grounds to believe a violation has been committed; however, such a report is not required under Exchange rules.

[2] 17 CFR 200.30–3(a)(12).

[Release No. 34–37651; File No. SR–CBOE–96–24]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Chicago Board Options Exchange, Inc.; Relating to As of Add Submissions

September 5, 1996.

On April 15, 1996, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to terminate its fee program for members who, for more than a prescribed percentage of transactions, submit trade information pursuant to CBOE Rule 6.51 (''Reporting Duties'') after the date on which the trade is executed. (These post-trade date submissions are commonly referred to as ''as of adds.'') In conjunction with the foregoing, the Exchange also proposes to revise the structure of its as of add summary fine program.

Notice of the proposal was published for comment and appeared in the Federal Register on May 17, 1996.[3] No comment letters were received on the proposal. This order approves the CBOE's proposal.

I. Description of the Proposal

CBOE Rule 6.51 requires, among other things, that (i) a participant in each transaction to be designated by the Exchange shall immediately report the transaction to the Exchange and (ii) each business day, each clearing member shall file with the Exchange trade information covering each Exchange transaction made by it or on its behalf during the business day.

On October 1, 1993, the Exchange instituted an as of add fee program to collect fees from members who, for more than a prescribed percentage of transactions, submit trade information pursuant to Rule 6.51 after the date on which the trade is executed. This program is set forth in CBOE Rule 2.26 and currently functions in the following manner. Each individual member is assessed a $10.00 fee for each as of add submitted by the member during a given month that is in excess of 2.4% of the member's trade submissions during that month. Similarly, each clearing member is assessed a $3.00 fee for each as of add submitted by the clearing member during a given month that is in excess of 1.2% of the clearing member's trade submissions during that month. In addition, the total fees under the program that may be assessed against a member in a given month are capped at $500 for individual members and at $1,000 for clearing members.

The reason the Exchange implemented the as of add fee program was to allocate the costs borne by the Exchange in processing as of add submissions to those members most responsible for generating those costs and thereby to encourage the submission of information with respect to a trade on the date the trade is executed by creating an economic incentive to submit the information on that day. The Exchange represents that during the first year of the program, the percentage of as of add submissions declined by 10% even though the Exchange experienced a 37% increase in trading volume. Based on past experience, the Exchange estimates that had the program not been in effect during that time period, the percentage of as of add submissions would have doubled. Since November, 1994, however, the percentage of as of add submissions has remained relatively constant. Therefore, although the program has clearly been effective in reducing the percentage of as of add submissions, it no longer appears to be causing a reduction in the rate of those submissions.

Accordingly, the Exchange is proposing to terminate the as of add fee program and to seek further reductions in the percentage of as of add submissions by revising the structure of the Exchange's as of add summary fine program.[4]

The Exchange institute its as of add summary fine program on February 1, 1995. The program is a part of the Exchange's minor rule violation plan (''Minor Rule Plan'') and is set forth in CBOE Rule 17.50(g)(7). Under the program, any individual member whose monthly percentage of as of add submissions exceeds 7.2% for two consecutive months or any clearing member whose monthly percentage of as of add submissions exceeds 3.6% for two consecutive months is subject to a fine of $250 for the first offense, $500 for the second offense, and $1,000 for each subsequent offense occurring during any 12-month period.

The Exchange is proposing to revise the structure of the as of add summary fine program in four primary respects in order to encourage further change in as of add behavior, and to the extent the Exchange collects fines under the program, to help the Exchange defray the additional costs it incurs in processing as of add submissions.

First, the Exchange is proposing to replace the current as of add summary fine schedule for individual members. The proposed fine schedule would be stricter in two respects: (i) Action against an individual member under the fine schedule would be triggered when the member exceeds the maximum allowable as of add submission percentage in a given month instead of when the member exceeds that percentage in two consecutive months as is the case under the current fine schedule and (ii) the maximum allowable as of add submission percentage for individual members under the fine schedule would be reduced from its current level of 7.2% to 5%. Specifically, the current fine schedule for individual members would be replaced with the following fine schedule. Any individual member whose percentage of as of add submissions in any month exceeds 5% would receive a letter of information for the first offense, a letter of caution for the second offense, a $500 fine for the third offense, a $1,000 fine for the fourth offense, and would be referred to the Exchange's Business Conduct Committee for each subsequent offense occurring during any 12 month period.[5]

In addition, as is currently the case, the Exchange would retain the discretion to initiate a formal disciplinary proceeding against an

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 37201 (May 10, 1996), 61 FR 24986 (May 17, 1996).

[4] The Exchange now believes that the costs to the Exchange of administering a program that imposes small fees or fines on occasional late-reporting members is not justified. Instead, the focus of the new program is on a small number of chronic late reporters who appear to be willing to accept fines as a cost of doing business. The proposed program would permit the Exchange to bring these chronic violators of trade reporting requirements before the CBOE's Business Conduct Committee much sooner than would be permitted under the existing program. This could result in formal charges being brought against such violators, which could lead to very severe sanctions such as major fines and suspensions of membership. *See* Letter from Michael L. Meyer, Esq., Schiff, Hardin & Waite, to Ivette Lopez, Assistant Director, Office of Market Supervision, Division of Market Regulation, Commission, dated August 6, 1996 (''Clarification Letter'').

[5] In some respects the proposed fine schedule is less strict. Under the proposed fine schedule, a member would not receive any monetary sanction for the first two offenses, as compared to the existing schedule where a member is fined $250 and $500 for the first and second offenses, respectively. Moreover, because the Exchange is proposing to eliminate the as of add fee program, the monetary disincentive for as of adds will be reduced for all individual members except those relatively small number of chronic late reporters whom the Exchange has chosen to target. This is consistent with the Exchange's stated purpose of focusing on the chronic late reporters who appear to be willing to accept fines as a cost of doing business. See Clarification Letter, *supra* note 4.

individual member pursuant to Chapter XVII of the Exchange's rules in the event the Exchange determines that any violations of Rule 6.51 are not minor in nature.

Second, the current as of add summary fine schedule for clearing members would be deleted and going forward as of add summary fines would only be assessed against individual members. The Exchange believes that such a fine structure is appropriate because individual members have primary control over the timing of trade submissions, and in the Exchange's experience, most as of adds are caused by delays and errors of individual members. Moreover, the Exchange believes that clearing members generally have a greater economic incentive than individual members to reduce as of adds because clearing members incur personnel and systems costs due to the extra work necessary to process as of adds whereas individual members do not incur such costs. Therefore, the Exchange believes that the most effective manner in which to achieve a reduction in the percentage of as of adds is to direct the as of add summary fine program toward individual members. Of course, notwithstanding the foregoing, the Exchange would still have the ability to initiate a formal disciplinary proceeding against a clearing member for violations of Rule 6.51.

Third, the Exchange is proposing to implement a verification procedure under Rule 17.50 pursuant to which any member who receives an as of add summary fine would be able to request verification of that fine by the Exchange. Under this procedure, the Exchange would attempt to serve any member who incurs an as of add summary fine with a disciplinary notice on or before the 10th day of the month immediately following the month in which the fine is incurred. The member would then have until the 25th day of the month in which the disciplinary notice is served to request verification. After the Exchange's verification process is completed, it would notify the member in writing of the Exchange's determination, and if the member so desired, the member could appeal the fine within 30 days after the date of such notice in accordance with the appeal procedures under Rule 17.50(d). In addition, any member who incurs an as of add summary fine and does not request verification would be able to appeal the fine under Rule 17.50(d) within 30 days after the Exchange's service of the disciplinary notice informing the member of the fine. The above-described verification procedures would function in the same general manner as the verification procedures that are currently in place under Rule 17.50 for fines imposed for failure to submit accurate trade information and for failure to submit trade information to the price reporter, and these procedures would serve to replace the current as of add verification procedures under Rule 2.26(c) which would be eliminated under the proposed rule change along with the remainder of Rule 2.26.

Finally, the current procedures set forth in Rule 2.26(d) which permit the Exchange to suspend the as of add fee program would also be eliminated along with the remainder of Rule 2.26, and instead, would be restated in Rule 17.50 and made applicable to the as of add summary fine program. As is currently the case with respect to the as of add fee program, these procedures would permit the Exchange's Clearing Procedures Committee, with the approval of the President of the Exchange, or his designee, to suspend the as of add summary fine program for periods no greater than seven calendar days, plus extensions, when unusual circumstances affect the ability of a significant number of members to submit trade information on a timely basis.

The Exchange proposes to implement the proposed rule change within 45 days after its approval by the Commission. The purpose of this time interval is to give the Exchange the opportunity to inform members of the approval of the proposed rule change in the Exchange's Regulatory Bulletin before the rule change is put into effect. The Exchange will publish the effective date of the rule change in the Exchange's Regulatory Bulletin and will notify the Commission of the effective date by letter.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[6] Specifically, the Commission believes that the proposed rule change may serve to further reduce the total number of monthly as of add submissions by providing a clear sanction in those circumstances in which disciplining is clearly appropriate. As a result, the Commission believes that the proposal should benefit all Exchange members, and ultimately investors, by reducing the Exchange's processing costs, making the CBOE more efficient in terms of the time involved in trade processing, and reducing the risk exposure to investors and Exchange member firms.

The Commission believes that an exchange's ability to effectively enforce compliance by its members and member organizations with Commission and exchange rules is central to its self-regulatory functions. In this regard, the Commission finds that the CBOE's proposal also is consistent with Section 6(b)(6)[7] of the Act in that it provides for the appropriate disciplining of the CBOE's members for violation of Exchange rules. Indeed, the Commission previously urged the CBOE to incorporate the as of add fee program into the Minor Rule Plan contained in Rule 17.50.[8] The Commission continues to believe that fining and instituting disciplinary proceedings against members to encourage compliance with exchange rules is generally preferable to assessing fees.[9]

The Commission finds that the proposed schedule of penalties pursuant to CBOE Rule 17.50(g)(7) is consistent with the Act.[10]

Further, the Commission does not believe that the fact that the new fine schedule will apply to individual members and not clearing members raises significant regulatory concerns. First, the Exchange represents that most as of adds are the result of late submissions by individual members, not clearing firms. Second, in its present form as previously approved by the Commission, both the as of add fee program and the summary fine program distinguish between clearing members and individual members. Accordingly,

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(6).

[8] While the CBOE did not completely incorporate the as of add fee program into Rule 17.50, it did create the current summary fine program for the most egregious violations of Rule 6.51. See Securities Exchange Act Release No. 35297 (January 30, 1995), 60 FR 7091 (February 6, 1995).

[9] See Securities Exchange Act Release No. 35190 (January 3, 1995), 60 FR 3008 (January 12, 1995). Fines levied pursuant to the Minor Rule Plan provide for an appropriate response to minor violations of Exchange rules, while preserving the due process rights of the party accused through specified, required procedures.

[10] The Commission notes that under certain circumstances the new schedule of penalties pursuant to the Minor Rule Plan may be too lenient in that referral to the Business Conduct Committee takes a minimum of five months. However, the Commission's concerns in this regard are alleviated by the fact that at any time the Exchange has the discretion to initiate a formal disciplinary proceeding against a member pursuant to Chapter XVII of the CBOE's rules in the event the Exchange determines that any violations of Rule 6.51 are not minor in nature. Moreover, the Exchange has represented to the Commission that the new schedule of penalties was the subject of extensive consideration by the Exchange's Clearing Procedures and Financial Planning Committees as well as its Floor Directors Committee. See Clarification letter, *supra* note 4.

the Commission believes that the difference in treatment between clearing members and individual members is reasonable and consistent with the Act.

Additionally, the Commission believes that including a verification procedure under Rule 17.50, pursuant to which any member who receives an as of add summary fine would be able to request verification of that fine by the Exchange, provides adequate due process rights to the fined member and is consistent with the Act. The Commission notes that even if the accused fails to request verification, the member may appeal the fine under Rule 17.50(d) within 30 days after the Exchange's service of the disciplinary notice informing the member of the fine.

Moreover, the Commission believes that the procedures currently set forth in Rule 2.26(d), which permit the Exchange to suspend the as of add fee program, are just as appropriate for inclusion in the as of add summary fine program. The Commission believes that when unusual circumstances exist that affect the ability of a significant number of members to submit trade information to the Exchange in a timely manner it may not be appropriate to assess fines against such members. These procedures will permit the CBOE's Clearing Procedures Committee, with the approval of the President of the Exchange, or his designee, to suspend the as of add summary fine program for periods no greater than seven calendar days, plus extensions, when unusual circumstances so warrant. The Commission notes, however, that it expects the CBOE to use its power to waive as of add fines only in highly unusual circumstances.

Finally, the Commission believes that the Exchange will be providing adequate notice of the rule change to its members by publication in the Exchange's Regulatory Bulletin 45 days in advance of the effective date of the change. The Commission believes this is particularly important with rule changes such as this which affect members' susceptibility to disciplinary sanctions.

Accordingly, the Commission finds that the CBOE's proposal is appropriate and consistent with the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CBOE–96–24) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23350 Filed 9–11–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37644; File No. SR–CHX–96–21]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to ''Stop'' Orders and ''Stopped'' Orders

September 5, 1996.

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 July 22, 1996, the Chicago Stock Exchange, Incorporated (''CHX'' 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.[1] The Commission is publishing this notice to solicit comments on the proposed rule change and Amendment No. 1 thereto from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Article XX, Rule 28 and Article XX, Rule 37 of the Exchange's Rules and add Article XX, Rule 28A to the Exchange's Rules. The text of the proposed rule change is as follows [new text is italicized; deleted text is bracketed]:

Article XX

Liability for [''Stop''] *''Stopped''* Orders

Rule 28 An agreement by a member or member organization to *have an order ''stopped''* [''stop'' securities]] at a specified price shall constitute a guarantee of the purchase or sale by him or it of the security[ies] at the *stopped* price or its equivalent in the amount specified*; but in no event shall the guarantee be greater than the greater of (i) the size disseminated in the primary market at the time the order was stopped, or (ii) the size disseminated by the Exchange at the time the order was stopped.* If an order is executed at a *price* less favorable [price than that agree upon] *than the stopped price*, the member or member organization which agreed to stop the securities shall be liable for an adjustment of the difference between the two prices.

Rule 28A Stop Orders.

(a) Stop Orders.

A ''stop'' order to buy shall only be entered at a price above the current primary market offer. A ''stop'' order to sell shall only be entered at a price below the current primary market bid. Once entered, a ''stop'' order may not be executed until a trade (the ''effective trade'') occurs in the primary market that is at or through the price of the ''stop'' order. Once the effective trade occurs, the ''stop'' order shall be executed based upon the next primary market trade, but at a price no better than the effective trade (i.e. the ''stop'' order shall be executed on a next-no better basis).

(b) Stop Limit Orders.

(1) Buy Stop Limit Orders. A buy stop limit order shall only be entered at a price above the current primary market offer and shall become a limit order when a round-lot transaction takes place in the primary market at or above the stop price. The order shall then be filled in the manner prescribed for handling a limit order to buy.

(2) Sell Stop Limit Orders. A sell stop limit order shall only be entered at a price below the current primary market bid and shall become a limit order when a round-lot transaction takes place in the primary market at or below the stop price. The order shall then be filled in the manner prescribed for handling a limit order to sell.

Article XX

Rule 37(a)

1.–5. No change in text.

6. Since executions are guaranteed on the basis *of the size and price* of the best bid or offering, the order may be executed out of the primary market range for the day, but in a Dual Trading System issue a stop must be granted if requested.

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

The primary purpose of the proposed rule change are to clarify that the existing Rule 28 of CHX Article XX relates to ''stopped'' orders and not ''stop'' orders, and to add a provision to the Exchange's Rules relating to ''stop''

[1] See Letter from David T. Rusoff, Attorney, Foley & Lardner, to Jon Kroeper, Attorney, SEC, dated August 27, 1996 (''Amendment No. 1''). Amendment No. 1 added language clarifying the manner by which sell stop limit orders would be elected under proposed CHX Article XX, Rule 28A(b)(2) and corrected the text of the proposed amendment to CHX Article XX, Rule 37(a)6.

orders, among other things. With regard to ''stop'' orders, proposed CHX Article XX, Rule 28A permits such orders only to be entered at a price above (for buy orders) or below (for sell orders) the current primary market offer or bid, respectively.

In addition, the Exchange's rules on ''stopped'' orders are being clarified to make it clear that the execution guarantee of the ''stopped'' order is limited to the size displayed in the primary market when the ''stopped'' order is entered. This is consistent with the execution guarantee on orders that are subject to the BEST Rule that are not stopped, which are guaranteed an execution on the lesser of the size displayed in the primary market or 2099 shares.[2]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Act[3] 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 written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

[2] *See* CHX Article XX, Rule 37. The Exchange's BEST System specifies certain conditions under which CHX specialists are required to accept and guarantee executions of market and limit orders from 100 up to and including 2099 shares.

[3] 15 U.S.C. 78f(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–96–21 and should be submitted by October 3, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23310 Filed 9–11–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37653; File No. SR–CSE–96–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by The Cincinnati Stock Exchange Relating to Day Trading Margin Requirements

September 6, 1996.

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 August 15, 1996, the Cincinnati Stock Exchange (''CSE'' 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 CSE proposes to amend its rules concerning day trading margin requirements. The text of the proposed rule change is set forth below [New text is italicized; deleted text is bracketed]:

Rule 6.2. Day Trading Margin

(a) The term ''day trading'' means the purchasing and selling of the same security on the same day. A ''day trader'' is any customer whose trading shows a pattern of day trading.

(b) Whenever day trading occurs in a customer's margin account the margin to be maintained shall be the margin on the ''long'' or ''short'' transaction, whichever occurred first. When day trading occurs in the account of a day trader, the margin to be maintained shall be the margin on the ''long'' or ''short'' transaction, which ever occurred first.

(c) No member shall permit a public customer to make a practice, directly or indirectly, of effecting transactions in a cash account where the cost of securities purchased is met by the sale of the same securities. No member shall permit a public customer to make a practice of selling securities with them in a cash account which are to be received against payment from another broker-dealer where such securities were purchased and are not yet paid for.

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 CSE 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 CSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to enhance the financial protections and therefore the integrity of the Exchange's markets by ensuring that customers maintain adequate margin reserves in their accounts. The proposed rule change requires day traders to maintain margins sufficient to cover their intraday ''long'' or ''short'' positions, depending upon which occurred first, for a particular day.

Because the proposed rule change will enhance the financial protections and the integrity of the exchange's markets, the Exchange believes that the proposed rule change is consistent with

Section 6 of the Act in general and with Section 6(b)(5) in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments 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 theFederal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR–CSE–96–05 and should be submitted by October 3, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23348 Filed 9–11–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37639; File No. SR–DCC–96–09]

Self-Regulatory Organizations; Delta Clearing Corp.; Notice of Filing of Proposed Rule Change Regarding Securities Eligible as Margin

September 4, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 2, 1996, Delta Clearing Corp. (''DCC'') 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 primarily by DCC. On August 16, 1996, DCC filed an amendment to its proposed rule change.[2] 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 will amend DCC's rules to allow participants the option of posting margin with DCC in the form of U.S. Treasury notes or U.S. Treasury bonds to amend the haircuts applicable to securities deposited as margin.

II. Self-Regulatory Organization's Statement of the Terms of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DCC 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. DCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, DCC participants may post margin in either U.S. Treasury bills or in central bank funds (*e.g.*, Federal funds).[4] The purpose of the proposed rule change is to amend DCC's procedures for the clearance and settlement of over-the-counter options and of repurchase and reverse repurchase agreements to allow participants the option of posting margin either in central bank funds or in U.S. Treasury bills, notes, or bonds.

DCC participants trade and maintain inventories in a wide range of U.S. Treasury securities. However, participants do not always maintain inventory in U.S. Treasury bills that are eligible as DCC margin collateral. Consequently, participants incur additional costs in order to satisfy DCC's requirement that margin collateral be supplied in U.S. Treasury bills.

DCC also believes that expanding the allowable margin collateral to include U.S. Treasury notes and bonds will improve participants' ability to meet margin calls in a timely fashion because they will be able to select from a greater portion of the securities in their securities inventories to meet their margin requirements. DCC also believes that because the U.S. Treasury securities markets is extremely liquid that DCC's acceptance of U.S. Treasury notes and bonds as collateral will not impede DCC's ability to liquidate if necessary and thus not increase the risk to DCC or to the national clearance and settlement system.

Furthermore, DCC believes that with the appropriate ''haircut'' margin calls met using U.S. Treasury notes and bonds will pose no additional risk to the system. As its haircuts, DCC is proposing to use the Commission's schedule for valuation of government securities as set forth in the Commission's uniform net capital rule.[5] DCC believes that this approach is conservative because the Commission's schedule provides for a larger percentage reduction in the valuation of U.S. Treasury securities with greater maturities. The magnitude of the reduction in value is consistent with DCC's methodology of assuming a three standard deviation movement in the

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[1] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from John Grebenstein, Executive Director, DCC, to Michele Bianco, Division of Market Regulation, Commission (August 16, 1996).

[3] The Commission has modified parts of these statements.

[4] With respect to options, participants also can post margin in the form of cover (*i.e.*, Treasury securities that would be deliverable upon exercise of an option).

[5] 17 CFR 240.15c–1 (1996). The schedule for valuation of government securities is set forth in paragraph (c)(2)(vi)(A) of Rule 15c3–1.

yield of the security based on the last one hundred day period's closing prices. DCC's clearing bank, Bank of New York, will accept these securities without further haircut. However, if the Bank of New York alters its haircut schedule such that this proposed rule change is not acceptable to it, DCC will submit a proposed rule change seeking Commission approval to amend its rule to conform to the Bank of New York haircut schedule.

DCC believes that the proposed rule change is consistent with Section 17A of the Act and the rules and regulations thereunder applicable to DCC. In particular, Section 17A(b)(3)(F) of the Act[6] which requires that a clearing agency be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to remove impediments to and to perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. DCC believes the proposed rule change will permit wider utilization of the system by providing participants with the opportunity to meet efficiently margin requirements consistent with DCC's obligations to safeguard funds and securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DCC does not believe that the proposed rule change will impose any burden on competition 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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[6] 15 U.S.C. 78q–1(b)(3)(F) (1988).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street 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 in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of DCC. All submissions should refer to the file number SR–DCC–96–09 and should be submitted by October 3, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23312 Filed 9–11–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37652; International Release No. 1017; File No. SR–DTC–96–13]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of a Proposed Rule Change Relating to the Admission of Foreign Entities As Depository Participants

September 5, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] Notice is hereby given that on July 12, 1996, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–DTC–96–13) as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1) (1988).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

DTC proposes to amend its current participants admissions policy to permit entities that are organized in a foreign country and are not subject to U.S. federal or state regulation (''foreign entities'') to become DTC participants.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC Rules 2 and 3 set forth the basic standards for the admission of DTC participants. The admission of an entity that is unable to meet the financial obligations arising from its depository transactions can directly affect all other participants. Accordingly, DTC's rules provide that the admission of a participant is subject to an applicant's demonstration that it meets reasonable standards of financial responsibility, operational capability, and character. Furthermore, DTC's rules require all participants to demonstrate to DTC that these standards are met on an ongoing basis.

In determining whether to grant access to its services, DTC's 1990 ''Policy Statement on the Admission of Participants'' (''1990 Policy Statement'') considers whether the applicant is subject to comprehensive U.S. federal or state regulation to be a critical factor.[3] Such regulation includes, among other things, capital adequacy, financial reporting and recordkeeping, operating performance, and business conduct of the applicant. Under the 1990 Policy Statement, an applicant not subject to

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] The 1990 Policy Statement is set forth in Securities Exchange Act Release No. 27808 (March 16, 1990), 55 FR 11279 [SR–DTC–90–01] (notice of filing of proposed rule change). For a complete discussion of the 1990 Policy Statement, refer to Securities Exchange Act Release No. 28754 (January 8, 1991), 56 FR 1548 (order approving proposed rule change).

state of federal regulatory oversight generally would not be eligible to become a participant.[4] However, since 1990 DTC has admitted a small number of foreign entities as participants if their obligations to DTC are guaranteed by participants deemed creditworthy by DTC.

Recently, certain participants have requested that DTC consider changes in the admissions policy that would allow foreign affiliates of DTC participants to become direct participants without first obtaining financial guarantees. The purpose of the proposed rule change is to establish, in lieu of requiring foreign entities to obtain such guarantees, admissions criteria that will permit a well-qualified foreign entity to obtain direct access to DTC's service while assuring that the unique risks associated with the admission of foreign entities are adequately addressed.[5]

The admission of foreign entities as participants raises a number of unique risks and issues, including, without limitation, (i) the level of state and federal regulation to which the foreign entity would be subject, (ii) whether the operation of the laws of the entity's home country and time zone differences[6] may impede the successful exercise of DTC's rights and remedies, particularly in the event of the entity's failure to settle, and (iii) whether the financial information regarding the foreign entity made available to DTC for monitoring purposes would be less adequate than information received from U.S. domestic entities.

In an effort to address these issues and concerns, the proposed rule change will require that the foreign entity, in addition to executing the standard DTC Participants Agreement, enters into a series of undertakings and agreements that are designed to address jurisdictional concerns, sufficiency of collateral, and to assure that DTC is provided with audited financial information that is acceptable to DTC. With regard to the undertakings and agreements between the foreign entity and DTC, jurisdictional issues, and waivers of rights or immunity with regard to all collateral of the foreign entity deposited with or pledged to DTC, DTC will require an opinion of counsel satisfactory to DTC that states, among other things, that all such undertakings, agreements, and waivers are legal and enforceable against the foreign entity and will be recognized and given effect under the laws of the foreign entity's home country.

The proposed rule change also will require that the foreign entity (i) be subject to regulation in its home country, (ii) be in good standing with its home country regulator, and (iii) if there is a central securities depository established in the foreign entity's home country, be eligible to become a member of that depository. Furthermore, the proposed rule change will require that the home country regulatory of the foreign entity have entered into a memorandum of undertaking with the Commission to share or exchange information.

The proposal also sets forth special financial conditions for foreign entities. Under the proposed rule change, foreign entities will be required to have and maintain excess net capital equal to 1000% of the excess net capital required of U.S. participants.[7] Foreign entities also will be required to deposit with or pledge to DTC special collateral having a value equal to fifty percent of the entity's net debit cap after the imposition of specified haircuts. Except for U.S. Treasury securities, securities included in the special collateral account will receive a haircut of fifty percent. In addition, securities for which the foreign entity is the sole or a principal market maker would not be acceptable as special collateral. Most importantly, the foreign entity will not receive credit for the special collateral in DTC's Collateral Monitor. Any net debit must be supported by the value of other, non-special collateral (including any securities received by the participant) reflecting DTC's customary haircuts. The effect of these special collateral requirements will help to assure that DTC does not suffer a loss even if the foreign entity fails to settle and the market value of the collateral supporting its net debit decreases by fifty percent or less.

The central purpose of the special financial conditions is to compensate for the fact that foreign entities are not subject to regulatory oversight in the U.S. As such, information concerning impending insolvency of foreign entities will not be available to DTC through the information-sharing network that has been established among U.S. self-regulatory organizations.[8] After receipt of an early warning from a domestic participant's regulator or from another clearing agency of which the participant is a member, DTC can take early measures to protect itself. For example, DTC can demand additional collateral or permit the participant to effect transactions on a ''cash and carry'' basis only. Because such information-sharing will not necessarily be available for a foreign entity, DTC's proposed financial conditions will require foreign participants to deposit this special collateral before such participants are permitted to create a net debit in DTC's settlement system.

DTC believes that the proposed rule changes is consistent with the requirements of Section 17A of the Act[9] because the proposal does not unfairly discriminate against foreign entities seeking admission as participants. Instead, DTC believes the proposed rulechange appropriately accounts for the unique risks to the depository raised by their admission.

(B) Self-Regulatory Organization's Statement on Burden on Competition

While DTC acknowledges that the proposed rule change may impose an additional burden for foreign entities due to the modified admissions criteria, DTC believes that any such burden is necessary and appropriate in furtherance of the purposes of the Act.

[4] However, DTC recognizes that any person designated by the Commission pursuant to Section 17A(b)(3)(B)(vi) of the Act even if not subject to such regulatory oversight could be eligible for admission.

[5] Certain of these criteria could be waived where inappropriate to a particular applicant or class of applicants (*e.g.*, certain foreign governments or international or national central securities depositories).

[6] Time zone differences could complicate communications between foreign participants and their correspondent U.S. settling banks with respect to the timely payment of participants' net debit to DTC or intraday demands for payment. These differences also could delay DTC's receipt of information concerning a participant's financial condition thereby placing DTC at a potential disadvantage relative to other foreign creditors that already have received the information because actions subsequently taken by DTC to protect itself or its participants could be limited or foreclosed by the prior actions of the foreign creditors.

[7] To qualify to be a DTC participant, DTC currently requires that U.S. broker-dealers have and maintain a minimum of $500,000 excess net capital and that banks must have and maintain minimum equity of $2 million. Therefore, under the proposal, foreign broker-dealers would be required to have and maintain excess net capital of $5 million and foreign banks would be required to have and maintain equity of $20 million to qualify for admission. Telephone conversation between Richard B. Nesson, Executive Vice President and General Counsel, DTC, and Mark Steffensen, Special Counsel, Division of Market Regulation, Commission (August 15, 1996).

[8] In 1988, DTC and other U.S. clearing agencies created the Securities Clearing Group (''SCG''). The primary purpose of the SCG was to establish formal procedures for the sharing of appropriate financial, operational, and clearing information about common members. For a complete description of SCG, refer to Securities Exchange Act Release No. 27044 (July 18, 1989), 54 FR 30963 [File Nos. SR–DTC–88–20, SR–MCC–88–10, SR–MSTC–88–07, SR–NSCC–88–09, SR–OCC–89–02, SR–PHILADEP–89–01, and SR–SCCP–89–01].

[9] 15 U.S.C. 78q–1 (1988).

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not sought or received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 DTC consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the file number SR–DTC–96–13 and should be submitted by October 3, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23342 Filed 9–11–96; 8:45 am]

BILLING CODE 8010–01–M

[10] 17 CFR 200.30–3(a)(12) (1996).

[Release No. 34–37647; File No. SR–GSCC–96–8]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Repurchase Agreement Netting Service

September 5, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 1, 1996, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–GSCC–96–8) as described in Items I, II, and III below, which items have been prepared primarily by GSCC. On August 9, 1996, GSCC filed an amendment to the proposed rule change.[2] 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

GSCC proposes to reimburse two costs related to interdealer broker netting members' (''IDBs'') participation in GSCC's netting system for repurchase and reverse repurchase transactions (''repo'') involving government securities as the underlying instruments.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC 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. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Recently, the Commission approved File No. SR–GSCC–96–04 to allow IDB netting members to participate in GSCC's netting service for repos.[4] Under the rule, IDB and non-IDB netting members can submit data on brokered repos to GSCC in the same manner as they do for cash transactions.[5] GSCC compares, nets, and settles repo close legs and repo start legs submitted prior to start date (*i.e.*, non-same-day-settling start legs) pursuant to GSCC's existing procedures for the netting and settlement of repos. The member parties to brokered repos assume the responsibility for the intraday settlement of start legs outside of GSCC.

This filing will amend GSCC's rules to accommodate IDB participation in repo netting and, more particularly, the ineligibility of intraday settling start legs for netting and settlement through GSCC. The first change relates to the clearance charges incurred by participating IDBs for the settlement of the start legs of brokered repos. The term clearance charges is a commonly used term that refers to costs charged by a clearing agent bank to a broker-dealer customer related to the settlement by that customer of its securities movement obligations. Such costs many include both fixed charges and pass through charges such as the costs of Fed Wire.

As GSCC stated in its prior rule filing,[6] its long-range plans for repo services entail the full and complete automation of all aspects of start and close leg processing, including the intraday settlement of repo start legs. GSCC believes that intraday settlement of start legs will be introduced next year. Once intraday settling start legs are netted by GSCC, participating IDBs will not incur any clearance cost for them because no movements of securities between IDBs and their dealer customers will be required. Rather, IDB's settlement obligations will be satisfied through the netting process.[7] In order to not disadvantage IDBs that wish to participate in the repo netting process immediately, GSCC will absorb IDBs' clearance charges related to the settlement of intraday repo start legs. To protect itself from being obligated to pay for clearance charges that are significantly higher than those that are customary in the industry, GSCC will reserve the right to absorb such charges

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Jeffrey Ingber, General Counsel and Secretary, GSCC, to Christine Sibille, Division of Market Regulation, Commission (August 6, 1996).

[3] The Commission has modified the text of the statements GSCC submitted.

[4] Securities Exchange Act Release No. 37482 (August 1, 1996), 61 FR 40275 (''Release No. 37482'').

[5] IDBs are restricted to submitting to GSCC data on offsetting repo transactions done with GSCC repo netting participants in order to ensure that the IDB will net out of the repo transaction.

[6] Release No. 37482.

[7] Because IDBs will be permitted only to submit to GSCC data on offsetting repo transactions done with GSCC netting participants, their settlement obligations for the start legs will net out as they do with the close legs.

only up to a dollar amount deemed reasonable by it.

Also in order to not disadvantage IDBs participating in the initial brokered repo netting service, if an IDB incurs or causes GSCC to incur an overnight financing cost resulting solely from securities delivered late in the day that the IDB is not able to redeliver before the close of the Fed Wire, the IDB may submit a bill for this financing cost to GSCC. If GSCC determines that such cost was incurred unavoidably and without fault by the IDB, GSCC will absorb or reimburse the IDB for this cost and will allocate it as it normally allocates financing costs under its fee structure. The term ''overnight financing cost'' is a commonly used term that refers to the costs charged by a clearing agent bank to a broker-dealer customer related to the financing by the bank of securities held from one business day until the next business day in the customer's clearing account. To protect itself from being obligated to pay for overnight financing charges that are significantly higher than those that are customary in the industry, GSCC will reserve the right to absorb such charges only up to a dollar amount deemed reasonable by it.

The Board of Directors of GSCC also has determined it appropriate to make these fee reimbursement provisions applicable to a division of a dealer netting member that: (1) Operates in an overall manner as a broker; (2) participates in the repo netting service through a separate GSCC account; and (3) abides by the restrictions imposed on IDBs that participate in the repo netting process.

The proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because it should facilitate the prompt and accurate clearance and settlement of securities transactions.[8]

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

GSCC has not solicited or received comment on the proposed rule change. Members will be notified of the rule change filing, and comments will be solicited by an Important Notice.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 GSCC consents, the Commission will:

(A) by order approve such proposed rule change or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to the file number SR–GSCC–96–8 and should be submitted by October 3, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23309 Filed 9–11–96; 8:45 am]

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[8] 15 U.S.C. 78q–1 (1988).

[9] 17 CFR 200.30–3(a)(12) (1996).

[Release No. 34–37658; File No. SR–GSCC–96–07]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing of Amendments to a Proposed Rule Change Relating to the Rights and Responsibilities of Interdealer Broker Netting Members

September 6, 1996.

On July 2, 1996, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–GSCC–96–07) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] relating to the rights and responsibilities of interdealer broker (''IDB'') netting members. GSCC amended the filing on July 23, 1996.[2] Notice of the proposed rule change, as amended, was published in the Federal Register on August 20, 1996.[3] On August 16, 1996, and on August 21, 1996,[4] GSCC filed amendments No. 2 and 3 to the filing. Amendment 2 and amendment No. 3 are described in Items I, II, and III below, which items have been prepared primarily by GSCC. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of amendment No. 2 is to clarify that Category 1 IDB have no liability for losses resulting from nonmember brokered transactions. The purpose of amendment No. 3 to the proposed rule change is to require that at least thirty percent of a Category 1 IDB's clearing fund deposit consist of cash or eligible netting securities and that no more than seventy percent of its clearing fund deposit be met by pledging eligible letters of credit.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Karen Walraven, Vice President and Associate General Counsel, GSCC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation (''Division''), Commission (July 18, 1996).

[3] Securities Exchange Act Release No. 37565 (August 14, 1996), 61 FR 43103.

[4] Letters from Karen Walraven, Vice President and Associate Counsel, GSCC, to Jerry W. Carpenter, Division, Commission (August 12, 1996, and August 15, 1996).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[5]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, GSCC's rules provide that if a loss resulting from a defaulting member relates to brokered transactions, ten percent of the loss is allocated collectively to IDBs regardless of their activity with the defaulting member. The proposed rule change as initially filed proposed amending GSCC's rules to eliminate the collective loss allocation and instead to allocate fifty percent of the loss from either a member or nonmember brokered transactions to Category 1 and Category 2 IDBs based on the level of their trading activity with the defaulting member.[6] However, pursuant to GSCC's rules, only Category 2 IDBs may enter into nonmember brokered transactions. Amendment No. 2 clarifies that the loss from a nonmember brokered transaction will be allocated among Category 2 IDBs pro rata based on the level of their trading activity with the defaulting member.

The purpose of amendment No. 3 to the proposed rule change is to require that at least thirty percent of a Category 1 IDB's clearing fund deposit consist of cash or eligible netting securities and that no more than seventy percent of the clearing fund deposit be met by pledging eligible letters of credit. Unlike other participants which are required to deposit ten percent of their clearing fund requirement in cash, Category 1 IDBs need only deposit $100,000 in cash which is two percent of their proposed fixed $5,000,000 deposit requirement. As originally filed, GSCC's proposed rule change permitted Category 1 IDBs to meet the non-cash component of their required clearing fund deposit (*i.e.*, $4.9 million) all or in part by pledging eligible letters of credit to GSCC. However, in amendment No. 3 GSCC states that for Category 1 IDBs, the non-cash component of their clearing fund requirement should be consistent with the composition requirements of other netting members, and therefore, no more than seventy percent of a Category 1 IDB's required clearing fund deposit may be met by pledging eligible letters of credit. At least thirty percent of their clearing fund requirement must consist of cash or eligible netting securities.

Both Category 1 IDBs, because of their increased volumes due to the implementation and expansion of repo brokering services, and Category 2 IDBs, because they may enter trades with nonmembers, present increased risk to GSCC and its other members. Therefore, GSCC believes that IDBs should be subject to the same clearing fund deposit composition requirements as other netting members, with the exception of the lower cash requirement for Category 1 IDBs.

GSCC believes the proposed rule change, as amended, is consistent with the requirements of Section 17A of the Act[7] and the rules and regulations thereunder because the proposal should facilitate the prompt and accurate clearance and settlement of securities transactions by IDBs in GSCC's netting system.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rule change as amended will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not solicited with respect to the proposed rule change as amended, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 GSCC consents, the Commission will:

(a) By order approve such proposed rule change or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, 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, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to the file number SR–GSCC–96–07 and should be submitted by October 3, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23343 Filed 9–11–96; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–37656; File No. SR–GSCC–96–06]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving a Proposed Rule Change Permitting All Netting Members To Receive Credit Forward Mark Adjustment Payments

September 6, 1996.

On June 15, 1996, the Government Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–GSCC–96–06) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] to allow all netting members to receive credit forward mark adjustment payments. Notice of the

[5] The Commission has modified the text of the summaries submitted by GSCC.

[6] A member brokered transaction is a brokered transaction where both the buyside and sellside counterparties to the IDB are netting members. A nonmember brokered transaction is a brokered transaction where either the buyside or sellside counterparty to the IDB is a nonmember.

[7] 15 U.S.C. 78q–1 (1988).

[8] 17 CFR 200.30–3(a)(12) (1995).

[1] 15 U.S.C. 78s(b)(1) (1988).

proposal was published in the Federal Register on July 29, 1996.[2] One comment letter was received.[3] For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change amends GSCC Rule 13 to permit all netting members to receive credit forward mark adjustment payments from GSCC pursuant to GSCC's funds-only settlement process.[4] Currently, GSCC collects forward mark adjustment payments from those netting members with a negative forward mark adjustment on a particular business day with regard to a particular CUSIP and remits forward mark adjustment payments to eligible category one dealer and bank netting members that are in a positive forward mark position with regard to such CUSIP. Each member's forward mark adjustment is recalculated each day with any debit or credit from the previous day reversed, and a new forward mark adjustment payment obligation is established. Only cash can be used to fund forward mark adjustment payments because GSCC passes through credit forward mark adjustment payments.

Section 1 of GSCC Rule 13 previously provided that only category one dealer netting members and bank netting members that have been members for at least sixty calendar days are entitled to receive credit forward mark adjustment payments. This limitation was put into effect in connection with the implementation of GSCC's netting service for repurchase transactions (''repo'').[5] Under the rule change, all netting members are eligible to receive credit forward mark adjustment payments, and the sixty day waiting period has been eliminated.

Although all netting members are now eligible to receive credit forward mark adjustment payments, special provisions apply to category two dealer netting members and category two futures commission merchant (''FCM'') netting members. Under GSCC's current rules, category two dealer netting members and category two FCM netting members are required to provide GSCC with additional clearing fund margin protection[6] in part because of the more modest minimum net worth requirements for these types of netting members.[7]

Accordingly, the rule change provides that each category two dealer netting member and category two FCM netting member now have an option as to whether it wishes to (i) receive credit forward mark adjustment payments and have the haircut applicable to its clearing fund deposit raised from the current levels to levels that are based on historical two day volatility designed to cover ninety-five percent of price movements, as determined by using the greater of the price movements from the last quarter or the last year, or (ii) not receive credit forward mark adjustment payments and retain its current clearing fund margin level.

II. Comment Letters

One comment letter was received with regard to the proposed rule change from Refco Securities, Inc. (''Refco'').[8] In its letter supporting the proposed rule change, Refco stated that it is an active participant in the government securities market and wants to participate in the repo netting process in the same manner as other dealers but as a category two dealer netting member it is unable to do so because it is not eligible to receive credit forward mark adjustment payments.

III. Discussion

Section 17A(b)(3)(F)[9] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that the proposed rule change is consistent with GSCC's obligations under Section 17A of the Act.

The rule change should permit GSCC to deliver credit forward mark adjustment payments to all netting members while still assuring the safeguarding of securities and funds within its custody or control. GSCC has gained some experience with the new forward mark adjustment process since the implementation of the process in November 1995 and is now better able to assess its liquidity needs. Furthermore, GSCC will only permit category two dealer and FCM netting members to receive credit forward mark adjustment payments if such netting members maintain additional clearing fund margin. If any such netting member elects to receive credit forward mark adjustment payments, the increase in the netting member's margin factors should help ensure that GSCC has sufficient collateral if such netting member defaults on its settlement obligations.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act 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–GSCC–96–06) 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. 96–23344 Filed 9–11–96; 8:45 am]

BILLING CODE 8010–01–M

[2] Securities Exchange Act Release No. 37461 (July 19, 1996), 61 FR 39492.

[3] Letter from Santo C. Maggio, President, Refco Securities, Inc., to Jonathan Katz, Secretary, Commission (July 12, 1996).

[4] The forward mark adjustment is a daily mark-to-market process for all net settlement positions designed to account for GSCC's ongoing exposure on each forward net settlement position. Because GSCC novates and guarantees forward settling trades prior to the settlement of such trades, GSCC incurs multi-day settlement exposure on such trades. To mitigate this risk, GSCC collects from each netting member on a daily basis an amount equivalent to the difference between the contract value of the netting member's positions and GSCC's system value based on current market values (''collateral mark''). GSCC also collects a financing mark based on the rate for all forward repurchase and reverse repurchase transactions (''repos'') which is equal to the product of the market value of the repo, GSCC's system repo rate, and the repo term. A member's forward mark adjustment payment is the sum of all collateral marks and all financing marks.

[5] GSCC believed that limiting credit pass throughs in connection with the implementation of the netting service for repos was a prudent measure to ensure that the revised forward mark adjustment process did not pose undue risk to GSCC. For a complete description of GSCC's repo netting system, refer to Securities Exchange Act Release No. 36491 (November 17, 1995), 60 FR 49649 [File No. SR–GSCC–95–02] (order approving proposed rule change implementing GSCC's netting services for non-same-day-settling aspects of next-day and term repo transactions).

[6] Category two dealer and FCM netting members have applicable margin factors as set by GSCC's Board of Directors which can be no lower than ninety-nine percent of historical one day price volatility. All other GSCC members have applicable margin factors as set by GSCC's Board of Directors which can be no lower than ninety-five percent of historical one day price volatility.

[7] For example, category two dealer netting members and FCM netting members must maintain a net worth of $25 million, but category one banks and category one dealers and FCMs must maintain a minimum net worth of $100 million and $50 million, respectively.

[8] *Supra* note 3.

[9] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[10] 17 CFR 200.30–3(a)(12) (1996).

[Release No. 34–37650 File No. SR–MBSCC–96–03]

Self-Regulatory Organizations; MBS Clearing Corporation; Order Approving Proposed Rule Change Relating to Eliminating the Monthly Audit Package Requirements.

September 5, 1996.

On June 18, 1996, the MBS Clearing Corporation (''MBSCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–MBSCC–96–03) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published on July 17, 1996, in the Federal Register to solicit comments on the proposed rule change.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

MBSCC is modifying its rules and procedures to eliminate the requirement that it provide a monthly audit package to each participant and the requirement that such participant review and respond to the package. MBSCC currently provides each participant with the participant's Open Commitment Report on a daily basis pursuant to its rules. Participants have a duty under the rules to review each report for errors and discrepancies and to report any error or discrepancy to MBSCC. MBSCC's rules and source book also require MBSCC to send each participant a monthly audit package which consists of a copy of the participant's Open Commitment Report dated the last business day of the previous month and an Audit Exception Reporting Form which must be completed by the participant and returned to MBSCC whether or not any exceptions are found.

In connection with this rule change, MBSCC will eliminate the late audit confirmation penalties from its schedule of penalty fees.

II. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).[3] Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions. The Commission believes that MBSCC's rule change meets this requirement because by eliminating the monthly audit package and the participants' requirement to review it, the administrative and economic burdens on participants' resources due to the duplicative nature of the requirements should be eliminated without any substantive effect. Such elimination should facilitate efficiencies in the administration of participant operations thereby promoting the prompt and accurate clearance and settlement of securities transactions.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act, particularly with Section 17A(b)(3)(F) of the Act, 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–MBSCC–96–03) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23347 Filed 9–11–96; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 37420 (July 11, 1996), 61 FR 37307.

[3] 15 U.S.C. 78q-1(b)(3)(F) (1988).

[4] 17 CFR 200.30–3(a)(12) (1996).

[Release No. 34–37655; File No. SR–OCC–96–08]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Regarding the Exercise of Certain Foreign Currency Options

September 6, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 18, 1996, The Options Clearing Corporation (''OCC'') 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 primarily by OCC. The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will permit the exercise of certain foreign currency options on the business day immediately preceding the expiration date of such options.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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 summarizes, sent forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Under the proposed rule change, OCC will amend its results to permit the exercise of American-style[3] foreign currency and cross-rate foreign currency options (''currency options'') on the business day immediately preceding their expiration date. Currently, OCC Rule 801(c) prohibits the exercise of option contracts on the business day immediately preceding their expiration unless such options are American-style flexibly structured options. At the time this restriction was incorporated into OCC's rules, all option contracts expired on Saturday. The restriction ensured that there was adequate time for all unmatched transactions to be resolved and for OCC to receive and process exercise notices for the preliminary and final exercise by exception (''ex-by-ex'') processing cycles that were then in effect. Subsequently, OCC has replaced the preliminary and final processing cycles for currency options with a single ex-by-ex processing procedure.

With the conversion to Friday night as the expiration date for all standardized currency options,[4] Rule 801(c) has

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission has modified the language in these sections.

[3] The term ''American'' or ''American-style'' option contract means the option contract may be exercised at any time from its commencement time until its expiration. In contrast, a European style option may only be exercised on its expiration.

[4] For a complete description of the conversion of the expiration date for all standardized currency options from Saturday to Friday, refer to Securities Exchange Act Release Nos. 32458 (June 11, 1993), 58 FR 3384 [File No SR–OCC–93–09] (notice of filing and order granting accelerated approval on a temporary basis of a proposed rule change that changed the expiration day for American-style foreign currency options from Saturday to Friday) and 32630 (July 14, 1993), 58 FR 38800 [File No.

Continued

operated to preclude the exercise of currency options on Thursday. OCC clearing members have requested that OCC lift the restriction with respect to currency options since their non-U.S. customers have expressed a desire to submit exercises on Thursday due to time zone differences with the United States. OCC believes that the protections afforded by the Rule 801(c) exercise restriction are no longer necessary for currency options because of the single cycle expiration processing procedures that are in effect and because currency options expire on Friday instead of Saturday.

OCC believes the proposed rule change is consistent with the requirements of Section 17A of the Act [5] because it promotes the prompt and accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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 OCC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, 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, 450 Fifth Street NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–96–08 and should be submitted by October 3, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23345 Filed 9–11–96; 8:45 am]

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SR–OCC–93–15] (order granting permanent approval on an accelerated basis of a proposed rule change that changed the expiration day for American-style foreign currency options and cross-rate foreign currency options from Saturday to Friday).

[5] 15 U.S.C. 78q–1 (1988).

[6] 17 CFR 200.30–3(a)(12) (1996).

[Release No. 34–37645; File No. SR–OCC–96–09]

Self-Regulatory Organizations; the Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to the Valuation of Government Securities

September 5, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] notice is hereby given that on July 18, 1996, The Options Clearing Corporation (''OCC'') 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 primarily by OCC. On August 22, 1996, OCC filed an amendment to the proposal.[2] 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 will modify OCC's valuation of government securities used by clearing members as margin clearing fund deposits.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of this proposed rule change is to modify the valuation methodology on deposits of government securities for margin and clearing fund purposes. The valuation rules for government securities for margin and clearing fund purposes have remained largely unchanged since the mid-1970's when OCC only valued such collateral at the time of deposit. Government securities are currently valued at either: (1) The lesser of par value or 100% of the current market value for maturities less than one year or (2) the lesser of par value or 95% of the current market value for maturities between one and ten years.[4]

The par value limitation was initially included in the valuation methodology because the security could be carried to its maturity, when it would reach par value, without any subsequent valuations after its initial deposit with OCC. The restriction of maturities to less than ten years was initially implemented as a risk control device because it precluded the deposit of longer, more volatile securities which were not subject to revaluation after their initial deposit with OCC.

Since the early 1980's, OCC has revalued government securities on a monthly basis. However, OCC is now prepared to revalue government securities on a daily basis and to

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Michael G. Vitek, Counsel, OCC, to Jerry W. Carpenter, Assistant Director, Division, Commission (August 19, 1996).

[3] The Commission has modified parts of these statements.

[4] Government securities are currently defined as securities issued or guaranteed by the United States or Canadian government or by any other foreign government acceptable to OCC and that matures within ten years. The term ''short-term government securities'' means securities maturing within one year. The term ''long-term government securities'' means all other government securities. The proposed rule change will amend the definition to delete the ten year restriction.

include such valuation in its overall daily assessment of clearing member margin and clearing fund deposits. OCC believes that the par value valuation methodology and the restriction on greater than ten year maturities are overly conservative and are no longer necessary to protect OCC from the risk of collateral value changes. Instead, the proposed rule change will impose new haircut levels on the values of government securities.

Specifically, the rule change proposes that Section 3 of Article VIII of OCC's By-Laws and Rule 604 of OCC's Rules be amended to establish a new schedule of haircuts. Government securities deposited as either clearing fund or margin will be valued at: (1) 99.5% of the current market value for maturities less than one year; (2) 98% of the current market value for maturities between one and five years; (3) 96.5% of the current market value for maturities between five and ten years; and (4) 95% of the current market value for maturities in excess of ten years.

OCC reviewed the haircut policies of other derivative clearing houses and analyzed recent historical volatilites of government securities before assessing the proposed haircut levels. Specifically, OCC collected daily data since 1990 on government securities of various maturities across the yield curve and analyzed this historical volatility in the same manner in which OCC analyzes volatility for the setting of margin intervals within OCC's Theoretical Intermarket Margin System. The proposed haircut levels provided adequate coverage for more than 99% of all days since 1990. In addition, OCC reviewed the extreme volatility in the U.S. government security market that occurred on March 8, 1996, and found that the proposed haircut levels would not have been breached. Finally, OCC compared its proposed haircut levels with those of other derivative clearing organizations and found that the proposed haircut levels are consistent with the haircut policies of those clearing houses and that they provide prudent protection from market volatility.

The proposed rule change is consistent with the purposes and requirements of Section 17A of the Act, as amended.[5] Specifically, OCC believes the proposed rule change promotes the protection of investors by enhancing OCC's ability to safeguard the securities and funds in its possession or subject to its control.

[5] 15 U.S.C. 78q–1 (1988).

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were not and are not intended to be solicited by OCC with respect to the proposed rule change, and none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety days of such date if it finds such longer period to be appropriate and publishes its reason for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld form the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to the file number SR–OCC–96–09 and should be submitted by October 3, 1996.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23346 Filed 9–11–96; 8:45 am]

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[Release No. 34–37648; International Series Release No. 1016; File No. SR–PSE–96–23]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Pacific Stock Exchange Incorporated Relating to the Listing and Trading of Equity-Linked Notes

September 5, 1996.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 24, 1996, the Pacific Stock Exchange Incorporated (''PSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization (''SRO''). On July 25, 1996, the Exchange submitted Amendment No. 1 to the Commission.[2] On September 4, 1996, the Exchange submitted Amendment No. 2 to the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its listing rules to provide for the listing

[1] 15 U.S.C. 78s(b)(1).

[2] Amendment No. 1 clarified that the requisite trading volume levels concerning the linked security must occur in the United States. In addition, Amendment No. 1 removed the unnumbered paragraph in proposed PSE Rule 3.1(j)(3)(D)(i) that referenced proposed PSE Rule 3.1(j)(3)(C)(iii)(b)(2) because the language in that paragraph did not take into consideration the provisions contained in proposed PSE Rule 3.1(j)(3)(C)(iii)(b)(3). *See* letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE, to Anthony P. Pecora, Attorney, Office of Market Supervision, Division of Market Regulation, SEC, dated July 24, 1996.

[3] Amendment No. 2 conforms the definition of ELNs contained in PSE Rule 3.1(b)(16) with the other rules in this proposal concerning ELNs in that the use of American Depositary Receipts (''ADRs'') is limited to sponsored ADRs. *See* letter from Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE, to Anthony P. Pecora, Attorney, Office of Market Supervision, Division of Market Regulation, SEC, dated September 3, 1996.

and trading of Equity-Linked Notes (''ELNs''). The text of the proposed rule change is available for inspection and copying at the PSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the 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 III 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

The Exchange is proposing to list for trading Equity-Linked Notes, which are notes that are linked, in whole or in part, to the market performance of common stocks, non-convertible preferred stocks, or sponsored ADRs [4] overlying such equity securities. The proposal states that the Exchange will consider for listing ELNs that meet the Exchange's issuer listing standards, ELN listing standards, minimum standards applicable to linked securities, and limits on the number of ELNs linked to a particular security, as set forth below.

a. Issuer Listing Standards

Under the proposal, the issuer of ELNs must be an entity that: (a) Is listed on a national securities exchange or the Nasdaq National Market or is an affiliate of a company listed on a national securities exchange or the Nasdaq National Market; and (b) has a minimum net worth of $150 million. In addition, the market value of an ELN offering, when combined with the market value of all other ELN offerings previously completed by the issuer and currently traded on a national securities exchange or the Nasdaq National Market, may not be greater than 25% of the issuer's net worth at the time of issuance.

b. ELN Listing Standards

The proposal states that the issue must have: (a) A minimum public distribution of one million ELNs; (b) a minimum of 400 holders of the ELNs (provided, however, that if the ELN is traded in $1,000 denominations, there is no minimum number of holders); (c) a minimum market value of $4 million; and (d) a term of two to seven years, provided that if the issuer of the underlying security is a non-U.S. company, or if the underlying security is a sponsored ADR, the issue may not have a term of more than three years.

c. Minimum Standards Applicable to the Linked Security

The proposed new rules state that the underlying security must have: (a) A market capitalization of at least $3 billion and trading volume in the United States of at least 2.5 million shares in the one-year period preceding the listing of the ELNs; or (b) a market capitalization of at least $1.5 billion and trading volume in the United States of at least 10 million shares in the one-year period preceding the listing of the ELNs; or (c) a market capitalization of at least $500 million and trading volume in the United States of at least 15 million shares in the one-year period preceding the listing of the ELNs.[5]

In addition, the notes must be issued by a company that has a continuous reporting obligation under the Act, as amended, and the security must be listed on a national securities exchange or the Nasdaq National Market and be subject to last sale reporting.

Furthermore, the notes must be issued by either: (a) A U.S. company; or (b) a non-U.S. company [6] (including a company that is traded in the United States through sponsored ADRs) provided that one of the following three criteria is met: First, the Exchange must have a comprehensive surveillance sharing agreement in place with the primary exchange in the country where the linked security is primarily traded (in the case of an ADR, the primary exchange on which the security underlying the ADR is traded).

Second, as an alternative, the combined trading volume of the non-U.S. security (a security issued by a non-U.S. company) and other related non-U.S. securities occurring in the U.S. market and in markets with which the Exchange has in place a comprehensive surveillance sharing agreement must represent (on a share equivalent basis for any ADRs) at least 50% of the combined world-wide trading volume in the non-U.S. security, other related non-U.S. securities, and other classes of common stock related to the non-U.S. security over the six month period preceding the date of listing.

Third, an alternate trading volume test would permit an ELN on a non-U.S. security if: (a) The combined trading volume of the non-U.S. security and other related non-U.S. securities occurring in the U.S. market represents (on a share equivalent basis) at least 20% of the combined world-wide trading volume in the non-U.S. security and in other related non-U.S. securities over the six-month period preceding the date of listing of the non-U.S. security for an ELN listing; (b) the average daily trading volume for the non-U.S. security in the U.S. markets over the six-month period preceding the date of listing of the non-U.S security for an ELN listing is 100,000 or more shares; and (c) the trading volume for the non-U.S. security in the U.S. market is at least 60,000 shares per day for a majority of the trading days for the six-month period preceding the date of selection of the non-U.S. security for an ELN listing.[7]

In addition, if the underlying security to which the ELN is to be linked is the stock of a non-U.S. company that is traded in the U.S. market as a sponsored

[4] ADR programs may be ''sponsored'' or ''unsponsored.'' A sponsored ADR is established by a single U.S. depository bank at the request, or with the consent, of the foreign issuer of the underlying security.

With a sponsored ADR program, a single depository bank, working closely with the issuer, acts as the central source of information for buyers, sellers, and intermediaries. In addition, the depository generally is required to distribute notices of shareholder meetings and voting instructions to ADR holders, thereby ensuring the ADR holders will be able to exercise voting rights through the depository with respect to the underlying securities.

ELNs may be linked only to sponsored ADRs. Telephone conversation between Michael D. Pierson, Senior Attorney, Regulatory Policy, PSE, and Anthony P. Pecora, Attorney, Office of Market Supervision, Division of Market Regulation, SEC (Sept. 3, 1996).

[5] If an issuer proposes to list an offering of ELNs that does not satisfy the market capitalization or trading volume requirements discussed above, the PSE, with the concurrence of the staff to the Commission, may evaluate the trading volume, public float, and market capitalization of that security, as well as other relevant factors, and determine on a case-by-case basis that it is appropriate to list ELNs overlying that security. However, depending on the proposed facts, the Commission may require the PSE to submit a rule filing pursuant to Section 19(b) of the Act that addresses the pertinent regulatory issues. In this regard, the Commission notes that any proposal to list an ELN that is linked to a security with a market capitalization of less than $500 million would raise significant regulatory concerns for which a Section 19(b) rule filing would be required. *See* Securities Exchange Act Release No. 34758 (Sept. 30, 1994), 59 FR 50943 (approving listing of Selected Equity-Linked Debt Securities (''SEEDS'') by the National Association of Securities Dealers, Inc. (''NASD'')).

[6] For the purposes of this rule, a non-U.S. company is any company formed or incorporated outside of the United States.

[7] The Commission notes that volume in foreign markets with which the Exchange has a comprehensive surveillance information sharing agreement in place is not included in these calculations. *See* Securities Exchange Act Release no. 37405 (July 7, 1996), 61 FR 36596, at n.8.

ADR, ordinary shares or otherwise, then the minimum number of holders of the underlying security shall be 2,000.

d. Limits on the Number of ELNs Linked to a Particular Security

The proposal provides that the issuance of ELNs relating to any underlying U.S. security may not exceed five percent of the total outstanding shares of such underlying security. In addition, the issuance of ELNs relating to any underlying non-U.S. security or sponsored ADR may not exceed: (a) Two percent of the total shares outstanding worldwide if at least 20 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing; or (b) three percent of the total shares outstanding worldwide if at least 50 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing; or (c) five percent of the total shares outstanding worldwide if at least 70 percent of the worldwide trading volume in such security occurs in the U.S. market during the six-month period preceding the date of listing.[8]

In addition, if an issuer proposes to issue ELNs that relate to more than the allowable percentages of the underlying security specified above, then the Exchange, with the concurrence of the staff of the Division of Market Regulation of the SEC, will evaluate the maximum percentage of ELNs that may be issued on a case-by-case basis.[9]

Finally, the proposed rule states that prior to the commencement of trading of particular ELNs listed pursuant to PSE Rule 3.1(j)(3), the Exchange will distribute a circular to its membership providing guidance regarding member firm compliance responsibilities (including suitability recommendations and account approval) when handling transactions in ELNs.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[10] of the Act in general and furthers the objectives of Section 6(b)(5)[11] in particular in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments.

III. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Also, copies of such filing will be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–96–23 and should be submitted by October 3, 1996.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) of the Act.[12] Specifically, the Commission believes that providing for the listing and trading of ELNs will offer a new and innovative means for investors to participate in the securities markets. In particular, the Commission believes that the availability of ELNs will permit investors to more closely approximate their desired investment objectives through, for example, shifting some of the opportunity for upside gain in return for additional income.[13] Accordingly, for these reasons, as well as for the reasons stated in the Commission's prior approval orders concerning equity-linked debt securities,[14] the Commission finds that the PSE's standards for the listing and

[8] *Id.* at n.9.

[9] As with the market capitalization and trading volume requirements, the Commission notes that the Exchange may be required to submit a rule filing to the Commission pursuant to Section 19(b) of the Act to address regulatory issues raised by any Exchange proposal to list an ELN related to more than the allowable percentages of outstanding shares of the underlying security. *See supra* note 4.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(5).

[13] Pursuant to Section 6(b) of the Act, the Commission must predicate approval of trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging, or other economic function because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[14] The Commission notes that it previously has approved the listing of equity-linked debt securities by the American Stock Exchange, Inc. (''Amex''), the Chicago Board Options Exchange, Incorporated (''CBOE''), the NASD, the New York Stock Exchange, Inc. (''NYSE''), and the Philadelphia Stock Exchange, Inc. (''Phlx''). *See* Securities Exchange Act Release Nos. 32343 (May 20, 1993), 58 FR 30833 (order originally approving the listing of ELNs by the Amex); 33328 (Dec. 13, 1993), 58 FR 66041 (approving revised market capitalization and trading volume requirements for the listing of ELNs by the Amex); 33468 (Jan. 13, 1994), 59 FR 3387 (order originally approving the listing of Equity-Linked Debt Securities (''ELDS'') by the NYSE); 34545 (Aug. 18, 1994), 59 FR 43877 (order approving the listing of ELDS by the NYSE linked to securities issued by non-U.S. companies); 34549 (Aug. 18, 1994), 59 FR 43873 (order approving the listing of ELNs by the Amex linked to securities issued by non-U.S. companies); 34758 (Sept. 30 1994), 59 50943 (order originally approving the listing of SEEDS by the NASD); 34759 (Sept. 30, 1994), 59 FR 50939 (order originally approving the listing of ELNs by the CBOE); 34765 (Sept. 30, 1994), 59 FR 51220 (approving revised market capitalization and trading volume requirements for the listing of ELNs by the Amex); 34766 (Sept. 30, 1994), 59 FR 51220 (approving revised market capitalization and trading volume requirements for the listing of SEEDS by the NASD); 34985 (Nov. 18, 1994), 59 FR 60860 (order approving alternative market capitalization and trading volume requirements for the listing of ELDS by the NYSE); 35479 (Mar. 13, 1995), 60 FR 14993 (order originally approving the listing of ELNs by the Phlx); 36578 (Dec. 13, 1995), 60 FR 65700 (approving revised market capitalization and trading volume requirements for the listing of ELNs by the Amex); 36990 (Mar. 20, 1996), 61 FR 13545 (approving revised market capitalization and trading volume requirements for the listing of ELNs by the Amex); 36993 (Mar. 20, 1996), 61 FR 13557 (approving revised market capitalization and trading volume requirements for the listing of ELDS by the NYSE); 36994 (Mar. 20, 1996), 61 FR 13553 (approving revised market capitalization and trading volume requirements for the listing of SEEDS by the NASD); 36995 (Mar. 20, 1996), 61 FR 13550 (approving revised market capitalization and trading volume requirements for the listing of ELNs by the CBOE); 37405 (July 3, 1996), 61 FR 36596 (approving revised market capitalization and trading volume requirements for the listing of ELDS by the NYSE) (collectively, ''Equity-Linked Note Approval Orders''). The discussions articulated in the Equity-Linked Note Approval Orders are incorporated herein.

trading of ELNs are consistent with the Act.

As with previously approved ELNs, ELDS, and SEEDS, the ELNs, the PSE is proposing to trade are not leveraged instruments. Their price, however, will be derived and based upon the underlying linked security. Accordingly, the level of risk involved in the purchase and sale of an ELN is similar to the risk involved in the purchase or sale of traditional common stock. Nonetheless, in considering other SROs' respective proposals to list and trade ELNs, ELDS, and SEEDS, the Commission had several specific concerns with this type of product because the final rate of return of an ELN is derivately priced (*i.e.*, based on the performance of the underlying security). The concerns included: (1) Investor protection concerns, (2) dependence on the credit of the issuer of the instrument, (3) systemic concerns regarding position exposure of issuers with partially hedged positions or dynamically hedged positions, and (4) the impact on the market for the underlying linked security.[15] The Commission concluded, however, that the SROs' proposals adequately addressed each of these issues such that the Commission's regulatory concerns were minimized adequately.[16] Similarly, in this proposal, the PSE has proposed safeguards, as described above, that the Commission finds to be equivalent to those approved for the trading of equity-linked debt securities in other markets. In particular, by imposing the listing standards, suitability, disclosure, and compliance requirements noted above, the PSE has adequately addressed the potential public customer concerns that could arise from the hybrid nature of ELNs. Further, the Commission believes that the listing standards and issuance restrictions should help to reduce the likelihood of any adverse market impact on the securities underlying the ELNs.

The Commission finds good cause for approving the amended proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the Federal Register in order to allow the PSE to begin listing ELNs without delay. As discussed above, the proposal merely provides the PSE with the ability to list equity-linked debt securities on the same basis as other SROs. Moreover, the Commission notes that the prior proposals by other SROs to list and trade equity-linked debt securities were published by the Commission for the full statutory comment period without any comments being received by the Commission. In light of the Commission's approval of the listing and trading equity-linked debt securities by other SROs, accelerating approval of this proposal does not raise any new regulatory issues and will allow the PSE to compete on an equal basis with other markets with regard to these equity-linked products.[17] Therefore, the Commission there is good cause to grant accelerated approval to the proposed rule change, as amended, consistent with Section 6(b)(5) and Section 19(b)(2) of the Act.[18]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–PSE–96–23), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23308 Filed 9–11–96; 8:45 am]

BILLING CODE 8010–01–M

[15] *See* Equity-Linked Note Approval Orders, *supra* note 14.

[16] *See* Equity-Linked Note Approval Orders, *supra* note 14.

[17] *See* Equity-Lined Note Approval Orders, *supra* note 14.

[18] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[19] 15 U.S.C. 78s(b)(2).

[20] 17 C.F.R. 200.30–3(a)(12).

[Release No. 34–37635; File No. SR–Phlx–96–19]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to Proposed Rule Change by the Philadelphia Stock Exchange, Inc., To Establish a Firm Facilitation Exemption

September 4, 1996.

I. Introduction

On June 3, 1996, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') submitted to 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] a proposed rule change to establish a firm facilitation exemption[3] for all non-multiply-listed Exchange options by adding new Commentary .08 to Exchange Rule 1001 and new Commentary .02 to Exchange Rule 1001A. The exemption would be available to equity and index options, including customized options.[4]

The proposed rule change appeared in the Federal Register on July 10, 1996.[5] No comments were received on the proposed rule change. The Phlx subsequently filed Amendment No. 1 to the proposed rule change on July 26, 1996.[6] This order approves the Phlx's proposal.

II. Background and Description

The Phlx is proposing to establish a firm facilitation exemption for all non-multiply-listed Exchange options. Under the proposal, the procedures in Exchange Rule 1064(b) for crossing a customer order with a firm facilitation order must be followed. Moreover, only after all market participants in the trading crowd have been given a reasonable opportunity to accept the terms, may the representing Floor Broker cross all or any remaining part of such order in accordance with the rule. According to the Phlx, the purpose of this procedure is to ensure that the trading crowd cannot first facilitate the order before resorting to a position limit exemption for the facilitating firm. Thus, only after it is determined that the trading crowd will not fill the order may the firm's customer order be crossed with the firm's facilitation order pursuant to the exemption.

The Phlx notes that the firm facilitation provision will be in addition to and separate from the standard limit, as well as other exemptions available under Exchange position limit rules. For example, if a member organization decides to facilitate customer orders in

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that a facilitation trade is defined as a transaction that involves crossing an order of a member firm's public customer with an order for the member firm's proprietary account.

[4] *See* Securities Exchange Act Release No. 37048 (March 29, 1996), 61 FR 15549 (April 8, 1996) (File No. SR–Phlx–96–08).

[5] *See* Securities Exchange Act Release No. 37398 (July 2, 1996), 61 FR 36410 (July 10, 1996).

[6] In Amendment No.1, the Phlx amended its proposed rule filing to: (1) require that a member organization submit to the Exchange's Market Surveillance Department appropriate forms substantiating the basis for the exemption within two business days or the time specified by the Exchange when approval is granted on the basis of verbal representations; (2) clarify that the proposal does not apply to multiply-listed options; (3) add language prohibiting the use of the exemption with respect to ''all or none'' or ''fill or kill'' orders; and (4) state that violations of the exemptive requirements, absent reasonable justification or excuse, shall result, in addition to any disciplinary action, in the withdrawal of the exemption, and may form the basis for subsequent denial of an application for an exemption under this rule. *See* letter from Gerald D. O'Connell, Senior Vice President, Market Regulation and Trading Operations, Phlx, to Matthew Morris, Office of Market Supervision, Division of Market Regulation, Commission, dated July 26, 1996 (''Amendment No. 1'').

ABC options, which is assumed not to be multiply-listed and also assumed to have a 10,500 contract standard position limit, the member organization may qualify for a firm facilitation exemption of up to twice that limit (21,000 contracts), as well as an equity hedge exemption of up to twice the standard limit (21,000 contracts), in addition to the 10,500 contract standard limit. If both exemptions are allowed, the facilitation firm may hold or control a combined position of up to 52,500 ABC contracts on the same-side of the market.[7]

The Phlx notes, however, that the firm facilitation exemption would not presently extend to all options listed on the Exchange. Rather, until coordinated intermarket procedures are developed, the firm facilitation exemption will be extended only to non-multiply-listed options.

Under the proposal, the facilitation exemption requires prior approval from two Floor Officials and submission of a Firm Facilitation Form.[8] Although approval may be granted on the basis of verbal representation, the facilitation firm is required to furnish to the Market Surveillance Department, within two business days or such other time period designated by the Exchange, appropriate forms substantiating the basis for the exemption.[9]

Within five business days after the execution of a facilitation exemption order, a facilitation firm must hedge all exempt option positions that have not previously been liquidated, and furnished to the Market Surveillance Department documentation reflecting the resulting hedged positions. In meeting this requirement, and to ensure fair and orderly markets, the facilitation firm must establish and liquidate its own as well as its customer's option and stock positions (or their equivalent) in an orderly fashion, and not in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes.

In addition, a facilitation firm is not permitted to use the facilitation exemption with a view toward taking advantage of any differential in the price between a group of securities and an overlying stock index option. According to the Phlx, this prohibition against index arbitrage should prevent undue market impact on the options or any underlying stock positions by preventing the increased positions from being used in a leveraged manner. Moreover, to facilitate surveillance and to ensure an accurate audit trail, the facilitation firm is required to promptly provide to the Exchange any information or documents requested concerning the exempted and hedged positions, to furnish copies of the relevant order tickets to the Market Surveillance Department on the day of execution, and to notify the Exchange of any material change in the exempted options position or the hedge.

The Exchange is also proposing several minor changes to its rules. First, the introductory paragraph to Exchange Rule 1001 is to be amended to list the 20,000 and 25,000 contract position limit tiers, which were inadvertently omitted when Commentary .05(a) was amended to adopt these limits.[10] Second, Exchange Rule 1064(b) is to be amended to eliminate the incorrect limitation to ''equity'' options, as this provision applies to index options as well. Third, the equity option hedge exemption contained in Commentary .07 to Exchange Rule 1001 is to be amended to state that the exemption is available up to ''two times above'' existing limits, as opposed to ''three times'' the limits, as currently stated. The maximum size of the exemption is not being changed, just rephrased in terms of the excess number of contracts above the applicable position limit. In this manner, the provision will be consistent with the index option hedge exemption of the Phlx as well as other exchanges.[11] Fourth, the equity option hedge exemption is to be amended to state that it is separate from any other exemption available under Exchange rules.

III. Discussion

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 Section 6(b)(5).[12] Specifically, the Commission believes that the Phlx's proposal is reasonably designed to accommodate the needs of investors and other market participants without substantially increasing concerns regarding the potential for manipulation and other trading abuses. The Commission also believes that the proposed rule change has the potential to enhance the depth and liquidity of the options market by providing Exchange members greater flexibility in executing large customer orders. Accordingly, as discussed below, the Commission believes that the rule proposal is consistent with the requirements of Section 6(b)(5) that exchange rules facilitate transactions in securities while continuing to further investor protection and the public interest.

The Phlx proposal contains several safeguards that will serve to minimize any potential disruption or manipulation concerns. First, the facilitation firm must receive approval from the Exchange prior to executing facilitation trades. Although Exchange approval maybe granted on the basis of verbal representations, the Commission believes that trading abuses are unlikely because the facilitation firm is required to furnish to the Exchange's Market Surveillance Department, within two business days or such other time period designated by the Exchange, forms and documentation substantiating the basis for the exemption.

Second, a facilitation firm must, within five business days after the execution of a facilitation exemption order, hedge all exempt options positions that have not previously been liquidated, and furnish to the Exchange's Market Surveillance Department documentation reflecting the resulting hedging positions. In meeting this requirement, the facilitation firm must liquidate and establish its customer's and its own options and stock positions (or their equivalent) in an orderly fashion, and not in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes. In addition, a facilitation firm is not permitted to use the facilitation exemption for the purpose of engaging in index arbitrage.

[7] In addition, exercise limits will continue to correspond to position limits, such that investors may exercise the number of contracts set forth as the position limit as well as those contracts exempted by this proposal, during five consecutive business days. *See* Exchange Rules 1002 and 1002A.

[8] According to the Phlx, the purpose of the Firm Facilitation Form is to detail the terms of the customer order and the resulting facilitation, as well as to ensure compliance with the exemption. In addition, pursuant to the existing requirements of Exchange Rule 1064(b), facilitation orders must be marked with an ''F'' prior to executing facilitating trades. Lastly, Firm Facilitation Forms will be made available at the Exchange's Surveillance Post.

[9] The Exchange also notes that the facilitation firm need not have the customer order in hand when requesting the exemption, as long as the exemption is properly used to facilitate a customer order pursuant to the rule. Because the provision states the position ''will facilitate'' a customer order, a firm approaching the limit may request an exemption prior to receiving an order, in response to customer interest.

[10] *See* Securities Exchange Act Release No. 36409 (October 23, 1995), 60 FR 55399 (October 31, 1995) (File No. SR–Phlx–95–71).

[11] *See* Phlx Rule 1001A, Commentary .01. *See also* CBOE Rule 4.11, Interpretations and Policies .04(b).

[12] 15 U.S.C. 78f(b)(5) (1988).

The Commission believes that these requirements will help to ensure that the facilitation exemption will not have an undue market impact on the options or any underlying stock positions.

Third, the facilitation firm is required to promptly provide to the Exchange any information or documents requested concerning the exempted options positions and the positions hedging them, as well as to promptly notify the Exchange of any material change in the exempted options positions or the hedge.

Fourth, neither the member's nor the customer's order may be contingent on ''all or none'' or ''fill or kill'' instructions, and the orders may not be executed until the procedures in Exchange Rule 1064(b) have been satisfied and crowd members have been given a reasonable time to participate in the trade.

Fifth, in no event may the aggregate exempted position exceed two times the applicable standard limit, in addition to the standard position limit.[13]

Sixth, the facilitation firm may not increase the exempted options position once it is liquidated, unless approval from the Exchange is again received pursuant to a reapplication.

In summary, the Commission believes that the safeguards built into the facilitation exemption process discussed above should serve to minimize the potential for disruption and manipulation, while at the same time benefiting market participants by allowing member firms greater flexibility to facilitate large customer orders. This structure substantially mirrors the firm facilitation exemption processes that were recently approved for other option exchanges.[14] Accordingly, the Commission believes it is appropriate to extend the benefits of a firm facilitation exemption to non-multiply-listed Phlx options.

In addition, because the other minor rule changes that the Exchange is proposing will make the Phlx's rules clearer and are non-substantive in nature, the Commission believes that they are consistent with Section 6(b)(5) of the Act.

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the Federal Register. Specifically, Amendment No. 1 conforms the Exchange's firm facilitation exemption to the relief recently approved for the other options exchanges. Accelerated approval of the proposed rule change will thereby provide for the desired uniformity of the exchanges' position limit exemptions. Any other course of action could lead to unnecessary investor confusion. In addition, the Chicago Board Options Exchange's proposal was noticed for the entire twenty-one day comment period and generated no responses.[15] Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the rule proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–96–19 and should be submitted by October 3, 1996.

IV. Conclusion

For the foregoing reasons, the Commission finds that the Phlx's proposal to establish a firm facilitation exemption, as well as the other non-substantive changes to the Phlx's rules, are consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2)[16] of the Act, that the proposed rule change (File No. SR–Phlx–96–19), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23313 Filed 9–11–96; 8:45 am]

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[13] The Commission notes, however, that the firm facilitation exemption is in addition to any other exemption available under the Exchange's rules.

[14] *See* Securities Exchange Act Release Nos. 36964 (March 13, 1996), 61 FR 11453 (March 20, 1996) (File No. SR–CBOE–95–68); 37178 (May 8, 1996), 61 FR 24523 (May 15, 1996) (File No. SR–PSE–96–10); 37179 (May 8, 1996), 61 FR 24520 (May 15, 1996) (File No. SR–Amex–96–11).

[15] *Id.*

[16] 15 U.S.C. 78s(b)(2) (1988).

[17] 17 CFR 200.30–3(a)(12).

[Release No. 34–37643; File No. SR–Phlx–96–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Options Specialist Evaluations

September 5, 1996.

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 July 1, 1996, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 Exchange, pursuant to Rule 19b–4 of the Act,[1] proposes to update its Options Specialist Evaluation program by adopting a new questionnaire and revising Exchange Rules 509, 511 and 515 regarding the evaluation procedure.

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.

[1] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 21, 1995, the Exchange submitted a proposed rule change to the Commission requesting approval for a new options specialist evaluation questionnaire and review procedure.[2] The proposed rule change was withdrawn on March 29, 1996 after Commission staff had requested that the Exchange reconsider its proposed evaluation review procedures.[3] Pursuant to the present filing, the Exchange is resubmitting the same new evaluation questionnaire and is proposing revised procedures for the review process.

Since at least 1978, the Exchange has been evaluating its options specialists based on the same questionnaire in use today. This quarterly survey is a subjective series of questions answered by floor brokers that have traded with the particular specialists over the last quarter. One of the purposes of this filing is to propose a new updated survey which requests information that the Exchange believes is more relevant to a specialist's performance in this day and age. The results of these evaluations are used by the Allocation, Evaluation and Securities Committee (''Committee'') when making allocation and reallocation decisions regarding option specialist privileges.

The new survey has 15 all-new questions and will be answered by floor brokers who, Exchange records show, have traded at least a minimum number of times in the specialist's issues over the subject quarter.[4] Only specialist units (not individual specialists) would now be graded as allocations are made to units, not individual specialists; however, separate evaluations will be conducted for each quarter or half turret post at which a unit has a specialist operation. Thus, a large specialist unit which is spread out over the floor may receive two or three separate evaluation scores so that the Committee can focus on exactly where a problem may be occurring. The same questionnaire will be used for equity option specialists, index option specialists[5] and foreign currency option specialists. The survey would only be answered every six months instead of every three months, which is the current procedure.

Each question must be answered by giving the unit a score of 1 through 9 (very poor to excellent). Any question that is answered with a score of 4 or less must be accompanied by a written explanation. Floor brokers who submit negative comments about a particular specialist unit will be invited to speak directly with a representative of the specialist unit in order to try to resolve any problems that may exist and Exchange staff may attend such a meeting. Floor brokers who do not complete and return the surveys still will be subject to fines pursuant to Options Floor Procedure Advice C–8.

The questions asked will cover a wide range of specialist responsibilities such as the degree of liquidity provided, the tightness of quotes, timeliness of quote updates, ability to fill small lot orders, timeliness of reports, ability to conduct opening rotations, maintenance of crowd control, and clerical staffing.

The second purpose of this filing is to revise the process by which the Committee uses the questionnaires to evaluate the specialists' performance. Currently, there is a very complicated review system in place that the Exchange has determined needs to be simplified in order to be effective. The evaluations are now scored on a scale of 1 through 10, and any unit with an overall score below 5 on the questionnaire in one quarter, a score of below 5 for three or more questions in one quarter, or a score below 5 on the same question for three consecutive quarters is deemed to have performed below minimum standards and is subject to review by the Committee.

Under the proposed new language in Supplementary Material .02 to Rule 515, the Committee[6] would review the survey as well as regulatory history, written complaints, timeliness of openings, trading data, and any other relevant information in order to determine if minimum performance standards as to, among other things, quality of markets, observance of ethical standards, and administrative responsibilities have been met. If a specialist unit is ranked by score in the bottom 10% of all units as a result of a semi-annual review, it will be presumed to have failed to meet the minimum performance standards.[7] The Committee may also make such a presumption if the information on the survey or the other information review by the Committee supports such a finding.

If the Committee makes such a presumption of failure to meet minimum performance standards, it may elect to hold an informal meeting with the specialist unit or it may elect to hold a formal hearing in accordance with Rule 511(e). The Committee may only impose sanctions such as removal of specialist privileges in one or more options classes or a prohibition from new allocations as the result of a formal hearing. Rules 511(c) and 515 will be amended to reflect these changes. The hearing procedures set forth in Rule 511(e) will not change and decisions will still be subject to appeal to the Board of Governors as provided for under By-Law Article XI, Section 11–1.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[8] in general, and in particular, with Section 6(b)(5 , in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, 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, as well as to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

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

[2] This proposal was noticed for comment in Securities Exchange Act Release No. 36776 (January 26, 1996), 61 FR 3748 (February 1, 1996) (File No. SR–Phlx–95–91).

[3] See Letter from Michele R. Weisbaum, Associate General Counsel, Phlx, to Michael Walinskas, SEC, dated March 29, 1996 (withdrawing File No. SR–Phlx–95–91).

[4] The number of trades is variable but will be predetermined by the Committee.

[5] Currently, all of the specialist units that have been allocated index options are also equity option specialists; however, if a unit only traded index options, the survey would be equally applicable.

[6] The Committee may conduct such reviews or it may delegate that responsibility to the Quality of Markets Subcommittee. Exchange Rule 509 is being amended to note this function as a specific responsibility of this subcommittee.

[7] Under the current procedure, a specialist unit that receives an average score under 5.00 in any one quarter would be deemed to have performed below minimum standards.

[8] 15 U.S.C. 78f(b).

within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. 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 at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–96–23 and should be submitted by October 3, 1996.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23349 Filed 9–11–96; 8:45 am]

BILLING CODE 8010–01–M

SELECTIVE SERVICE SYSTEM

Senior Executive Service Performance Review Board; Appointments of Members

Announcement is made of the appointment of the following persons as members of the SES Performance Review Board for the Selective Service System: Richard M. McKee, Director, Dairy Division, Agricultural Marketing Service, USDA; Roger R. Rapp, Director, Field Operations, National Cemetery System, Department of Veterans Affairs; Harry H. Zimmerman, Director, Base Closure Office, Naval Facilities Engineering Command, Department of the Navy.

The announcement of July 12, 1990, 55 FR 28709 is cancelled.

Dated: September 5, 1996.

Gil Coronado,

Director.

[FR Doc. 96–23368 Filed 9–11–96; 8:45 am]

BILLING CODE 8015–01–M

DEPARTMENT OF STATE

[Public Notice 2437]

Inspector General; State Department Performance Review Board Members (Office of Inspector General)

In accordance with section 4314 (c)(4) of the Civil Service Reform Act of 1978 (Pub. L. 95–454), the Office of Inspector General of the Department of State has appointed the following individuals to its Performance Review Board register:

Kenneth Hunter, Deputy Assistant Secretary of Passport Services, Bureau of Consular Affairs, Department of State

Donald Mancuso, Assistant Inspector General for Investigations, Department of Defense

Everett L. Mosley, Assistant Inspector General for Audit, Agency for International Development

Michael G. Sullivan, Assistant Inspector General for Auditing, Department of Veterans Affairs

Dated: August 29, 1996.

Jacquelyn L. Williams-Bridgers,

Inspector General.

[FR Doc. 96–23328 Filed 9–11–96; 8:45 am]

BILLING CODE 4710–42–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 96–044]

Documentation and Marine Safety for an International, Private-Sector Tug of Opportunity System

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting; request for comments.

SUMMARY: The Coast Guard is conducting a public meeting to receive views on the documentation and marine safety criteria to be used in assessing a private-sector initiated, international, tug of opportunity system plan.

DATES: The meeting will be held on Thursday, October 17, 1996, from 9 a.m. until 5 p.m. Written statements and requests to make oral presentations should reach the Coast Guard on or before October 10, 1996. Other comments should reach the Coast Guard on or before October 30, 1996.

ADDRESSES: The meeting will be held on the fourth floor North Auditorium, Jackson Federal Building, 915 Second Avenue, Seattle, Washington. Written materials may be mailed to the Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant W. M. Pittman, Office of Response (G–MOR–1), telephone (202) 267–0426, fax (202) 267–4085. The telephone number is equipped to record messages on a 24-hour basis.

SUPPLEMENTARY INFORMATION: The Alaska Power Administration Asset Sale and Termination Act (Pub. L. 104–58) was signed into law on November 28, 1995. A Presidential directive and subsequent DOT Action Plan requires the Coast Guard to assess and provide a report to Congress on the most cost effective means of implementing a private-sector initiated, international, tug of opportunity system for vessels in distress operating within the Olympic Coast National Marine Sanctuary and the Strait of Juan de Fuca. A system plan will be considered at future public meetings once available.

Agenda of Meeting

The agenda includes the following:

Documentation

(1) Core concepts.
(2) Organizational and functional structure.
(3) Technology issues.
(4) Communications.
(5) Tracking vessels.
(6) Tug issues.
(7) Other equipment.
(8) Crew qualifications to crew a system tug.
(9) Crew training to meet qualifications.
(10) Testing requirements for crew.
(11) Certification of qualified crew.
(12) Legal requirements which should be addressed.
(13) Fiscal administration which should be addressed.

Marine Safety

(1) Concept of tug of opportunity.
(2) Calling area description.
(3) Calling fleet description.
(4) Risk.

(5) Definition of accident.
(6) Likely accident locations.
(7) Events with potential for significant impacts.
(8) Areas with most significant impacts of accident.
(9) Potential utility of tugs.
(10) Two means to save.
(11) Tug criteria.
(12) Define adequate assist vessel.
(13) Use of coverage approach.
(14) Tug equipment.
(15) Crew criteria.
(16) Skills.
(17) Training.
(18) Substance abuse standards.
(19) System goals.
(20) Coverage goals.
(21) Response goals.

Procedural

The meeting is open to the public. Persons wishing to make oral presentations at the meeting should notify the person listed under **FOR FURTHER INFORMATION CONTACT** no later than October 10, 1996.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: September 9, 1996.

Howard L. Hime,

Acting Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 96–23366 Filed 9–11–96; 8:45 am]

BILLING CODE 4910–14–M

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received requests from:

1. Mayer, Brown & Platt (WB461—8/15/96),
2. Covington & Burling (WB462—8/14/96), and
3. Association of American Railroads (WB463—7/30/96), for permission to use certain data from the Board's Carload Waybill Samples. A copy of the requests may be obtained from the Office of Economics, Environmental Analysis and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

Vernon A. Williams,

Secretary.

[FR Doc. 96–23385 Filed 9–11–96; 8:45 am]

BILLING CODE 4915–00–M

Surface Transportation Board[1]

[STB Finance Docket No. 33045]

Perry County Port Authority d/b/a Hoosier Southern Railroad—Acquisition and Lease Exemption—Norfolk Southern Railway Company

The Perry County Port Authority d/b/a Hoosier Southern Railroad (''HSR''), a Class III railroad, has filed a notice of exemption under 49 CFR 1150.41 to acquire by donation and to lease and operate certain lines of railroad located in the State of Indiana, which are currently owned by the Norfolk Southern Railway Company (''NS''). First, HSR will lease and operate, and will subsequently acquire by donation, an approximately 2.6-mile line of railroad, extending from milepost 19.8, near Santa Claus, IN, to milepost 22.4, at Lincoln City, IN (Santa Claus Line). Second, HSR will lease and operate a separate 16.2 mile line of railroad extending from milepost 0.0, at Rockport Junction, IN, to milepost 16.2, at Rockport, IN (Rockport Line), over which NS will retain the right to exercise local trackage rights. In addition, HSR will obtain from NS incidental overhead trackage rights over approximately 1.1 miles of NS main line, between milepost 33.2–EB (HSR milepost 22.4—Santa Claus Line), at Lincoln City, IN, and milepost 32.1–EB (HSR milepost 0.0—Rockport Line), at Rockport Junction, IN, for purposes of connecting the two newly-operated lines[2] and consolidating railcar interchange with NS at Lincoln City, IN.

HSR expected to consummate the proposed lease and incidental trackage rights transactions on September 1, 1996, and to consummate the proposed acquisition of the Santa Claus Line on or before December 31, 1996.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33045, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Branch, 1201 Constitution Avenue, N.W., Washington, DC 20423. In addition, a copy of each pleading must be served on: Robert A. Wimbish, Esq., Rea, Cross & Auchincloss, Suite 420, 1920 N Street, N.W., Washington, DC 20036. Telephone: (202) 785–3700.

Decided: September 4, 1996.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 96–23384 Filed 9–11–96; 8:45 am]

BILLING CODE 4915–00–M

[1] The ICC Termination Act of 1995, Pub. L. No. 104–88, 109 Stat. 803, which was enacted on December 29, 1995, and took effect on January 1, 1996, abolished the Interstate Commerce Commission and transferred certain functions to the Surface Transportation Board (Board). This notice relates to functions that are subject to Board jurisdiction pursuant to 49 U.S.C. 10902.

[2] Prior to September 1, 1996, the Indiana Hi-Rail Corporation (IHR) leased and operated both the Santa Claus Line and the Rockport Line. HSR will replace IHR as the new operator. HSR has certified that it has served a copy of its notice of exemption upon all shippers located on both the Santa Claus Line and the Rockport Line.

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Specific Transportation Bond, Distilled Spirits or Wines Withdrawn for Transportation to Manufacturing Bonded Warehouse, Class Six.

DATES: Written comments should be received on or before November 12, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the form(s) and instructions should be directed to Mary Lou Blake, Wine, Beer and Spirits Regulations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Specific Transportation Bond, Distilled Spirits or Wines Withdrawn for Transportation to Manufacturing Bonded Warehouse, Class Six.

OMB Number: 1512–0144.

Form Number: ATF F 2736 (5100.12).

Abstract: ATF F 2736 (5100.12) is a specific bond which protects the tax liability on distilled spirits and wine while in transit from one type of bonded facility to another. The bond identifies the shipment, the parties, the date, and the amount of the bond coverage.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Also, ATF requests information regarding any monetary expenses you may incur while completing this form.

Dated: August 30, 1996.

John W. Magaw,

Director.

[FR Doc. 96–23339 Filed 9–11–96; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the ATF Distribution Center Contractor Survey.

DATES: Written comments should be received on or before November 12, 1996 to be assured of consideration.

ADDRESS: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20026, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dirck Harris, Document Services Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

SUPPLEMENTARY INFORMATION:

Title: ATF Distribution Center Contractor Survey.

OMB Number: 1512–0002.

Form Number: ATF F 1600.7.

Abstract: ATF F 1600.7 provides users of the Bureau's forms and publications an opportunity to comment on the Bureau's Distribution Center contractor and the services it provides. The users can evaluate and comment on the services of the Distribution Center contractor.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Individuals or households, business or other for-profit.

Estimated Number of Respondents: 21,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 168.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Also, ATF requests information regarding any monetary expenses you may incur while completing this form.

Dated: August 30, 1996.

John W. Magaw,

Director.

[FR Doc. 96–23340 Filed 9–11–96; 8:45 am]

BILLING CODE 4810–31–P

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Power of Attorney.

DATES: Written comments should be received on or before November 12, 1996, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Julie Cox, Tax Compliance Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, 927–8220.

SUPPLEMENTARY INFORMATION:

Title: Power of Attorney.

OMB Number: 1512–0079.

Form Number: ATF F 1534 (5000.8).

Abstract: ATF F 1534 (5000.8) delegates authority to a specific individual to sign documents on behalf of an applicant or principle (alcohol and tobacco permittees). Many of the documents that are submitted to ATF entail binding legal commitments by the

applicant/permittee and any omission or falsification may subject the applicant/permittee to penalties provided in the law.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 3,000.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Also, ATF requests information regarding any monetary expenses you may incur while completing this form.

Dated: August 30, 1996.

John W. Magaw,

Director.

[FR Doc. 96–23341 Filed 9–11–96; 8:45 am]

BILLING CODE 4810–31–P

Office of the Comptroller of the Currency

Proposed Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comments concerning an information collection titled (MA)—Securities Exchange Act Disclosure Rules (12 CFR Part 11).

DATES: Written comments should be submitted by November 12, 1996.

ADDRESSES: Direct all written comments to the Communications Division, Attention: 1557–0106, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, comments may be sent by facsimile transmission to (202)874–5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the collection may be obtained by contacting John Ference or Jessie Gates, (202)874–5090, Legislative and Regulatory Activities Division (1557-0106), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Title: (MA)—Securities Exchange Act Disclosure Rules (12 CFR 11).

OMB Number: 1557–0106.

Form Number: SEC Forms 3, 4, 5, 8–K, 10, 10–K, 10–Q, Schedules 13D, 13G, 14A, 14B, and 14C.

Abstract: This information collection covers the OCC's Securities Exchange Act Disclosure Rules (12 CFR 11) which require national banks to make public disclosures and file with the OCC certain Securities Exchange Commission forms. Publicly owned national banks make disclosures and filings to comply with applicable banking and securities law and regulatory requirements. The OCC reviews the information to ensure that it complies with Federal law and makes public all information required to be filed. Investors, depositors, and the public use the information to make informed investment decisions.

Type of Review: Renewal of OMB approval.

Affected Public: Businesses or other for-profit.

Number of Respondents: 131.

Total Annual Responses: 636.

Frequency of Response: Occasional.

Total Annual Burden Hours: 5,360.

Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

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

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

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

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

Dated: September 5, 1996.

Karen Solomon,

Director, Legislative & Regulatory Activities Division.

[FR Doc. 96–23383 Filed 9–11–96; 8:45 am]

BILLING CODE 4810–33–P

Submission for OMB Review; Comment Request

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Submission for OMB review; comment request.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of the Comptroller of the Currency (OCC) hereby gives notice that it has sent to the Office of Management and Budget (OMB) for review an information collection titled Interpretive Rulings (12 CFR part 7).

DATES: Comments regarding this information collection are welcome and should be submitted to the OMB Reviewer and the OCC Clearance Officer. Comments are due on or before October 15, 1996.

ADDRESSES: A copy of the of the submission may be obtained by calling the OCC Clearance Officer listed.

SUPPLEMENTARY INFORMATION:

OMB Number: 1557–0204.

Form Number: None.

Type of Review: Reinstatement of previously approved collection without change.

Title: Interpretive Rulings (12 CFR part 7).

Description: National banks use the information to insure compliance with applicable Federal banking law and regulations. The collections of information evidence bank compliance with various regulatory requirements and provide needed information for examiners and provide protections for banks.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 2,430.

Estimated Burden Hours Per Respondent: 1.7 hours.

Frequency of Response: Recordkeeping.

Estimated Total Annual Burden: 4,156.

Clearance Officer: Jessie Gates or Dionne Walsh, (202)874–5090, Legislative and Regulatory Activities Division (1557–0200), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

OMB Reviewer: Alexander Hunt, (202)395–7340, Paperwork Reduction Project 1557–0200, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dated: September 6, 1996.

Karen Solomon,

Director, Legislative & Regulatory Activities Division.

[FR Doc. 96–23271 Filed 9–11–96; 8:45 am]

BILLING CODE 4810–33–P

Customs Service

Application for Recordation of Trade Name: ''A. J. & W. Incorporated''

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to section 133.12, Customs Regulations (19 CFR 133.12), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name ''A. J. & W. INCORPORATED.,'' used by A. J. & W. Incorporated, a corporation organized under the laws of the State of Hawaii, located at 565 Kokea Street, Building G2–4, Honolulu, Hawaii 96817.

The application states that the trade name is used in connection with towels, footwear, bags, luggage, mugs, straw beach mats, kitchen accessory sets, luggage accessories, jewelry bags, ornamental wood stands, bath gift sets, pua shell souvenir line, fans, ashtrays, and general souvenir items.

Before final action is taken on the application, consideration will be given to any relevant data, views, or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the Federal Register.

DATES: Comments must be received on or before November 12, 1996.

ADDRESSES: Written comments should be addressed to U.S. Customs Service, Attention: Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (Franklin Court), Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Delois P. Johnson, Intellectual Property Rights Branch, 1301 Constitution Avenue, NW., (Franklin Court), Washington D.C. 20229 (202–482–6960).

Dated: September 6, 1996.

John F. Atwood,

Chief, Intellectual Property Rights Branch.

[FR Doc. 96–23362 Filed 9–11–96; 8:45 am]

BILLING CODE 4820–02–P

Internal Revenue Service

Proposed Collection; Comment Request for Form 5305–SEP

Editorial Note: Federal Register Document 96–22515 was inadvertently printed with the wrong text at page 46679 in the issue of Wednesday, September 4, 1996. The correct document is printed below.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5305–SEP, Simplified Employee Pension-Individual Retirement Accounts Contribution Agreement.

DATES: Written comments should be received on or before November 12, 1996 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Simplified Employee Pension—Individual Retirement Accounts Contribution Agreement.

OMB Number: 1545–0499.

Form Number: Form 5305–SEP.

Abstract: Form 5305–SEP is used by an employer to make an agreement to provide benefits to all employees under a Simplified Employee Pension (SEP) described in Internal Revenue Code section 408(k). This form is not to be filed with the IRS but is to be retained in the employer's records as proof of establishing a SEP and justifying a deduction for contributions to the SEP.

Current Actions: There are no changes being made to this form.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100,000.

Estimated Time Per Respondent: 53 min.

Estimated Total Annual Burden Hours: 88,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 28, 1996.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 96–22515 Filed 9–3–96; 8:45 am]

BILLING CODE 1505–01–M

federal register

Thursday
September 12, 1996

Part II

Environmental Protection Agency

40 CFR Parts 9 and 63

National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[AD–FRL–5508–6]

RIN 2060–AE37

National Emissions Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) from existing and new plant sites that emit organic hazardous air pollutants (HAP) identified on the EPA's list of 189 HAP. The organic HAP are emitted during the manufacture of one or more of the following Group IV polymers and resins: acrylonitrile butadiene styrene resin (ABS), styrene acrylonitrile resin (SAN), methyl methacrylate acrylonitrile butadiene styrene resin (MABS), methyl methacrylate butadiene styrene resin (MBS), polystyrene resin, poly (ethylene terephthalate) resin (PET), and nitrile resin.

In the production of thermoplastics, a variety of organic HAP are used as monomers or are created as by-products. Some of these organic HAP are considered to be mutagens and carcinogens, and all can cause reversible or irreversible toxic effects following exposure. The potential toxic effects include eye, nose, throat, and skin irritation; liver and kidney toxicity, and neurotoxicity. There effects can range from mild to severe. The standards are estimated to reduce organic HAP emissions from existing affected sources by 3,550 megagrams per year (Mg/yr).

The intent of this rule is to protect the public by requiring the maximum degree of reduction in emissions of organic HAP from new and existing major sources. The emissions reductions achieved by these standards, when combined with the emission reductions achieved by other similar standards, will achieve the primary goal of the Clean Air Act (Act) as amended in 1990.

EFFECTIVE DATE: September 12, 1996. See the Supplementary Information section concerning judicial review.

ADDRESSES: *Docket.* Docket No. A–92–45, containing information considered by the EPA in development of the promulgated standards, is available for public inspection between 8 a.m. and 5:30 p.m., Monday through Friday at the following address in room M–1500, Waterside Mall (ground floor) U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (MC–6102), 401 M Street SW., Washington, DC 20460; telephone: (202) 260–7549. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations contact:

Region I—Greg Roscoe, Air Programs Compliance, Branch Chief, U.S. EPA, Region I, SEA, JFK Federal Building, Boston, MA 02203, (617) 565–3221.

Region II—Kenneth Eng, Air Compliance Branch Chief, U.S. EPA, Region II, 290 Broadway, New York, NY 10007–1866, (212) 637–4000.

Region III—Bernard Turlinski, Air Enforcement Branch Chief, U.S. EPA, Region III, 3AT10, 841 Chestnut Building, Philadelphia, PA 19107, (205) 597–3989.

Region IV—Jewell A. Harper, Air Enforcement Branch, U.S. EPA, Region IV, 345 Courtland Street, N.E., Atlanta, GA 30365, (404) 347–2904.

Region V—George T. Czerniak, Jr., Air Enforcement Branch Chief, U.S. EPA, Region V, 5AE–26, 77 West Jackson Street, Chicago, IL 60604, (312) 353–2088.

Region VI—John R. Hepola, Air Enforcement Branch Chief, U.S. EPA, Region VI, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733, (214) 665–7220.

Region VII—Donald Toensing, Chief, Air Permitting and Compliance Branch, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7446.

Region VIII—Douglas M. Skie, Air and Technical Operations Branch Chief, U.S. EPA, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6432.

Region IX—Colleen W. McKaughan, Air Compliance Branch Chief, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1198.

Region X—Air and Radiation Branch Chief, U.S. EPA, Region X, AT–092, 1200 Sixth Avenue, Seattle, WA 98101, (206) 533–1152.

For information concerning the analyses performed in developing this rule, contact Mr. Robert Rosensteel at (919) 541–5410, organic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those facilities which manufacture one or more of the 7 thermoplastic products identified in the rule and listed below:

Category	Examples of regulated entities
Industry	Facilities which manufacture acrylonitrile butadiene styrene resin, styrene acrylonitrile resin, methyl methacrylate acrylonitrile butadiene styrene resin, methyl methacrylate butadiene styrene resin, polystyrene resin, poly (ethylene terephthalate) resin, or nitrile resin.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.1310 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Response to Comment Document

The response to comment document for the promulgated standards contains: (1) A summary of all the public comments made on the proposed rule and the Administrator's response to the comments; and (2) A summary of the changes made to the rule since proposal. The document may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone (919) 541–2777; or from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22151, telephone (703) 487–4650. Please refer to ''Hazardous Air Pollutant Emissions from Process Units in the Thermoplastics Manufacturing Industry—Basis and Purpose Document for Final Standards, Summary of Public Comments and Responses'' [EPA–453/R–96–001b; May 1996]. This document is also available for downloading from the Technology Transfer Network. The Technology Transfer Network is one of the EPA's electronic bulletin boards. The Technology Transfer Network 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) 541–5472 for up to a 14,400 bps modem. If more information on the Technology Transfer Network is needed, call the HELP line at (919) 541–5384.

Previous Background Documents

The following is a listing of background documents pertaining to this rulemaking. The complete title,

EPA publication number, publication date, docket number, and the abbreviated descriptive title used to refer to the document throughout this notice are included.

(1) Hazardous Air Pollutant Emissions from Process Units in the Thermoplastics Manufacturing Industry—Supplementary Information Document for Proposed Standards. EPA–453/R–95–003a. March 1995. Docket item A–92–45: II–A–9. Supplementary Information Document.

(2) Hazardous Air Pollutant Emissions from Process Units in the Thermoplastics Manufacturing Industry—Basis and Purpose Document for Proposed Standards. EPA–453/R–95–004a. March 1995. Docket item A–92–45: II–A–10. Basis and Purpose Document for Proposed Standards.

Judicial Review

National emission standards for organic HAP for Group IV polymers and resins were proposed in the Federal Register (FR) on March 29, 1995 (60 FR 16090). This Federal Register action announces the EPA's final decision on the rule. Under section 307(b)(1) of the Act, judicial review of the final rule is available only by filing 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 final 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 following outline is provided to aid in reading the preamble to the final rule.

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I. Background

Section 112(b) of the Act lists 1989 HAP and directs the EPA to develop standards to control all major sources and some area sources emitting HAP. On July 16, 1992, the EPA published a list of major and area source categories for which NESHAP are to be promulgated (57 FR 3156). Six of the seven source categories regulated by this rule were included on that list as major source categories. The other source category, nitrile resins production, has since been added to the source category list. On December 3, 1993, the EPA published a schedule for promulgating standards for the listed major and area source categories (58 FR 83941). Standards for these seven major source categories were proposed on March 29, 1995, under this rulemaking.

II. Summary of Considerations Made in Developing These Standards

A. Purpose of Standards

The Act was created in part ''to protect and enhance the quality of the nation's air resources so as to promote the public health and welfare and the productive capacity of its population [the Act, section 101(b)(1)]. Title I of the Act establishes a control technology-based program to reduce stationary source emissions of HAP. The goal of the section 112(d) Maximum Achievable Control Technology standards (MACT) is to apply such control technology to reduce emissions and thereby reduce the hazard of pollutants emitted from stationary sources.

The Act strategy avoids dependence on a detailed and comprehensive risk assessment hampered by (but not limited to) the following caveats, as prerequisites for control of air toxics: (1) Some of the HAP emitted from stationary sources are unknown; and (2) Many of the HAP with emissions information have incomplete data in which to describe health hazard. In addition, these standards are not ''significant'' as defined by Executive Order 12866, and a specific benefits analysis is not required. Because of these issues, a detailed and intensive risk assessment of potential effects from the organic HAP emitted from stationary sources is not included in this rulemaking.

The EPA does recognize that the degree of adverse effects to health resulting from the most significant emissions identified can range from mild to severe. The extent to which the effects could be experienced is dependent upon the ambient concentrations and exposure time. The latter is further influenced by source-specific characteristics such as emission rates and local meteorological conditions. Human variability factors also influence the degree to which effects to health occur: genetics, age, pre-existing health conditions, and lifestyle.

The organic HAP listed in section 112(b)(1) of the Act emitted by the thermoplastic facilities covered by these standards include styrene, acrylonitrile, butadiene, ethylene glycol, methanol, acetaldehyde, and dioxane. Available emission date gathered, in conjunction with development of these MACT standards, show that these organic HAP are those which have the potential for reduction by the implementation of the standard.

Some of the effects of the pollutants whose emissions are reduced by these standards include central nervous system effects (e.g., drowsiness, dizziness, headaches, impairment of vision, peripheral nervous system effects expressed as numbness of the extremities, fatigue, and coma and death at lethal levels), respiratory irritation expressed as labored breathing and impaired lung function, eye irritation, reproductive and developmental effects, gastrointestinal effects, blood effects (e.g., anemia and leukocytosis), and liver and kidney toxicity. In addition, butadiene exposure to humans has been associated with increased risk of cardiovascular disease and effects on the blood. In regard to carcinogenicity, some of the organic HAP controlled under these standards are either probable (i.e., acetaldehyde, dioxane, acrylonitrile, and butadiene) or possible (i.e., styrene) human carcinogens.

These standards will result in a minimum organic HAP emission reduction of 3,550 Mg/yr for existing affected sources and 6,870 Mg/yr for new affected sources. The majority of the organic HAP regulated by these standards are also volatile organic compounds (VOC). In reducing emissions of organic HAP, emissions of VOC are also reduced. No other criteria pollutant ambient levels will be affected by these standards. The emission reductions achieved by these standards, when combined with the emission

reductions achieved by other standards mandated by the Act, will achieve the primary goal of the Clean Air Act.

B. Technical Basis of Regulation

National emission standards for sources of HAP established under section 112(d) of the Act reflect MACT:

> * * * the maximum degree of reduction in emissions of the HAP * * * 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 * * * [42 U.S.C. § 7412(d)(2)].

The amended Clean Air Act contains requirements for the development of regulatory alternatives for sources of HAP emissions. The statute requires the standards to reflect the maximum degree of reduction in emissions of HAP that is achievable for new or existing sources. This control level is referred to as MACT. The amended Clean Air Act also provides guidance on determining the least stringent level allowed for a MACT standard; this level is termed the ''MACT floor.''

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) of the Act]. Existing source standards shall be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources for source categories and subcategories with 30 or more sources or the average emission limitation achieved by the best performing 5 sources for source categories or subcategories with fewer than 30 sources [section 12(d)(3) of the Act]. These two minimum levels of control define the MACT floor for new and existing sources.

Two interpretations have been evaluated by the EPA for representing the MACT floor for existing sources. One interpretation is that the MACT floor is represented by the 88th percentile source. The second interpretation is that the MACT floor is represented by the ''average emission limitation achieved'' by the best performing sources, where the ''average'' is based on a measure of central tendency, such as the arithmetic mean, median, or mode. This latter interpretation is referred to as the ''higher floor interpretation.'' In a June 6, 1994 Federal Register notice [59 FR 29196], the EPA presented its interpretation of the statutory language concerning the MACT floor for existing sources. Based on a review of the statute, legislative history, and public comments, the EPA believes that the ''higher floor interpretation'' is a better reading of the statutory language. The determination of the MACT floor for existing sources under the proposed and final rule followed the ''higher floor interpretation.''

The regulatory alternatives considered in the development of this rule, including those regulatory alternatives selected as standards for new and existing affected sources, are based on process and emissions data received from the existing plant sites known by the EPA to be in operation.

Regulatory alternatives more stringent than the MACT floor were selected when they were judged to be reasonable ''taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts, and energy requirements'' (42 U.S.C. § 7412(d)(2)).

Potential regulatory alternatives were developed based on the Hazardous Organic NESHAP (HON) (i.e., subparts F, G, H, and I of 40 CFR part 63), the Polymer Manufacturing New Source Performance Standards (NSPS) (subpart DDD of 40 CFR part 60), and the Batch Processes Alternative Control Techniques (ACT) document [EPA 453/R–93–017; November 1993]. The HON was selected as a basis for regulatory alternatives because: (1) the characteristics of the emissions from storage vessels, continuous process vents, equipment leaks, and wastewater at Group IV thermoplastic facilities are similar or identical to those addressed by the HON; and (2) The levels of control required under the HON were already determined through extensive analyses to be reasonable from a cost and impact perspective.

The Polymer Manufacturing NSPS, which covers certain process emissions at polystyrene and PET facilities using a continuous process, and cooling tower emissions at PET facilities, was selected for the same basic reasons as the HON. Although the Polymer Manufacturing NSPS was developed under section 111 of the Clean Air Act and was targeted to control VOC emissions, the requirements for setting standards under section 111 are very similar to the requirements under section 112 of the Clean Air Act Amendments of 1990, and all of the organic HAP identified from polystyrene and PET affected sources are also VOC.

Finally, the Batch Processes ACT was selected to identify regulatory alternatives for batch process vents, which are not addressed by either the HON or Polymer Manufacturing NSPS. As with the Polymer Manufacturing NSPS, the Batch Processes ACT addresses the control of VOC emissions, and all of the organic HAP identified for the Group IV thermoplastics facilities are also VOC. Unlike the HON and Polymer Manufacturing NSPS, the Batch Processes ACT is not a regulation and, therefore, does not specify a level of control that must be met. Instead, the Batch Processes ACT provides information on emissions estimation techniques and potential levels of control and their environmental, energy, and cost impacts. Based on the review of the Batch Processes ACT, the EPA selected a level of control equivalent to 90 percent reduction for batch process vents. This level of control was selected for regulatory analysis purposes.

C. Stakeholder and Public Participation

In the development of these standards, numerous representatives of the thermoplastics industry were consulted. Industry representatives have included trade associations and thermoplastic producers responding to section 114 questionnaires and information collection requests (ICR). Representatives from other interested EPA offices, Regional offices, and State environmental agency personnel, participated in the regulatory development process as members of the Work Group. The Work Group is involved in the regulatory development process, and is given opportunities to review and comment on the standards before proposal and promulgation. Therefore, the EPA believes that the implication to order EPA offices and programs has been adequately considered during the development of these standards. In addition, the EPA has met with members of industry concerning these standards. Finally, industry representatives, regulatory authorities, and environmental groups had the opportunity to comment on the proposed standards and to provide additional information during the public comment period that followed the proposal.

The standards were proposed in the Federal Register on March 29, 1995 (60 FR 16090). The preamble to the proposed standards described the rationale for the proposed standards. Public comments were solicited at the time of proposal. 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, the public did not request a hearing and, therefore, one

was not held. The public comment period was from March 29, 1995 to May 30, 1995. Twenty-seven comment letters were received. Commenters included industry representatives and State agencies. The comments were carefully considered, and changes were made in the proposed standards when determined by the EPA to be appropriate. A detailed discussion of these comments and responses can be found in the Basis and Purpose Document for Final Standards (EPA–453/R–96–001b; May 1996), which is referenced in the **ADDRESSES** section of this preamble. The summary of comments and responses in the Basis and Purpose Document for the Final Standards (EPA–453/R–96–001b; May 1996) serves as the basis for the revisions that have been made to the standards between proposal and promulgation. Section V of this preamble discusses these major changes.

III. Summary of Promulgated Standards

Emissions of specific organic HAP from the following types of emission points (i.e., emission source types) are being covered by the final standards: Storage vessels, continuous process vents, batch process vents, equipment leaks, wastewater operations, heat exchange systems, and some process contact cooling towers associated with the manufacture of PET. The organic HAP emitted and required to be controlled by these standards vary by subcategory. Each of the nineteen thermoplastic products constitutes a separate subcategory (i.e., affected source) that is regulated by these standards.

The existing affected source is defined as each group of one or more TPPUs that manufacture the same thermoplastic product as their primary product, and (1) are located at a major source plant site, (2) are not exempt, and (3) are not part of a new affected source. This means that each plant site will have only one existing affected source in any given subcategory.

New affected sources are created under various circumstances. If a plant site with an existing affected source producing thermoplastic A as its primary product constructs a new TPPU also producing thermoplastic A as its primary product, the new TPPU is a new affected source if the new TPPU has the potential to emit more than 10 tons per year of a single HAP or 25 tons per year of all HAP. In this situation, the plant site would have an existing affected source producing thermoplastic A and a new affected source producing thermoplastic A. Each subsequent new TPPU with potential HAP emissions above major source levels (i.e., 10/25 tons per year) would be a separate new affected source. New affected sources are also created when a TPPU is constructed at a major source plant site where the thermoplastic product was not previously produced, with no regard to the potential HAP emissions from the TPPU. This approach to defining new affected source was selected in order to make this subpart more consistent with the HON.

Another instance where a new affected source is created is if a new TPPU is constructed at a new plant site (i.e., green field site) that will be a major source. The final manner in which a new affected source is created is when an existing affected source undergoes reconstruction, thus making the previously existing affected source subject to new source standards.

This standard differs from the HON, however, in that it applies to multiple source categories. Thus, unlike the HON, a newly added TPPU at a facility is covered by this rule even if that TPPU is in a different source category from the existing TPPUs at the facility. It is the EPA's position that the addition of a process unit in a different source category is a new source and must meet the requirements for new sources even though the TPPU has the potential to emit less than 10 tons per year of a single HAP or 25 tons per year of all HAP. Indeed, if a source covered by another MACT standard (i.e., a different source category) were built at a HON facility, that source would be subject to new source requirements under that MACT standard.

Also, each affected source includes the following emission points and equipment that are associated with each group of TPPU: (1) Each wastewater stream; (2) each wastewater operation; (3) each heat exchange system; (4) each process contact cooling tower used in the manufacture of PET that is associated with a new affected source; and (5) each process contact cooling tower used in the manufacture of PET using a continuous terephthalic acid high viscosity multiple end finisher process that is associated with an existing affected source.

With relatively few exceptions, the final standards for storage vessels, continuous process vents, equipment leaks, wastewater streams, and heat exchange systems are the same as those promulgated for the corresponding types of emission points at facilities subject to the HON. As shown in Tables 1 and 2, some subcategories have requirements that differ from the HON; these cases are designated by ''MACT Floor.'' These different requirements are specified in the final standards.

As in the HON, if an emission point within an affected source meets the applicability criteria and is required to be controlled under the standards, it is referred to as a Group 1 emission point. If an emission point within the affected source is not required to apply controls, it is referred to as a Group 2 emission point.

TABLE 1.— SUMMARY OF FINAL STANDARDS FOR EXISTING AFFECTED SOURCES IN RELATIONSHIP TO THE HON, THE POLYMER MANUFACTURING NSPS, AND THE BATCH PROCESSES ACT

Subcategory	Type of emission point				
	Storage vessels	Process vents	Equipment leaks	Wastewater	Heat exchange systems
ABS, continuous emulsion.	HON	HON	HON	HON	HON.
ABS, continuous mass	HON	Continous process vents: HON batch process vents: 90 percent reduction or complaint flare.	HON	HON	HON.
ABS, batch emulsion	HON	Continuous process vents: HON batch process vents: 90 percent reduction or compliant flare.	HON	HON	HON.
ABS, batch suspension	HON	Continuous process vents: HON batch process vents: 90 percent reduction or compliant flare.	HON	HON	HON.
ABS, latex	HON	Continuous process vents: HON batch process vents: 90 percent reduction or compliant flare.	HON	HON	HON.

TABLE 1.— SUMMARY OF FINAL STANDARDS FOR EXISTING AFFECTED SOURCES IN RELATIONSHIP TO THE HON, THE POLYMER MANUFACTURING NSPS, AND THE BATCH PROCESSES ACT—Continued

Subcategory	Type of emission point				
	Storage vessels	Process vents	Equipment leaks	Wastewater	Heat exchange systems
MABS	HON	Continuous process vents: HON batch process vents: 90 percent reduction or compliant flare.	HON	HON	HON.
MBS	HON	Continuous process vents: MACT floor batch process vents: 90 percent reduction or compliant flare.	HON	HON	HON.
SAN, continuous	HON	Continuous process vents: HON batch process vents: 90 percent reduction or compliant flare.	HON	HON	HON.
SAN, batch	HON	Continuous process vents: HON batch process vents: 90 percent reduction or compliant flare.	HON	HON	HON.
ASA/AMSAN	MACT floor	MACT floor	HON	No control	HON.
Polystyrene, continuous	MACT floor	Continuous process vents from material recovery sections: same as polymer manufacturing NSPS other continuous process vents: HON batch process vents: 90 percent reduction or compliant flare.	HON	HON	HON.
Polystyrene, batch	HON	Continuous process vents: HON batch process vents: 90 percent reduction or compliant flare.	HON	HON	HON.
Expandable polystyrene	HON	Continuous process vents: HON batch process vents: 90 percent reduction or compliant flare.	HON	HON	HON.
PET–TPA, continuous	HON	Continuous process vents from raw material preparation and polymerization reaction sections: same as polymer manufacturing NSPS other continuous process vents: HON batch process vents: 90 percent reduction or compliant flare.	HON	HON	HON.
PET–TPA continuous high viscosity multiple end finisher.	HON	Continuous process vents from raw material preparation and polymerization reaction sections: same as polymer manufacturing NSPS other continuous process vents: HON batch process vents: 90 percent reduction or compliant flare.	No control	HON	HON.
PET–TPA, batch–DMT, batch.	HON	Continuous process vents: HON batch process vents: 90 percent reduction or compliant flare.	HON	HON	HON.
PET–DMT, continuous	HON	Continuous process vents from material recovery and polymerization reaction sections: same as polymer manufacturing NSPS other continuous process vents: HON batch process vents: 90 percent reduction or compliant flare.	HON	HON	HON.
Nitrile	MACT floor	Continuous process vents: HON batch process vents: 90 percent reduction or compliant flare.	HON	HON	HON.

ASA/AMSAN = acrylonitrile styrene acrylate resin/alpha methyl styrene acrylonitrile resin.
TPA = terephthalic acid.
DMT = dimethyl terephthalate.

TABLE. 2.—SUMMARY OF FINAL STANDARDS FOR NEW AFFECTED SOURCES IN RELATIONSHIP TO THE HON, THE POLYMER MANUFACTURING NSPS, AND THE BATCH PROCESSES ACT

Subcategory	Type of emission point					
	Storage vessels	Process vents	Equipment leaks	Wastewater	Heat exchange systems	Process contact cooling towers
ABS, continuous emulsion	HON	Continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	NA.
ABS, continuous mass	Regulatory alternative 2 [1].	Continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	NA.
ABS, batch emulsion	HON	Continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	NA.
ABS, batch suspension	HON	Continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	NA.

TABLE. 2.—SUMMARY OF FINAL STANDARDS FOR NEW AFFECTED SOURCES IN RELATIONSHIP TO THE HON, THE POLYMER MANUFACTURING NSPS, AND THE BATCH PROCESSES ACT—Continued

Subcategory	Type of emission point					
	Storage vessels	Process vents	Equipment leaks	Wastewater	Heat exchange systems	Process contact cooling towers
ABS, Latex	HON	Continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	NA.
MABS	HON	Continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	NA.
MBS	HON	Continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	NA.
SAN, continuous	MACT floor.	Continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	NA.
SAN, batch	HON	MACT floor	HON	No control	HON	NA.
ASA/AMSAN	MACT floor.	MACT floor	HON	No control	HON	NA.
Polystyrene, continuous	MACT floor.	Continuous process vents from material recovery sections: same as polymer manufacturing NSPS, other continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	NA.
Polystyrene, batch	HON	Continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	NA.
Expandable polystyrene	HON	Continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	NA.
PET–TPA, continuous	HON	Continuous process vents from raw material preparation and polymerization reaction sections: same as Polymer Manufacturing NSPS other continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	No contact condenser effluent associated with a vacuum system shall go to a process contact cooling tower.
PET–TPA, continuous multiple end finisher.	HON	Continuous process vents from raw material preparation and polymerization reaction sections: same as Polymer Manufacturing NSPS other continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	No control	HON	HON	No contact condenser effluent associated with a vacuum system shall go to a process contact cooling tower.
PET–TPA, batch –DMT, batch	HON	Continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	No contact condenser effluent associated with a vacuum system shall go to a process contact cooling tower.

TABLE. 2.—SUMMARY OF FINAL STANDARDS FOR NEW AFFECTED SOURCES IN RELATIONSHIP TO THE HON, THE POLYMER MANUFACTURING NSPS, AND THE BATCH PROCESSES ACT—Continued

Subcategory	Type of emission point					
	Storage vessels	Process vents	Equipment leaks	Wastewater	Heat exchange systems	Process contact cooling towers
PET–DMT, continuous	HON	Continuous process vents from material recovery and polymerization reaction sections: same as polymer manufacturing NSPS other continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	No contact condenser effluent associated with a vacuum system shall go to a process contact cooling tower.
Nitrile	MACT floor.	Continuous process vents: HON batch process vents: 90 percent reduction or a compliant flare.	HON	HON	HON	NA.

[1] The final standard is stringent than the MACT floor, which is more stringent than the HON.
NA = Not applicable, not part of affected source.
ASA/AMSAN = acrylonitrile styrene acrylate resin/alpha methyl styrene acrylonitrile resin.
TPA = terephthalic acid.
DMT = dimethyl terephthalate.

A. Storage Vessel Provisions

The standards require owners and operators to first determine whether or not a storage vessel is required to be controlled. For those storage vessels determined to require control, the standards specify the appropriate level of control.

For most existing and new storage vessels, the criteria for determining which storage vessels must be controlled are identical to the criteria in the HON storage vessel provisions and are based on storage vessel capacity and vapor pressure of the stored material. Typically, applicability criteria are different for existing and new affected sources.

For most storage vessels, the level of control required is either technical modification to the tank (e.g., the installation of an internal floating roof) or the use of a closed vent system and control device that is generally required to achieve at least 95 percent emission reduction.

Note: This is the same level of control as required under the HON.

As shown in Tables 1 and 2, some subcategories also have requirements that differ from the HON. These requirements are specified in the final standards. For those subcategories not applying the HON level of control, the level of control varies depending on the subcategory. For example, the standards may require 90 or 98 percent emission reduction, as opposed to the 95 percent emission reduction required by the HON. Finally, to simplify the final rule, some chemicals with extremely low vapor pressure (e.g., ethylene glycol) have been exempted from the storage vessel provisions.

B. Process Vent Provisions

Similar to the standards for storage vessels, the standards for process vents require owners and operators to first determine whether or not a process vent, or set of process vents, requires control and, if so, then specifies the level of control required. The standards regulate both continuous and batch process vents.

Except for certain PET and polystyrene continuous process vents, the group status of a continuous process vent is determined by comparing the total resource effectiveness (TRE) value for each continuous process vent to a TRE value. The TRE value is a reflection of the cost effectiveness of controlling an individual continuous process vent. There are different TRE coefficients for continuous process vents depending on whether the affected source is new or existing. The TRE equations for new and existing continuous process vents differ because the standards for new affected sources are more stringent than the standards for existing affected sources. With one exception, continuous process vents with TRE values of 1.0 or less are Group 1 continuous process vents. For continuous process vents at existing MBS facilities, the TRE value for each continuous process vent is compared to a TRE value of 3.7. The proposed and final standards refer to the procedures in the HON for determination of the TRE value.

For continuous process vents associated with the material recovery section from *existing* PET affected sources using a continuous dimethyl terephthalate (DMT) process, the set of continuous process vents are designated as Group 1 continuous process vents if the combined uncontrolled emission rate is greater than the threshold emission rate. For other sets of continuous process vents associated with the raw material preparation section or polymerization reaction section at existing and new polystyrene and PET facilities, there are no applicability criteria. These sets of continuous process vents are considered to be Group 1 and must meet the specified emission limits. Continuous process vents associated with the material recovery section at *new* PET affected sources using a continuous DMT process are also designated as Group 1 and must meet the specified emission limits.

The group determination procedure for batch process vents differs from the procedure used for continuous process vents. First, the estimated annual emissions for an individual batch process vent are entered into the flow rate regression equation and a calculated flow rate is determined. Second, the actual flow rate for the batch process vent is compared to the calculated flow rate. If the actual flow rate is less than the calculated flow rate, then the batch process vent is designated as Group 1 and control is required. The batch process vent group determination procedure is the same for existing and new batch process vents.

There are exceptions to the procedures described above. For new SAN affected sources using a batch process, the standards require an overall emission reduction of 84 percent from all process vents (i.e., continuous and batch process vents), and a group determination is not required. For new and existing acrylonitrile styrene acrylate resin/alpha methyl styrene acrylonitrile resin (ASA/AMSAN) affected sources, the standards require that emissions from all process vents (i.e., continuous and batch process vents) be controlled by 98 percent, and a group determination is not required.

Another exception concerns a batch process vent that is combined with a continuous process vent prior to a control or recovery device. Said batch process vent is not required to comply with the batch process vent provisions if there are no emissions to the atmosphere up until the point the batch process vent is combined with the continuous process vent. The combined vent stream would be required to comply with the continuous process vent provisions. The presence of a batch process vent in a continuous process vent emission stream would necessitate that all applicability tests and performance tests be conducted while the batch process vent is emitting (i.e., maximum operating conditions for the combined vent stream).

The level of control required for most continuous process vents is the same as the level of control required by the HON: 98 percent emission reduction or an organic HAP concentration limit of 20 ppmv. If a flare is used, it must meet the design and operating requirements of § 63.11(b) of subpart A of 40 CFR part 63. Exceptions to this level of control are described in the following paragraphs.

For continuous process vents associated with material recovery sections at polystyrene affected sources using a continuous process, raw material preparation sections and polymerization reaction sections at PET affected sources using a continuous terephthalic acid (TPA) process, and material recovery sections and polymerization reaction sections at PET affected sources using a continuous DMT process, the standards require continuous process vents associated with these process sections to meet emission limits expressed as kilogram organic HAP per megagram of product. Depending on the process section, the standards provide several compliance options including limiting the outlet gas temperature from each final condenser or reducing emissions from each process section by 98 weight percent or to an organic HAP concentration limit of 20 ppmv. These are the same control requirements as specified in the Polymer Manufacturing NSPS, which serve as the basis for these specific provisions.

For batch process vents, the standards require Group 1 batch process vents to achieve emission reductions of 90 percent or greater for the batch cycle.

There are three subcategories where the standards are based on the MACT floor. These subcategories are existing MBS affected sources, existing and new ASA/AMSAN affected sources, and new SAN affected sources using a batch process. As described earlier, the applicability criteria and level of control differ from the HON for all three subcategories.

For existing MBS affected sources, the standards require continuous process vents at affected sources to either: (1) meet an emission limit of 0.000590 kilogram of emissions per megagram of product for all continuous process vents associated with the affected source; or (2) control emissions from continuous process vents with a TRE of 3.7 or less by 98 percent. The development of the MACT floor level of control and applicability criteria for MBS existing affected sources is documented in Docket Item II–B–21 of A–92–45 and in the Supplementary Information Document (SID) for Proposed Standards [EPA–453/R–95–003a; March 1995].

For both existing and new ASA/AMSAN affected sources, the standards require all continuous and batch process vents to achieve emission reductions of 98 percent.

For new SAN affected sources using a batch process, the standards require an overall emission reduction of 84 percent for all process vent emissions.

C. Heat Exchange Provisions

The standards apply to each heat exchange system that is associated with the affected source. The standards require a monitoring program to detect leakage of organic HAP from the process into the cooling water. The standards refer to the monitoring program in the HON.

D. Process Contact Cooling Tower Provisions

The standards require that owners or operators of new affected sources manufacturing PET not send contact condenser effluent associated with a vacuum system to a process contact cooling tower. For existing PET affected sources using a continuous TPA high viscosity multiple end finisher process, the owner or operator is required to keep the concentration of ethylene glycol in the process contact cooling tower water to 4 percent or less by weight provided the TPPU is or has become subject to 40 CFR part 60, subpart DDD. Process contact cooling towers at existing PET affected sources using other processes (e.g., DMT process) are not regulated.

Note: The standards treat the contact condenser effluent at existing affected sources as wastewater.

E. Wastewater Provisions

Except for ASA/AMSAN affected sources, the standards require owners and operators to comply with the wastewater provisions in the HON. Owners and operators are required to make a group determination for each wastewater stream based on the applicability criteria in the HON: flow rate and organic HAP concentration. The level of control required for Group 1 wastewater streams is dependent upon the organic HAP constituents in the wastewater stream. The standards do not require control of wastewater emissions from existing or new ASA/AMSAN affected sources.

The standards also require owners and operators to comply with the maintenance wastewater requirements in § 63.105 of subpart F of this part. These provisions require owners and operators to include a description of procedures for managing wastewaters generated during maintenance in their start-up, shutdown, and malfunction plan.

F. Equipment Leak Provisions

Except for one subcategory, both existing and new affected sources are required to comply with the equipment leak standards specified in subpart H of 40 CFR part 63. For PET affected sources using a continuous TPA high viscosity multiple end finisher process, the final rule does not require an equipment leak program. The final rule also exempts from the equipment leak standards any PET TPPU in which all of the components are either in vacuum service or in heavy liquid service.

In general, subpart H requires owners and operators to implement a leak detection and repair (LDAR) program, including various work practice and equipment standards. The subpart H standards are applicable to equipment in volatile HAP service for 300 or more hours per year (hr/yr). The standards define ''in volatile HAP service'' as being in contact with or containing process fluid that contains a total of 5 percent or more total HAP. Equipment subject to the standards are: valves, pumps, compressors, connectors, pressure relief devices, open-ended

valves or lines, sampling connection systems, instrumentation systems, agitators, and closed-vent systems and control devices.

A few differences to the subpart H standards are contained in the final rule. These differences include: exempting indications of liquids dripping from bleed ports on pumps and agitators at facilities producing polystyrene resins from the definition of a leak; not requiring the submittal of an Initial Notification; and allowing 150 days, rather than 90 days, to submit the Notification of Compliance Status. In addition, PET facilities are not required to provide a list of identification numbers for components in heavy liquid service, pressure relief devices in liquid service, and instrumentation systems. The final rule also clarifies that for these components the presence of a leak is to be determined exclusively through the use of visual, audible, olfactory, or any other detection methods, but that Method 21 is not to be used. Finally, bottoms receivers and surge control vessels are not regulated under the equipment leak provisions, but instead are regulated as storage vessels.

Affected sources subject to this rule currently complying with the NESHAP for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks [40 CFR part 63, subpart I] or with the equipment leak provisions in § 60.562–2 of 40 CFR part 60, subpart DDD, are required to continue to comply with subpart I or subpart DDD, as applicable, until the compliance date of the final rule, at which point in time they must comply with this rule and are no longer subject to subpart I and subpart DDD. Further, affected sources complying with subpart I through a quality improvement program are allowed to continue these programs without interruption as part of complying with this rule. In other words, becoming subject to this rule does not restart or reset the ''compliance clock'' as it relates to reduced burden earned through a quality improvement program.

G. Emissions Averaging Provisions

The EPA is allowing emissions averaging among continuous process vents, batch process vents, aggregate batch vent streams, storage vessels, and wastewater streams, within an existing affected source. New affected sources are not allowed to use emissions averaging. Emissions averaging is not allowed between subcategories; it is only allowed between emission points within the same affected source. Under emissions averaging, a system of ''credits'' and ''debits'' is used to determine whether an affected source is achieving the required emission reductions. Twenty emission points per plant site are allowed in the emissions averaging plan submitted for the plant site, with an additional 5 emission points allowed if pollution prevention measures are used.

H. Compliance and Performance Test Provisions and Monitoring Requirements

Compliance and performance test provisions and monitoring requirements contained in the standards are very similar to those found in the HON. Each type of emission point included in the standards is discussed briefly in the following paragraphs. Significant differences from the continuous parameter monitoring requirements found in the HON are discussed in Section 8.

1. Storage Vessels

Monitoring and compliance provisions for storage vessel improvements include periodic visual inspections of vessels, roof seals, and fittings, as well as internal inspections. If a control device is used, the owner or operator must identify the appropriate monitoring procedures to be followed in order to demonstrate compliance. Monitoring parameters and procedures for many of the control devices likely to be used are identified in the standards. Reports and records of inspections, repairs, and other information necessary to determine compliance are also required by the standards.

2. Continuous Process Vents

The standards for continuous process vents require the owner or operator to either calculate a TRE index value to determine the group status of each continuous process vent or to comply with the control requirements. The TRE index value is determined after the last recovery device in the process or prior to venting to the atmosphere. The TRE calculation involves an emissions test or engineering assessment and use of the TRE equations specified in the standards.

Performance test provisions are included for Group 1 continuous process vents to verify that control or recovery devices achieve the required performance. Monitoring provisions necessary to demonstrate compliance are also included in the standards.

Compliance provisions for continuous process vents at polystyrene and PET affected sources are included in the standards. For owners or operators electing to comply with a kilogram organic HAP per megagram of product emission limit, procedures to demonstrate compliance are provided.

3. Batch Process Vents

Similar to the provisions for continuous process vents, there is a procedure for determining the group status of batch process vents. This procedure is based on annual emissions and annual average flow rate of the batch process vent. Equations for estimating and procedures for measuring annual emissions and annual average flow rates are provided in the standards. The use of engineering assessment is also allowed under certain circumstances.

Performance test provisions are included for Group 1 batch process vents to verify that control devices achieve the required performance. Monitoring provisions necessary to demonstrate compliance are also included in the standard.

For Group 2 batch process vents, the standard requires owners and operators to establish a batch cycle limitation. The batch cycle limitation restricts the number and type of batch cycles that can be accomplished per year. This enforceable limitation ensures that a Group 2 batch process vent does not become a Group 1 batch process vent as a result of running more batch cycles than anticipated when the group determination was made. The determination of the batch cycle limitation is not tied to any previous production amounts. As affected source may set the batch cycle limitation at any level it desires as long as the batch process vent remains a Group 2 batch process vent. Alternatively, an owner or operator may declare any Group 2 batch process vent to be a Group 1 batch process vent. In such cases, control of the batch process vent is required.

Procedures are included in the standards to demonstrate compliance with the requirement to reduce overall process vent emissions (i.e., continuous and batch process vents) by 84 percent for new SAN affected sources using a batch process.

4. Heat Exchange Systems

Monitoring of cooling water is required to detect leaks in heat exchange systems. If a leak is detected, the heat exchange system must be repaired.

5. Process Contact Cooling Towers

Owners and operators of new affected sources manufacturing PET are prohibited from sending contact condenser effluent associated with a vacuum system to a process contact

cooling tower. Owners and operators of existing PET affected sources using a TPA continuous high viscosity multiple end finisher process are required to monitor ethylene glycol concentration in the cooling tower water and to ensure that the levels do not exceed 4 percent by weight. Procedures for sampling cooling tower water and measuring the ethylene glycol concentration are included in the standards.

6. Wastewater

For demonstrating compliance with the various requirements, the standards allow the owners or operators to either conduct performance tests or to document compliance using engineering calculations. Appropriate compliance and monitoring provisions are included in the standards.

7. Equipment Leaks

Except for certain components at PET affected sources, the final rule retains the use of Method 21 to detect leaks. Method 21 requires a portable organic vapor analyzer to monitor for leaks from equipment in use. A ''leak'' is a concentration specified in the regulation for the type of equipment being monitored and is based on the instrument response to methane (i.e., the calibration gas) in air. The rule allows the use of engineering assessment to determine that equipment is not in organic HAP service. If there is disagreement between an owner or operator and the Administrator, the rule specifies that Method 18 or Method 25A be used to determine the organic HAP or total organic compounds (TOC) content of a process stream. To test for leaks in a batch system, test procedures using either a gas or a liquid for pressure testing the batch system are specified.

8. Continuous Parameter Monitoring

The final standards require owners or operators to establish parameter monitoring levels. The standards provide the owner or operator the flexibility to establish the levels based on site-specific information. Site-specific levels can best accommodate variation in emission point characteristics and control device designs. Three procedures for establishing these levels are provided in the final standards. They are based on performance tests; performance tests, engineering assessments, and/or manufacturer's recommendations; and engineering assessments and/or manufacturer's recommendations. While the establishment of a level based solely on performance tests is preapproved by the Administrator, values determined using the last two procedures, which may or may not use the results of performance tests, must be approved by the Administrator for each individual case.

The final standards require the availability of at least 75 percent of monitoring data to constitute a valid days worth of data for continuous and batch process vents. Failure to have a valid day's worth of monitoring data is considered an excursion. The criteria for determining a valid day's or hour's worth of data are provided in the standards.

A certain number of excused excursions have been allowed in the final standards; these provisions are the same as the provisions in the HON. The standards allow a maximum of 6 excused excursions for the first semiannual reporting period, decreasing by 1 excursion each semiannual reporting period. Starting with the sixth semiannual reporting period (i.e., the end of the third year of compliance) and thereafter, one excused excursion is allowed each semiannual reporting period. As is always the case, a State has the discretion to impose more stringent requirements than the requirements of NESHAP and other federal requirements and could choose not to allow the excused excursion provisions contained in these standards.

I. Recordkeeping and Reporting Provisions

The standards require owners or operators of affected sources to maintain required records and reports for a period of at least 5 years. The final standards require that the following reports be submitted, as applicable: (1) Precompliance Report, (2) Emissions Averaging Plan, (3) Notification of Compliance Status, (4) Periodic Reports, and (5) other reports (e.g., notifications of storage vessel internal inspections).

Specific recordkeeping and reporting requirements are specified in each section that addresses an individual emission point (e.g., 63.1321 for batch process vents). The recordkeeping and reporting provisions related to the affected source as a whole (e.g., Notification of Compliance Status) are found in § 63.1335. Requirements found in an individual emission point section and the requirements in § 63.1335 are complementary. For example, § 63.1326 requires an owner or operator to record the batch cycle limitation for each Group 2 batch process vent. § 63.1327 goes on to require the owner or operator to submit this information in the Notification of Compliance Status, as specified in § 63.1335. Finally, § 63.1335 requires submittal of the information specified in § 63.1327.

IV. Summary of Impacts

This section presents impacts resulting from the control of organic HAP emissions under these standards. Because many organic HAP are also VOC, a reduction in VOC emissions will also result from controls imposed by the standards. The standards are estimated to reduce organic HAP emissions from all existing affected sources by 3,520 Mg/yr from a baseline level of 18,120 Mg/yr. For new affected sources, the standards are estimated to reduce organic HAP emissions by 6,870 Mg/yr from a baseline level of 11,610 Mg/yr. At baseline, the EPA found that many affected sources already had some controls in place. These standards generally achieve an emission reduction by meeting the MACT floor level of control. [Note: Costs and other impacts are not considered when the selected standard is based on the MACT floor.] In some cases, these standards achieve additional emission reduction, beyond the floor, that was determined to be cost effective.

Under the final standards, energy use is expected to increase by approximately 29,800 barrels of oil per year for existing affected sources and 43,600 barrels of oil per year for new affected sources. The emissions of secondary air pollutants associated with this energy increase are 70 Mg/yr for existing affected sources and 80 Mg/yr for new affected sources. At the same time, energy credits attributable to the prevention of organic HAP emissions from equipment leaks are approximately 7,000 barrels of oil per year for existing affected sources and 3,800 barrels of oil per year for new affected sources. This results in a net increase in energy usage equivalent to approximately 22,500 barrels of oil per year for existing affected sources and 39,700 barrels of oil per year for new affected sources.

These figures are related to the control of process vents, wastewater operations, and equipment leaks. Energy impacts related to storage vessels were not estimated because many storage vessels would be controlled through the use of internal floating roofs which do not have any associated energy impacts. Data are not available for the EPA to estimate energy impacts for the elimination of emissions from process contact cooling towers for new PET affected sources or the control of ethylene glycol concentration in the process contact cooling tower water for existing PET affected sources using a continuous TPA high viscosity multiple end finisher process.

Cost impacts include the capital costs of new control equipment, the cost of energy (i.e., supplemental fuel, steam, and electricity) required to operate control equipment, operation and maintenance costs, and the cost savings generated by reducing the loss of valuable product in the form of emissions. Also, cost impacts include the costs of monitoring, recordkeeping, and reporting associated with the standards.

Under the standards, it is estimated that total capital costs for existing affected sources would be $10.7 million (1989 dollars), and total annual costs would be $3.3 million (1989 dollars) per year. Total capital costs for new affected sources would be $6.5 million (1989 dollars), and total annual costs would generate a savings of $5.2 million (1989 dollars) per year. It is expected that the actual compliance cost impacts of the standard would be less than presented because of the potential to use common control devices, upgrade existing control devices, use other less expensive control technologies, implement pollution prevention technologies, or use emissions averaging. Because the effect of such practices is highly site-specific and data were unavailable to estimate how often the lower cost compliance practices would be utilized, it is not possible to quantify the amount by which actual compliance costs would be reduced.

The economic impact analysis for the selected regulatory alternatives at proposal showed that the estimated price increases for the affected chemicals ranged from 0.1 percent for nitrile to 2.8 percent for SAN. Estimated decreases in output ranged from 0.1 percent for polystyrene to 4.6 percent for SAN. Net annual exports (i.e., exports minus imports) were predicted to decrease by an average of 2.5 percent. These impacts were judged, at proposal, to be acceptable. Because estimated costs of the final standards have decreased, the economic impacts determined at proposal will decrease as well. Therefore, the EPA finds the economic impacts associated with the final standards are less than at proposal and are judged to be acceptable.

V. Significant Comments and Changes to the Proposed Standards

In response to comments received on the proposed standards, changes have been made to the final standards. While several of these changes are clarifications designed to make the EPA's intent clearer, a number of them are significant changes to the requirements of the proposed standards. A summary of the substantive comments and/or changes made since the proposal are described in the following sections. The rationale for these changes and detailed responses to public comments are included in the Basis and Purpose Document for the Final Standards [EPA–453/R–96–001b; May 1996]. Additional information on the final standards is contained in the docket for this rulemaking (see **ADDRESSES** section of this preamble).

A. Applicability Provisions and Definitions

1. Designation of Affected Source and the Definition of TPPU

Commenters expressed confusion about the definitions of ''affected source'' and ''TPPU'' in the proposed standards. The EPA reviewed both definitions and agreed that they needed clarification. In response, the EPA has revised the language describing ''affected source'' and ''TPPU'' for the final standards.

The definition of ''affected source'' included in § 63.502 of the proposed standards was revised and the definition now references § 63.1310(a) of the final rule, and § 63.1310(a) describes the affected source. The provisions in § 63.1310(a), which at proposal were in § 63.500(a) and defined applicability in terms of the existence of one or more TPPUs, have been revised to define applicability in terms of the affected source. As part of this revision, the provisions in proposed § 63.500(b), which described the affected source, were removed. [Note: In the proposed standards, the definition of TPPU attempted to describe all the equipment and operations that would be included in an affected source. In the final standards, the description of what the affected source includes is contained in § 63.1310(a).]

As discussed in section II, an existing affected source is defined as each group of one or more TPPUs that manufacture the same thermoplastic product as their primary product, and (1) are located at a major source plant site, (2) are not exempt, and (3) are not part of a new affected source. A new affected source can be a single TPPU located at major source plant site or a group of TPPUs that manufacture the same thermoplastic product as their primary product at a major source plant site. The situations when a new affected source are created are discussed under A.3 of this section.

The affected source also includes the following emission points and equipment that are associated with each group of TPPU: (1) each wastewater stream; (2) each wastewater operation; (3) each heat exchange system; (4) each process contact cooling tower used in the manufacture of PET that is associated with a new affected source; and (5) each process contact cooling tower used in the manufacture of PET using a continuous terephthalic acid high viscosity multiple end finisher process that is associated with an existing affected source.

For the final standards, the number of existing affected sources present at a plant site will equal the number of thermoplastic products manufactured at that plant site. A plant site manufacturing 3 different thermoplastic products has 3 existing affected sources.

Note: Each different thermoplastic product represents a different subcategory, and each subcategory comprises a separate existing affected source.

The number of existing affected sources at a plant site could range from 1 to 19.

The definition of TPPU was revised and now includes a list of the collection of equipment that comprises a TPPU. This equipment includes process vents from process vessels, storage vessels, and equipment subject to the equipment leaks provisions. Because wastewater streams, wastewater operations, heat exchange systems, and process contact cooling towers are equipment that are often used by more than one TPPU, these items are not included as part of the definition of TPPU. Instead, said items are included in the definition of affected source. Because the portion of each wastewater stream attributable to an individual TPPU can be determined, each wastewater stream can be associated with an affected source. On the other hand, wastewater operations may service wastewater streams associated with more than one affected source, just as heat exchange systems and PET process contact cooling towers could service multiple affected sources. Therefore, for wastewater operations, heat exchange systems, and PET process contact cooling towers, the final rule requires that said emission points and equipment are subject to all applicable requirements associated with each affected source that said emission points and equipment may service. In a simple example, a heat exchange system is associated with two affected sources that are both subject to the final rule. The owner or operator must comply with the provisions for heat exchange systems contained in the final rule. In a more complex example, a piece of wastewater operations equipment services wastewater streams from two affected sources subject to the final rule and from one source subject to the HON.

This piece of wastewater operations equipment must comply with both the final rule and the HON.

2. Definition of Organic HAP

Numerous commenters recommended that the EPA restrict the list of organic HAP in the final standards to those that are used or are present in significant quantities at TPPUs or those that are listed in the HON, subpart F. Table 2. The EPA agreed with the commenters suggestion that a table providing a listing of the specific organic HAP expected to be regulated for each subcategory covered by the standards should be added to the final standards. Therefore, the definition of organic HAP was revised to specify those organic HAP that are known to be used or present in significant quantities for each subcategory, thereby restricting the organic HAP regulated by the final standards. This list is provided in Table 2 of the final standards.

The revised definition of organic HAP was developed using available process description information received from industry and gathered from available literature. Because there may be additional organic HAP present at an affected source, the final standards require owners or operators to identify the presence of any additional organic HAP based on the following criteria: (1) the organic HAP is knowingly introduced into the manufacturing process other than as an impurity, or has been or will be reported under any Federal or State program, such as Title V or the Emergency Planning and Community Right-To-Know Act (EPCRA) Section 311, 312, or 313; and (2) the organic HAP is listed in Table 2 of subpart F.

3. Determining New Source Status

The EPA received comments regarding the procedure for determining if new or existing source requirements would apply to a particular TPPU. In response to those comments, the EPA has revised the provisions in the final standards.

Under the final standards, new affected sources are created under each of the following four situations: (1) if a plant site with an existing affected source producing a thermoplastic product as its primary product constructs a new TPPU also producing the same thermoplastic product as its primary product, the new TPPU is a new affected source if the new TPPU has the potential to emit more than 10 tons per year of a single HAP or 25 tons per year of all HAP; (2) when a TPPU is constructed at a major source plant site where the thermoplastic product was not previously produced as the primary product of an existing affected source; (3) if a new TPPU is constructed at a new plant site (i.e., green field site) that will be a major source; and (4) when an existing affected source undergoes reconstruction, thus making the previously existing affected source subject to new source standards.

These revisions reflect the EPA's intent that new source requirements apply if the added TPPU has the potential to emit major quantities, as in the HON, or the added TPPU is a new affected source. The HON applied to only one source category, and it was not possible to add a process unit subject to the HON that was in a new source category. Therefore, the only differentiation to be made under the HON was between process units emitting major quantities of organic HAP and those not emitting major quantities of organic HAP. On the other hand, the thermoplastics standards apply to multiple source categories/subcategories, and it is possible to add a TPPU subject to the thermoplastics standards that is in a new source category/subcategory. For this reason, if a TPPU is added to an existing plant site and said TPPU manufactures a thermoplastic product as its primary product not previously produced at the plant site as the primary product of an existing affected source, that TPPU, regardless of emissions, is a new affected source at that plant site.

4. Solid State PET Processes

Commenters contended that all PET solid state polymerization units, including collocated units, should be exempted from regulation. They stated that PET solid state polymerization units are a vastly different technology than DMT and TPA processes and have different emission characteristics. The EPA has concluded that PET solid state processes are distinct from DMT or TPA processes. The EPA did not collect data on PET solid state processes, and it was not possible to conduct the required analyses for regulating PET solid state processes. Therefore, the final standards do not regulate these processes. However, these processes may be regulated in a future standard.

5. Flexible Operation Units

The flexible operation unit provisions included in the proposed standards, which were modelled after the HON, have been retained in the final standards. Under these provisions, an owner or operator of a process unit that is designed and operated as a flexible operation unit will commit to being subject to this rule or not being subject to this rule based on a five-year projection of products to be manufactured and production quantities.

These provisions were modified to provide clarification of the EPA's intent and flexibility in complying with the provisions. Under the final rule, once an owner or operator commits to being subject to this rule, there are two options for complying. Under the first option, an owner or operator shall determine the group status (i.e., Group 1 or Group 2) of each emission point based on the production of the expected primary product (i.e., the thermoplastic product that convinced the owner or operator to commit to being subject to this rule). Once the group status of each emission point is determined, the owner or operator shall comply with the applicable emission standards for the primary product at all times, regardless of what product is being manufactured. Under the second option, an owner or operator shall determine the group status of each emission point each time a different product is being manufactured, regardless of whether or not said product is a thermoplastic product. Then, for each Group 1 emission point, the owner or operator shall comply with the applicable standards for the primary product. The EPA recognizes that neither option is an ideal situation. Under the first option, an owner or operator may find themselves operating a control device to control a Group 1 emission point that has none to negligible emissions when a different product is being manufactured. Under the second option, an owner or operator may find themselves performing multiple group determinations. Again, the EPA recognizes that neither option is an ideal situation, but believes the tradeoff between these inconveniences and flipping in and out of separate MACT standards is worthwhile.

As part of demonstrating compliance with the rule, an owner or operator required to operate a control device must establish parameter monitoring levels and conduct monitoring. Under either compliance option discussed above an owner or operator must establish parameter monitoring levels to reflect the manufacture of different products. These provisions allow an owner or operator to demonstrate that the parameter monitoring levels established for the primary product are appropriate for the manufacture of other products. If this is not the case, the provisions require that unique parameter monitoring levels be established.

6. Coordination With Other Clean Air Act Requirements

At proposal, the EPA has proposed to amend subpart DDD of 40 CFR part 60 by removing all references to polystyrene and PET facilities. This action was being taken because the proposed thermoplastics standards would supersede the requirements in subpart DDD for polystyrene and PET affected sources after the compliance date of the thermoplastics standards. Commenters also suggested that subpart I of 40 CFR part 63 be amended by removing all references to MBS and MABS affected sources after the compliance date of the thermoplastics standards. Other commenters requested that the EPA further clarify that after the compliance date of the thermoplastics standards, affected sources will no longer be subject to certain NSPS.

The EPA clarified the relationship between the thermoplastics standards and existing applicable standards in § 63.1311 of the final rule. The final rule was revised to state that affected sources subject to both the thermoplastics standards and another subpart are to comply with the provisions of the thermoplastic standards only after the compliance date for the thermoplastic standards, for those standards listed in § 63.1311 (g) through (l) of the final rule. Further, after the compliance date for these standards, these affected sources will no longer be subject to the other subparts. The EPA determined that a clear understanding can be provided in these standards without making modifications to other subparts. Thus, the proposed amendments to subpart DDD were not made as part of the final rulemaking, nor were the suggested amendments made to subpart I. For subpart DDD, the language in the final rule is more specific than for the other subparts. Because subpart DDD regulates multiple emission points (i.e., process vents, equipment leaks, and process contact cooling towers), the EPA needed to consider if it was desired or necessary to continue requiring portions of subpart DDD to apply. In fact, it is necessary to leave the provisions for controlling the ethylene glycol concentration in process contact cooling towers for the PET TPA continuous high viscosity multiple end finisher subcategory intact. This is because the provisions in the thermoplastics rule for the degree of control required for emissions from process contact cooling towers for this subcategory depend on whether or not an existing affected source is subject or becomes subject to subpart DDD for this emission point.

B. Continuous Process Vent Provisions

1. Reorganization of the Standards To Distinguish Between Continuous Process Vents Subject to Provisions From the HON and Continuous Process Vents Subject to Provisions Adapted From the Polymer Manufacturing NSPS

To better distinguish between the various requirements for continuous process vents, the proposed standards were reorganized. In the final standards, separate sections of the rule apply to the following subcategories: those required to comply with subpart G of the HON and those producing PET or polystyrene using a continuous process. In the final standards, § 63.1315 references subpart G; § 63.1316 through § 63.1320 apply to select continuous process vents at affected sources producing polystyrene and PET using a continuous process. Further, because not all process vents at affected sources producing polystyrene and PET using a continuous process are subject to § 63.1316 through § 63.1320, the provisions of § 63.1316 designate which process vents are subject to § 63.1316 through § 63.1320, which are subject to § 63.1315 (i.e., the HON), and which are subject to § 63.1321 (i.e., the batch process vent provisions). This reorganization is one way the EPA changed the standards to reduce complexity and eliminate potential confusion.

2. Applicability of the Polymer Manufacturing NSPS Adapted Provisions to the Collection of Process Sections at an Affected Source

Commenters stated that the regulatory construction of the proposed standards implied that the process vent emission limits adapted from the Polymer Manufacturing NSPS [proposed § 63.505 (b) and (c)] apply to each collection of material recovery sections, raw material preparation sections, and polymerization sections, respectively, within an affected source and not to each individual process section (e.g., material recovery section), as under the Polymer Manufacturing NSPS.

At proposal, the EPA has intended for each individual process section to meet the emission limits in proposed § 63.505 (b) and (c), as applicable. However, since proposal, the EPA has determined that revising the proposed standards to allow each collection of process sections within an affected source to meet the applicable emission limit would simplify compliance while achieving the same emission reductions. Therefore, the final standards apply the emission limits adapted from the Polymer Manufacturing NSPS to each collection of material recovery sections, raw material preparation sections, or polymerization reaction sections, as appropriate, within an affected source.

3. Clarification of Compliance Demonstration Provisions for Final Condenser Temperature Limits

Commenters suggested modifying the provisions adapted from the Polymer Manufacturing NSPS that provide for a demonstration of compliance by limiting the final condenser outlet temperature. Commenters explained that the reporting provisions in the Polymer Manufacturing NSPS state that the temperature limit is only exceeded when the average condenser outlet temperature for a 3-hour period is more than 6 °C above (i.e., warmer) the average operating temperature established during the most recent performance test at which compliance was demonstrated. Commenters requested that the final standards incorporate those monitoring, test method, and recordkeeping and reporting requirements from the Polymer Manufacturing NSPS that provide this flexibility (i.e, the six degree window).

The EPA intended for the proposed standards to be equivalent to the Polymer Manufacturing NSPS in this regard and have revised the final standards to provide the desired flexibility (i.e., the six degree window). In addition, the EPA has disassociated the six degree window from the results of the performance test and has instead associated it with the applicable temperature limit in the standard. The final standards allow all owners or operators complying with the final condenser operating temperature limits to be 6 °C warmer than the applicable temperature limit for the 3-hour averages. The EPA considered that the proposed provisions did not achieve an even-handed implementation of the requirements because some affected sources would be allowed to have 3-hour averages at warmer temperatures than others because their performance test results indicated a temperature closer to the applicable temperature limit.

C. Batch Process Vent Provisions

1. Exemption of Certain Batch Process Vents

Commenters supported the use of cutoffs for the group status determination for batch process vents as found in proposed § 63.506–2(d). Specifically, commenters agreed that low annual organic HAP emissions and low flow rate cutoffs are suitable. Commenters explained that batch

processes are, by nature, suited to low volume production and the manufacture of specialty products, and as such, low flow, low emitting process vents are likely in batch operations.

These provisions were retained in the final rule with one exception. The EPA removed the requirement to determine the volatility class (i.e., low, medium, or high) for batch process vents. As a result, there is a single minimum emission level cutoff in the final provisions of § 63.1323(d). In addition, the EPA chose to add a minimum emission level of 225 kilograms per year (kg/yr) to the definition of batch process vent. This modification made the batch process vent more consistent with the continuous process vent provisions which have a minimum organic HAP concentration level as part of the definition of continuous process vent. An emission point with emissions equal to or less than 225 kg/yr is not considered a batch process vent. At proposal, the 225 kg/yr level was part of the batch process vent group determination procedures; Group 2 batch process vents with annual emissions less than 225 kg/yr were subject to reporting requirements related to process changes.

2. Revisions to Group Determination Procedures

Commenters suggested changing the group determination provisions to only utilize emissions data from a TPPU's primary product. In addition, it was requested that batch process vent group determinations be performed on an annual basis instead of for every process change. Commenters stated that the proposed group determination provisions were considerably more complex than the continuous process vent group determination provisions. Commenters felt that, not only did the batch process vent group determination provisions require an owner or operator to obtain emissions data for every product that it manufactured, but even the most minor process changes (i.e., lengthening cycle times, altering process temperatures and pressures, etc.) triggered the need for a new group determination to be performed. Given the inherent process variability associated with batch operations, commenters contended that it would be very difficult to perform a group determination. Furthermore, because batch units often need to implement sudden process changes in response to customer demands, the proposed provisions could potentially require repeating the group determination exercise several times in a single year. Commenters explained that such a situation would not only serve to complicate a batch unit's compliance status, but could also adversely impact its ability to remain competitive in the marketplace.

Four issues related to the group determination procedures were reviewed by the EPA: (1) a request to perform the group determination on the primary product, (2) a request to perform the group determination on an annual basis, (3) an objection that the group determination procedures require a new group determination to be made whenever minor process changes occur, and (4) an objection to the requirement to perform the group determination when a sudden process change is required.

The EPA has considered the request to perform the group determination on the primary product and agrees that this would provide acceptable results from an environmental perspective while simplifying the compliance requirements for and improving the enforceability of the batch process vent standards. The final rule contains provisions allowing the owner or operator of an affected source to perform the group determination for batch process vents based on annualized production of a single product. To ensure protection to the environment, the final rule specifies that the highest organic HAP emitting product must be used when determining the group status based on a single product.

In addressing the request that the group determination be required on an annual basis instead of for every process change, the EPA believes the proposed rule was clear on this point. The proposed rule required that emissions and average flow rate be determined on an annual basis and describe how to account for the production of different products throughout the year. In this way, the group determination is done on an annual basis and can account for expected changes in the product being produced. The final rule does not reflect any changes related to this specific issue.

The third issue raised was an objection to the requirement that a new group determination be performed whenever minor process changes occur (e.g., lengthening cycle times, altering process temperatures and pressures, etc.). The proposed rule addressed the issue of minor process changes as they affect Group 2 batch process vents. If a process change affecting a Group 2 batch process vent occurs, a group determination must be made. However, the group determination provisions state that ''changes that are within the range on which the original group determination was based'' are not considered process changes. This allows an owner or operator to perform the initial group determination considering the potential for minor process changes. The EPA believes that the proposed provisions were clear that minor process changes (i.e., variations in operating conditions) do not require that a new group determination be performed. Addressing this concern as it relates to Group 1 batch process vents, the proposed provisions do not require a redetermination of group status for Group 1 batch process vents under any circumstances. Therefore, if minor process changes were to occur, the owner or operator would not be required to perform another group determination. The final rule does not reflect any changes related to this specific issue.

The fourth issue raised was an objection to the requirement to perform a new group determination when a sudden process change is required. In light of the third issue raised, EPA interpreted ''sudden process change'' to potentially mean (1) that a new product is being made, (2) that the same product is being made in a fundamentally different way (e.g., with different raw materials), or (3) that the same mix of products is being made but in a different proportion. In the first two cases, the EPA desires and intends that a new group determination be made. In the third case, the owner or operator has the flexibility to consider this situation when performing the initial group determination. If this situation was not considered, then a new group determination would be required. The EPA feels that these types of process changes warrant a new group determination to ensure that the emission standards are being met. The final rule does not reflect any changes related to this specific issue.

3. Emissions Testing and Performance Testing

Commenters requested that more flexibility should be allowed in designing an emissions testing scheme for batch process vents. Commenters cited an example, provided as part of the proposed definition of batch emission episode, where the charging of a vessel and the heating of the same vessel are considered two distinct batch emission episodes. In this example, the definition of batch emission episode would necessitate that separate emissions measurements be made for the charging and the heating of the vessel. This would require that a large number of samples be taken to characterize processes that have

multiple, short duration process steps. Commenters felt that the flexibility to test the emissions from several steps as a single batch emission episode would reduce testing costs without jeopardizing the quality of the emissions data. It was suggested that three or more batch cycles could be tested to obtain a representative average emission rate for the batch cycle.

After consideration of this comment, the EPA chose to leave the provisions related to emissions testing of batch process vents unchanged as they relate to this specific comment. The EPA felt adequate data were not presented to warrant changing these provisions. However, the emissions testing provisions in § 63.1323(b) and § 63.1325(c) have been modified to provide flexibility and reduce the burden of testing, while continuing to ensure that results are satisfactory for applicability determinations and performance tests. The final provisions allow an owner or operator to test just a portion of the batch emission episode selected to be controlled when the owner or operator can demonstrate that emissions during the period to be tested represent emissions for the entire batch emission episode or are greater than the average emission rate for the batch emission episode.

4. Flow Rate Estimation Procedures

Commenters asserted that the equations and test methods for calculating annual average flow rate in the proposed rule were not warranted. Commenters felt that the volumetric flow rate testing methods and the requirement to measure flow every 15 minutes specified in proposed § 63.506–2(e) were overly burdensome and would not always provide representative measurements. It was suggested that average flow rates for a batch emission episode are better defined by calculations of displacement volumes with respect to the durations of the displacement episodes or by other more simplified methods.

The EPA agrees that there are more simplified and potentially more accurate techniques for estimating flow rate for batch process vents. The final rule contains provisions that allow engineering assessment, as well as testing, to be used for estimating flow rate.

5. Emissions Estimation Procedures

Commenters recommended removing the emissions estimation equations in proposed § 63.506–2(b) from the rule. Commenters recommended that measurements or engineering estimates be allowed in place of the equations. It was felt the emissions estimation equations would not allow the flexibility necessary to account for differences in process technologies and operating methods.

Commenters also supported the provisions that allowed owners or operators to use direct measurement or engineering assessment to estimate emissions in cases where the emissions estimation equations are inappropriate for a particular type of operation or where, speaking to direct measurement, a more refined estimate of emissions is necessary. However, commenters objected to the requirement to demonstrate that the emissions estimation equations and direct measurement methods are not appropriate before engineering assessment can be used.

In response to the first issue raised, the emissions estimation equations have been retained in the final rule. The EPA found noting in the public comments that would warrant removing these procedures.

In response to the second issue, the EPA believes the data required to use the emissions estimation equations should be obtainable with reasonable effort. Further, specific comments regarding the inaccuracy or inappropriateness of the equations were not made. Given this, the EPA favors a more consistent estimation technique which is provided by the use of the emissions estimation equations, and the final rule requires the owner or operator to demonstrate that the emissions estimation equations are inappropriate before the use of engineering assessment is allowed.

However, independent of the comments provided, the EPA has concluded that direct measurement of emissions may prove to be difficult and may or may not provide an increased assurance of accuracy over the use of engineering assessment. Therefore, if an owner or operator can demonstrate that the emissions estimation equations are not appropriate, the final provisions allow the use of either direct measurement or engineering assessment.

6. Other Changes Resulting From EPA Review

In addition to changes made to the proposed rule as a result of public comment, changes were made as a result of EPA independently reviewing the rule between proposal and promulgation. Because the batch process vent provisions included in the rule are among the EPA's first attempts to regulate batch process vents, the EPA felt an ongoing, independent review of these provisions after proposal was warranted. Changes resulting from this review are listed below:

(1) Allow applicability determinations and compliance demonstrations (i.e., performance tests) to be based on TOC or organic HAP. Allow the use of Method 25A to compliment the use of TOC as a potential basis for applicability determinations and compliance demonstrations.

(2) Allow the establishment of parameter monitoring levels to be based on performance tests or a combination of performance tests and engineering assessment (discussed in more depth in Section H, Monitoring). To accommodate this change, modifications to the batch process vent testing provisions were required.

(3) Add provisions specifying how the batch cycle limitation is to be determined.

(4) Change the reporting requirement for batch cycle limitation records from quarterly to annually.

These changes are discussed in the paragraphs below.

In the final rule, the EPA has allowed the use of TOC as the basis for applicability and compliance demonstrations (i.e., performance tests) as an alternative to organic HAP. The EPA has done this to provide flexibility to the regulated community and to reduce the overall burden of the rule. The EPA considered the impacts of allowing TOC to serve as a surrogate for organic HAP in applicability and compliance demonstrations and did not find any negative impacts. Further, allowing the use of Method 25A as a complement to the use of TOC as a surrogate to organic HAP reduces the burden of implementing the final rule with little to no adverse impact on the measurement of pollutants in the regulated batch process vents. To the best of the EPA's knowledge, the batch process vents regulated by this rule are predominantly organic HAP. Also, with one exception (i.e., ethylene glycol), the regulated organic HAP, which are listed in the definition of organic HAP found in the final rule, have response factors to Method 25A adequate to ensure satisfactory measurement of TOC in the batch process vents. For certain emission points where the EPA considered the presence of ethylene glycol and its corresponding poor response factor to call into question the results that would be obtained using Method 25A, the use of Method 25A is not allowed. For all other emission points, the EPA has allowed the use of TOC for applicability and compliance demonstrations as an alternative to organic HAP in the final rule.

In the final rule, the EPA allows the establishment of parameter monitoring levels to be based on either performance tests, as in the proposed rule, or a combination of performance tests, engineering assessment, and manufacturer's recommendations. This change affects all emission points which are required to establish parameter monitoring levels, including batch process vents. The rationale for this change is discussed in detail in Section H, monitoring, of this document. For batch process vents, this change in the procedures for establishing parameter monitoring levels necessitated changes to the performance test provisions. When an owner or operator chooses to establish parameter monitoring levels based exclusively on performance tests, the final rule directs that the performance test must include the entire batch emission episode selected to be controlled. As discussed earlier, an owner or operator may choose to control just a portion of a batch emission episode; in such a scenario, the performance test must include the entire portion of the batch emission episode selected to be controlled. Alternatively, when an owner or operator chooses to establish parameter monitoring levels based on a combination of performance tests, engineering assessment, and manufacturer's recommendations, the final rule allows an owner or operator to test either the entire batch emission episode, or portion thereof, selected to be controlled or to test only the entire batch emission episode, or portion thereof, selected to be controlled.

Note: The flexibility to test a period of the batch emission episode that is less than the entire batch emission episode, or portion thereof, selected to be controlled is discussed earlier in this section.

The final rule includes provisions specifying how the batch cycle limitation, required for Group 2 batch process vents, is to be established. The EPA felt that the proposed rule was ambiguous concerning the establishment of the batch cycle limitation and added these provisions to make the rule complete. The added provisions provide additional description of the purpose of the batch cycle limitation and describe what documentation is required as part of establishing the batch cycle limitation.

In the final rule, the EPA changed the requirement for reporting the number and type of batch cycles accomplished for a Group 2 batch process vent from quarterly to annually. The EPA felt that quarterly reporting was unwarranted given that the compliance requirement (i.e., the batch cycle limitation) was on an annual basis.

D. Wastewater Provisions

1. Steam Stripping Styrene-Containing Wastewater Streams

Numerous commenters claimed that the selection of steam stripping as the basis of the standards for the treatment of styrene-containing wastewater streams was inappropriate due to polymerization problems. The EPA acknowledges that steam stripping styrene-containing wastewaters may prove to be impractical in some cases due to issues raised by the commenters. However, steam stripping is not required by the standards. Both the proposed and final wastewater provisions provide several options for complying with the standards. If the owner or operator judges steam stripping to be impractical for their process, one of the other wastewater compliance options may be used. The EPA considers one of these compliance options, the use of enclosed sewers to a biological treatment operation unit, a favorable option because styrene is highly biodegradable. Further, because the organic HAP emitted from the subcategories regulated by this rule are highly biodegradable, the EPA has determined that it is not necessary to require affected sources to demonstrate that 95 percent of the mass of organic HAP listed in Table 9 of the HON are removed when using a biological treatment unit, as required by the HON. Therefore, the final thermoplastic rule does not require an owner or operator to make this demonstration.

2. Elimination of Regulations Pertaining to Wastewater From Polystyrene Affected Sources

In addition to considering the comments made concerning the impracticality of steam stripping styrene-containing wastewaters, the EPA evaluated the need to regulate wastewater from polystyrene affected sources. Because the water solubility of styrene is limited to approximately 300 ppm and styrene is the only known organic HAP emitted during the production of polystyrene, it is not possible for a wastewater stream that only contains styrene to meet the Group 1 applicability criteria (i.e., 1,000 ppm minimum concentration). Therefore, because, to the best of EPA's knowledge, there can be no Group 1 wastewater streams at a polystyrene affected source, the final standards do not regulate wastewater from this subcategory.

E. Process Contact Cooling Tower Provisions

1. Ethylene Glycol Jet Retrofit for PET Existing Affected Sources

Commenters disagreed with the EPA's position that ethylene glycol jets are the vacuum systems technology of choice for a retrofit application and with the EPA determination that ethylene glycol jets are cost effective. Commenters contended that the EPA had failed to consider numerous costs factors and design considerations.

Note: While the proposed standards did not require the use of ethylene glycol jets, they were the technology on which the prohibition of process contact cooling towers was based.

Based on the data available at proposal, the costs and emission reductions achievable through the use of ethylene glycol jets in retrofit situations were acceptable. The EPA knew that the proposed standards for ethylene glycol jets were based on limited data and limited knowledge obtained from one manufacturer of PET. The EPA took special effort to make this clear and to solicit comments on the installation and operation of ethylene glycol jets in the preamble to the proposed standards (see pages 16104 and 16107 of the preamble). Based on the comments provided, the EPA agrees that ethylene glycol jets are not a suitable retrofit technology for existing affected sources, either technically or economically, for meeting the provisions of the proposed standards that prohibit the use of process contact cooling towers. These comments are presented and discussed in detail in the Basis and Purpose Document for the Final Standards [EPA–453/R–96–001b; May 1996].

As explained in chapter 6.0 of the Basis and Purpose Document for the Final Standards [EPA–453/R–96–001b; May 1996], steam jet vacuum systems can be used to create a vacuum on the process vessels, contact condensers can be used to condense steam, and the contact condenser effluent can be recirculated to the process contact cooling tower. In the process contact cooling tower, stripping and drift may occur, resulting in organic HAP emissions to the atmosphere. Volatilization of organic HAP from the vacuum system may also occur. The following paragraphs describe some of the public comments on this issue and the EPA's responses.

Given that the EPA was convinced by the commenters' arguments that ethylene glycol jets are not a suitable retrofit technology for existing affected sources, the EPA considered alternate

options for controlling emissions from the vacuum system. Both volatile organic HAP (VOHAP) and ethylene glycol are emitted from the vacuum system, and the EPA chose to approach each of these emissions separately.

To address VOHAP emissions from the vacuum system at existing sources, the final standards treat the contact condenser effluent as wastewater and apply the same provisions to it as are applied to process wastewater. Contact condenser effluent is considered process wastewater based on the proposed wastewater provisions, and without any special provisions or specific mention, the wastewater provisions will apply. The EPA judged that treating the contact condenser effluent prior to any significant opportunity for volatilization protects the environment. Further, the HON wastewater provisions, which are the basis for the wastewater provisions in the proposed and final standards, have been judged to be environmentally effective and cost effective overall. Therefore, it the wasetwater provisions deem a wasterwater stream to be Group 2 (i.e., not requiring control), that means it is not cost effective to control any VOHAP that may be contained in that wastewater stream.

Addressing emissions from the process contact cooling tower was more complex.

Note: The HON did not specifically address process contact cooling towers because they are not used extensively in the synthetic organic chemical manufacturing industry (SOCMI).

Given that the emissions of VOHAP would be dealt with through the use of the wastewater provisions at existing affected sources, the key issue related to cooling towers became the emissions of ethylene glycol. Between proposal and promulgation, the EPA spent considerable effort gathering information on PET vacuum systems and their emissions. Much of this effort focused on emissions from the cooling towers, specifically emissions of ethylene glycol. In addition to gathering information on emissions, the EPA investigated control options aimed at reducing emissions of ethylene glycol from cooling towers. Possible control options, not considering ethylene glycol jets, included treating a slipstream of the cooling tower water to reduce the concentration of ethylene glycol or installing a large heat exchanger to isolate the cooling tower from the process. None of these control options were shown to be cost effective. All of the factors discussed above have led the EPA to conclude that, with one exception discussed below, specific provisions for controlling emissions from process contact cooling towers are not warranted for existing affected sources. Instead, the EPA is requiring that the wastewater provisions be applied to all vacuum system wastewater.

The one exception where it was found to be cost effective to control emissions from existing process contact cooling towers was for affected sources manufacturing PET using a continuous TPA high viscosity multiple end finisher process. Based on industry reported emissions, total ethylene glycol emissions for all PET subcategories are approximately 340 Mg/yr, and approximately 230 Mg/yr are being emitted from the single plant site that is part of this subcategory. This subcategory is required to keep the concentration of ethylene glycol in the process contact cooling tower water to 4 percent by weight or less.

As at proposal, the final standards require that owners or operators of new affected sources manufacturing PET not send contact condenser effluent associated with a vacuum system to a process contact cooling tower.

2. Vacuum System Wastewater

Many commenters objected to the proposed provision designating all contact condenser effluent as Group 1 wastewater streams. Commenters stated that the EPA had not provided adequate rationale explaining why the standards for contact condenser effluent were more stringent than the standards for other wastewater streams. Because the automatic designation of contact condenser effluent as Group 1 wastewater was done in an effort to make the use of noncontact condensers within steam-based vacuum systems equivalent to ethylene glycol jets, and that need no longer exists for existing affected sources, there is no longer a need or justification to designate all contact condenser effluent from existing PET affected sources as Group 1 wastewater. As a result, the EPA has changed the final standards to implement the group determination procedure (i.e., Group 1 or Group 2) for contact condenser effluent from existing PET affected sources.

On the other hand, the final standards continue to prohibit the use of process contact cooling towers for new PET affected sources.

Note: This requirement is equivalent to the MACT floor.

However, the provisions designating all contact condenser effluent streams from new PET affected sources as Group 1 wastewater have been dropped from the final standards. Like existing PET affected sources, the final standards implement the group determination procedure for contact condenser effluent from new PET affected sources. As described earlier, the purpose for designating all contact condenser effluent streams as Group 1 wastewater was to ensure equivalency between the use of ethylene glycol jets and the use of noncontact condensers. At the time of proposal, the EPA considered ethylene glycol jets to be pollution free because there was no wastewater stream produced. The automatic designation of all contact condenser effluent as Group 1 wastewater was meant to address the absence of wastewater when ethylene glycol jet systems are used. Since proposal, the EPA has come to understand that the use of ethylene glycol jets does not eliminate emissions because the additional loading to the glycol recovery unit can create additional emissions from process vents or wastewater streams or both.

Realizing that ethylene glycol jets are not pollution free, the EPA considered the additional emissions at the glycol recovery unit when ethylene glycol jets are used and the emissions from the contact condenser effluent when noncontact condensers are used.

Note: The use of ethylene glycol jets would still achieve more control than using steam jets and subjecting the contact condenser effluent to the wastewater provisions.

In either case, an equivalent quantity of VOHAP is introduced to the vacuum system from the process. Process vents and wastewater streams at the glycol recovery unit are subject to the appropriate provisions of the standards. For example, a wastewater stream at the glycol recovery unit would be subject to a group determination and, based on the results, would be controlled if required. The EPA judged that to require the same action for the contact condenser effluent from noncontact condensers would ensure equivalency between a new affected source using ethylene glycol jets and one using noncontact condensers.

F. Equipment Leak Provisions

1. Polystyrene

A number of commenters stated that the EPA had overestimated the emissions from equipment leaks at polystyrene affected sources in general and, in particular, from components containing styrene as the organic HAP. The commenters claimed that the use of the average SOCMI emission factors to estimate emissions was inappropriate because the vapor pressure of styrene at typical operating conditions in

polystyrene affected sources equates to a concentration of less than 10,000 ppm and no leaks would be detected using a leak definition of 10,000 ppm. The commenters also stated that the effect of using the average SOCMI emission factors was to justify the HON equipment leak program (i.e., subpart H) and that, if the EPA used a more realistic estimate of emissions (e.g., the emission factor for components with concentrations less than 10,000 ppm), a re-evaluation of the costs and emission reductions would likely result in a conclusion that the HON is not cost effective. The commenters recommended that if any program was to be implemented for polystyrene affected sources and especially for components in styrene service, it should either be a visual-only program or, at most, a program based on a State Reasonably Achievable Control Technology (RACT) program.

In response to these comments, the EPA re-evaluated the analysis that served as the basis for proposing the equipment leak provisions from the HON for polystyrene and other styrene-based resin affected sources.

Note: The results of this re-evaluation are contained in Item IV–B–2, Docket A–92–45.

In re-evaluating that analysis, the EPA determined the MACT floor for each subcategory. Because a MACT floor was determined to exist and the Clean Air Act does not allow the EPA to set a standard less stringent than the MACT floor, the EPA determined that some standard must be set for these subcategories.

The EPA agrees with the commenters that the average SOCMI emission factors are likely to overestimate emissions from components containing or contacting styrene. Therefore, the EPA lowered the emission factors used to estimate the emissions from these components. The EPA also adjusted leak rate factors based on additional data and comments from the industry. Adjustments to the emission factors and leak rates had the effect of reducing both the overall emission estimates and the emission reductions associated with the current industry programs, the MACT floor programs, and the HON program.

In addition, the EPA re-evaluated the costing program used to estimate the costs for the various equipment leak programs. Errors were discovered in the costing program. The net effect of correcting these errors was to lower the estimated costs for all of the various equipment leak programs. The incremental differences between the various programs decreased as well, but not by as much as the overall costs.

To determine whether or not the subpart H provisions were cost effective, the EPA examined the incremental costs and emission reductions between the HON program and the MACT floor program for each of the subcategories.

[Note: In the original analysis, the EPA examined the cost between the HON program and each facility's specific current program.]

Based on the incremental differences between the HON and the MACT floor programs, the EPA determined that the HON requirements are cost effective for each of the styrene-based resin subcategories, including the three polystyrene subcategories. Therefore, the EPA has retained the HON requirements in the final rule.

2. PET

Many commenters objected to the imposition of the HON equipment leak requirements on PET affected sources, especially those using the TPA process. These commenters stated that, due to the preponderance of components in heavy liquid service, no program should be imposed or, if a program is required, it should simply be a visual-only program. Some of the commenters referred to the rationale in the development of the Polymer Manufacturing NSPS [40 CFR part 60, subpart DDD], which exempted PET affected sources using a continuous TPA process from equipment leak regulation.

As was done for the styrene-based resin subcategories, the EPA re-evaluated the emission estimates and cost estimates for all of the PET subcategories. The results of this re-evaluation are found in Item IV–B–3, Docket A–92–45. The following actions were taken as part of the re-evaluation. First, the EPA lowered the emission factors used to estimate emissions from components in heavy liquid service to take into account the properties of ethylene glycol. Second, the EPA limited the re-evaluation of costs and emission reductions to only those facilities that provided specific component profiles (i.e., component counts and types of service). The results of the re-evaluation showed that, except for one PET subcategory, the HON requirements are cost effective. Thus, the final rule retains, for the most part, the HON requirements for the PET subcategories.

Note: Modifications to the HON requirements are discussed below.

The re-evaluation of the proposed equipment leak provisions showed that the provisions were not cost effective for PET affected sources using a continuous TPA high viscosity multiple end finisher process. Thus, this subcategory, which currently contains only one affected source, is exempt from the equipment leak requirements in the final rule.

With regard to exempting PET affected sources altogether based on the exemption contained in the Polymer Manufacturing NSPS, the EPA does not agree with the commenters. During the development of the Polymer Manufacturing NSPS, information available to the EPA indicated that all components at PET TPA continuous facilities were in heavy liquid service. Information provided by the industry during the development of this rulemaking, however, shows the presence of components in gas/vapor service and in light liquid service at some PET TPA facilities. The decision to require an equipment leak program for this rulemaking is based on this newer information. However, the EPA continues to agree that, if a PET TPPU consists solely of components in heavy liquid service, or in vacuum service, then said TPPU should be exempt from the equipment leak standards. The final rule contains this provision.

Many commenters were concerned about the recordkeeping and reporting requirements, especially for PET TPA affected sources where the vast majority of components are in heavy liquid service. While the EPA believes the original requirements were the minimum required to ensure compliance with the overall program, the EPA has reduced the burden of the recordkeeping and reporting requirements for these subcategories in light of the preponderance of components in heavy liquid service. The most significant change is the elimination of the requirement to initially list the identification numbers of components in heavy liquid service.

Finally, several commenters expressed concern with the use of Method 21 to detect leaks from components in ethylene glycol (i.e., heavy liquid) service, stating in part that Method 21 would not detect an ethylene glycol leak based on the properties of ethylene glycol and the operating conditions of the process. The EPA agrees that Method 21 is inappropriate for determining ethylene glycol leaks where the leaking component is in heavy liquid service. However, § 63.169 of subpart H does not require the use of Method 21; it is one of two alternatives for determining the presence of leaks from components in heavy liquid service. The other alternative is to use a sensory-based detection method. The final rule has been revised to clarify that leaks are to be determined exclusively through the use of visual, audible,

olfactory, and any other detection methods; Method 21 is not to be used to determine leaks from components in heavy liquid service at PET facilities.

G. Emissions Averaging Provisions

1. Number of Emission Points Allowed in Emissions Averaging

Numerous commenters requested that the number of emission points allowed in an emissions average be increased to 20 points from the 5 points allowed at proposal. If pollution prevention measures are used, commenters requested that an additional 5 emission points be allowed from the 3 emission points allowed at proposal. The commenters stated that this would be consistent with the HON.

In response to comments and to be more consistent with the HON and the proposed Group I Polymers and Resins NESHAP, the number of emission points allowed in emissions averaging at a plant site has been increased to 20 points, with an additional 5 points allowed if pollution prevention measures are used. These values (i.e., 20/25) are the maximum allowed for all emissions averages at a plant site, regardless of the number of affected sources present at a plant site or the number of emissions averaging programs implemented.

2. Including Batch Process Vents in Emissions Averaging

Several commenters requested that batch process vents be included in the emissions averaging provisions. The EPA had not allowed emissions averaging of batch process vents at proposal. The proposal preamble stated that the accuracy and consistency of emissions estimates needed for emissions averaging were considered to be greater than those needed for applicability determinations. However, upon review, the EPA has determined that having the same procedures to estimate emissions for applicability determinations and emissions averaging is reasonable. The final standards allow emissions averaging of existing batch process vents as well as aggregate batch vent streams.

H. Compliance and Performance Test Provisions and Monitoring Requirements

1. Excused Excursions

Many commenters requested that the proposed standards allow excused excursions in the same way that the HON allows excused excursions. In the final standards, the EPA included provisions to excuse a certain number of excursions for each reporting period. These provisions are identical to the HON provisions. The decision to include excused excursion provisions was based on data and information presented in public comments received on the proposed standards and received during industry meetings held after proposal. The commenters contended that by not allowing excused excursions in these standards, the EPA has made these standards more stringent than the HON, which the proposed standards and the costs of the proposed standards were modelled after. The commenters requested that the EPA justify the increased cost of imposing the more stringent ''no excused excursion'' provisions. The EPA agreed with the commenters that not allowing excused excursions could impose significant additional capital and operating costs on the affected source for only negligible corresponding reductions in air emissions. As is always the case, a State has the discretion to impose more stringent requirements than the requirements of NESHAP and other federal requirements and could choose not to allow the excused excursion provisions contained in these standards.

The EPA considered the number of excused excursions that would be most appropriate for these standards and determined that the number of excursions allowed in the HON is reasonable. Therefore, the final standards allow a maximum of 6 excused excursions for the first semiannual reporting period, decreasing by 1 excursion each semiannual reporting period. Starting with the sixth semiannual reporting period (i.e., the end of the third year of compliance) and thereafter, affected sources are allowed one excused excursion per semiannual reporting period.

2. Parameter Monitoring Levels

Commenters requested that more flexibility be permitted for establishing compliance levels for parameter monitoring. The commenters asked the EPA to allow the use of the HON range concept, which recognizes that a process or control device operates properly over a range of conditions.

The EPA revised the requirements for establishing parameter monitoring levels to incorporate the concepts included in the HON range concept.

Note: The final standards continue to use the term level.

Under the final rule, the owner or operator can choose between three procedures for establishing parameter monitoring levels. By providing the flexibility to establish parameter monitoring levels based on one of the three procedures, site-specific levels can be chosen which best accommodate variation in emission point characteristics and control device designs. These three procedures for establishing parameter monitoring levels are based on: (1) performance tests; (2) performance tests, engineering assessments, and/or manufacturer's recommendations; and (3) engineering assessments and/or manufacturer's recommendations. The establishment of a parameter monitoring level based solely on performance tests is preapproved by the Administrator; however, parameter monitoring values determined using the last two procedures, which may or may not use the results of performance tests, must be approved by the Administrator for each individual case.

3. Other Changes Resulting from EPA Review

In addition to changes made to the proposed rule as a result of public comment, changes were made as a result of EPA independently reviewing the rule between proposal and promulgation. In the final rule, the EPA has allowed the use of TOC, minus methane and ethane, as the basis for compliance demonstrations (i.e., performance tests) as an alternative to organic HAP for continuous process vents, batch process vents, storage vessels, and wastewater streams.

Note: The term ''TOC,'' as used in the remainder of this discussion and as defined in the final rule, denotes ''TOC, minus methane and ethane.''

The final rule also allows the use of TOC as an alternate basis for applicability determinations for batch process vents; TOC is not allowed as an alternate basis for applicability determinations for continuous process vents. In addition, the final rule allows the use of Method 25A to measure TOC in these instances were TOC serves as an alternative basis for compliance demonstrations or applicability determinations.

These changes were made to provide flexibility to the regulated community and to reduce the overall burden of the rule. The EPA considered the impacts of allowing TOC to serve as a surrogate for organic HAP in compliance demonstrations and did not find any adverse impacts. Further, in allowing the use of Method 25A as a complement to the use of TOC as a surrogate to organic HAP, the EPA judged that the burden of implementing the final rule would be reduced with no adverse impacts.

As proposed, the provisions concerning applicability determinations and compliance demonstrations allowed an owner or operator to measure total organic HAP *or* TOC; however, the proposed rule required Method 18 for measurement of organic compounds in both cases. In light of this, the major difference between the proposed and final rule is the flexibility to use Method 25A in measuring TOC. In deciding to allow the use of Method 25A, the EPA considered the composition of the emission streams and considered provisions that could be implemented to safeguard against inappropriate uses of Method 25A. To the best of the EPA's knowledge, the emission streams regulated by this rule are predominantly organic HAP. Also, with one exception (i.e., ethylene glycol), the regulated organic HAP, which are listed in the definition of organic HAP found in the final rule, have response factors to Method 25A adequate to ensure satisfactory emissions measurements. To safeguard against inadequate emissions measurements that might result from the inappropriate use of Method 25A, the final rule specifies the calibration gas to be used (i.e., the organic HAP representing the largest percent by volume) and what is an acceptable response for the calibration gas (i.e., 20 times the standard deviation of the response from the zero calibration gas).

In considering the use of TOC as an alternate basis for applicability determinations, and the complementary use of Method 25A to measure TOC, the EPA evaluated applicability determinations for continuous process vents and batch process vents.

[Note: The applicability determination procedures for storage vessels and wastewater streams do not use airborne organic HAP concentration values. Therefore, the use of Method 25A for these emission points is not applicable.]

The applicability determination procedure for continuous process vents (i.e., the TRE equation) requires an owner or operator to estimate the concentration and emission rate for both organic HAP and TOC. Because both of these values are required and were the basis for the original TRE analysis, the EPA judged that it was inappropriate to use TOC as an alternate basis to organic HAP for the applicability determinations for continuous process vents. On the other hand, the original analysis for batch process vents (i.e., the Batch Processes ACT) was based on the control of TOC; thus, the EPA considered the use of TOC as an alternate basis for the applicability determinations for batch process vents to be satisfactory.

I. Recordkeeping and Reporting

Several commenters stated that the recordkeeping and reporting requirements of the proposed standards were extremely burdensome. These commenters requested that the EPA reduce unnecessary recordkeeping and reporting requirements in the final standards. Commenters requested that the frequency with which records must be retained be reduced. The commenters also contended that records should only be required if an excursion has occurred. The commenters contended that records showing compliance with the standards were unnecessary.

The EPA has made every effort to reduce the recordkeeping requirements of the final thermoplastics rule. The EPA recognizes that unnecessary recordkeeping and reporting requirements would burden both the affected source and EPA enforcement agencies.

The EPA reviewed the recordkeeping required by the proposed rule and has made reductions in the amount of information that is required to be recorded. The final rule has been changed to require recording and retention of hourly average values of continuously monitored values. The proposal required that 15-minute averages be calculated and recorded. Under the proposal, if the daily average value was above the minimum or below the maximum established parameter monitoring levels (i.e., excess emissions occurred), the 15-minute values had to be retained; if the daily average value did not exceed the established parameter monitoring level, the 15-minute values could be converted to hourly averages, and the hourly averages could be retained instead of the 15-minute averages. Upon reconsideration, the EPA found that hourly average values provide a sufficient record to support the calculation of the daily average value. Therefore, to reduce the recordkeeping burden, the rule has been changed to specify that only hourly averages must be calculated and recorded. The rule no longer requires calculating or recording of 15-minute average values.

For emission points where continuous parameter monitoring is required, the value of the parameter must still be measured at least once every 15 minutes, but only the hourly average must be calculated and recorded. Many facilities already have computerized systems and monitor parameters more frequently than once every 15 minutes for process control purposes. The 15-minute monitoring frequency is consistent with the General Provisions and previous NSPS and NESHAP for emission points from similar industries.

In addition, the EPA added provisions [§ 63.1335(h)] that allow an owner or operator to implement a reduced recordkeeping program provided that certain criteria related to the monitoring system and the performance of the process, as it relates to maintaining compliance with the monitoring provisions, are met. Under these provisions it is possible for an owner or operator to retain only daily average values or, after a period of 6 consecutive months without an excursion, to retain no daily records.

The EPA believes that the recordkeeping requirements of the final rule are necessary to show compliance. The EPA will continue to require owners or operators to keep records, regardless of whether there was an excursion or not. These records are necessary to prove compliance when no excursion has occurred and are used to determine the severity of a violation, and, thus, how much of a penalty should be assessed once an excursion has occurred.

The EPA has made every effort to reduce the reporting requirements of the final rule. The EPA reviewed each report required at proposal, and determined that two of these reports, the Initial Notification and the Implementation Plan, contained many requirements that were duplicative with the existing operating permit program. For this reason, the EPA has removed the requirements for the Initial Notification and Implementation Plan from the final rule.

The EPA considers the recordkeeping and reporting requirements of the final rule to be the minimum necessary to ensure compliance.

Upon further review, the EPA decided to add a new report, the Precompliance Report, to the final rule to allow the owner or operator of an affected source to request an extension of compliance or to request approval to use alternative monitoring parameters, alternative continuous monitoring or recordkeeping, or alternative controls. At proposal, these items were submitted in the Implementation Plan. Overall, these changes, deleting the Initial Notification and the Implementation Plan and adding the Precompliance Report, result in a reduction of the reporting burden for the affected source.

VI. Administration Requirements

A. 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 the final standards. 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 as provided for in section 307(d)(7)(A).

B. Executive Order 12866

Under Executive Order 12866 [58 FR 5173, October 4, 1993], the EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in standards 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 entitlement, 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, the OMB has notified the EPA that it considers that a ''significant regulatory action'' within the meaning of the Executive Order. The EPA submitted this action to the OMB for review. Changes made in response to suggestions or recommendations from the OMB were documented and included in the public record.

C. Paperwork Reduction Act

The information collection requirements for this NESHAP have been submitted for approval to the OMB under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by the EPA (ICR. No. 1737.01), and a copy may be obtained from Sandy Farmer, OPPE Regulatory Information Division (2137), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460, or by calling (202) 260–2740.

The public recordkeeping and reporting burden for this collection of information is estimated to average approximately 4,000 hours per respondent, at approximately 1,000 hours per response for 4 responses each, for each of the first 3 years following promulgation of the rule. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing the reviewing the collection of information.

Sent comments regarding the recordkeeping and reporting burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch (2137), U.S. Environmental Protection Agency, 401 M Street, S.W., 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.''

D. Regulatory Flexibility Act.

The Regulatory Flexibility Act (RFA) (Pub. L. 96–354, September 19, 1980) requires Federal agencies to give special consideration to the impact of regulation on small businesses. The RFA specifies that a final regulatory flexibility analysis must be prepared if a final regulation will have a significant economic impact on a substantial number of small entities. To determine whether a final RFA is required, a screening analysis, otherwise known as an initial RFA, is necessary.

Regulatory impacts are considered significant if:

(1) Annual compliance costs increase total costs of production by more than 5 percent, or

(2) Annual compliance costs as a percent of sales are at least 20 percent (percentage points) higher for small entities, or

(3) Capital cost of compliance represent a significant portion of capital available to small entities, or

(4) The requirements of the regulation are likely to result in closures of small entities.

A ''substantial number'' of small entities is generally considered to be more than 20 percent of the small entities in the affected industry.

Consistent with Small Business Administration (SBA) size standards, a thermoplastic producing firm is classified as a small entity if it has less than 750 employees and is unaffiliated with a larger entity. Based upon this criterion, only one firm, an MBS producer, employs less than 750 workers.

Data were available to examine two of the criteria; these were the potential for closure, and comparison of compliance costs as a percentage of sales.

For criterion one, the affected source is not expected to fall at risk of closure from the regulations, thus this criterion is not met. Also, the compliance costs were only 0.001 percent of total sales for the affected source, and this does not meet criterion two. Because the economics analysis lead to the conclusion that not MBS facilities at risk of closure, this criterion is not met.

In conclusion, and pursuant to section 605(b) of the RFA, the Administrator certifies that these standards will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the economic impacts for small entities do not meet or exceed the criteria in the Guidelines to the Regulatory Flexibility Act of 1980, as shown above. Further information on the initial RFA is available in the background information package (see **SUPPLEMENTARY INFORMATION** section).

E. Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

The SBREFA Subtitle D requires more rigorous regulatory flexibility analyses. It also requires the EPA to undertake a small entity stakeholder process involving the Small Business Administration (SBA) and the OMB prior to proposing a rule for which a regulatory flexibility analysis is required. In addition, it subjects agency compliance with many aspects of the amended Regulatory Flexibility Act (RFA) to judicial rule. Subtitle D of the SBREFA takes effect to rulemakings proposed as of June 28, 1996. Therefore, it does not apply to this rulemaking.

Subtitle E of SBREFA establishes opportunity for Congress to review and potentially disapprove nonmajor rules promulgated on or after March 29, 1996. With limited exceptions, it provides that no rule promulgated on or after March 29, 1996, may take effect until it is submitted to Congress and the Comptroller General along with specified supporting documentation. Different requirements apply to major rules. This rule, which is nonmajor, is being submitted to Congress in accordance with these requirements.

F. Unfunded Mandates

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

The EPA has determined that the final standards do not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. Therefore, the requirements of the Unfunded Mandates Act do not apply to this section.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 63

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

Dated: May 15, 1996.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, parts 9 and 63 of title 40, chapter I of the Code of Federal Regulations are 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., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq., 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding the new entries 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 Emission Standards for Hazardous Air Pollutants for Source Categories [3]	
63.1311	2060–0351
63.1314	2060–0351
63.1315	2060–0351
63.1319	2060–0351
63.1320	2060–0351
63.1325–1332	2060–0351
63.1335	2060–0351

[3] The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

* * * * *

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

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

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

2. Part 63 is amended by adding subpart JJJ to read as follows:

Subpart JJJ—National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins

Secs.

63.1310 Applicability and designation of affected sources.
63.1311 Compliance schedule and relationship to existing applicable rules.
63.1312 Definitions.
63.1313 Emission standards.
63.1314 Storage vessel provisions.
63.1315 Continuous process vents provisions.
63.1316 PET and polystyrene continuous process affected sources—emissions control provisions.
63.1317 PET and polystyrene continuous process affected sources—monitoring provisions.
63.1318 PET and polystyrene continuous process affected sources—testing and compliance demonstration provisions.
63.1319 PET and polystyrene continuous process affected sources—recordkeeping provisions.
63.1320 PET and polystyrene continuous process affected sources—reporting provisions.
63.1321 Batch process vents provisions.
63.1322 Batch process vents—reference control technology.
63.1323 Batch process vents—methods and procedures for group determination.
63.1324 Batch process vents—monitoring provisions.
63.1325 Batch process vents—performance test methods and procedures to determine compliance.
63.1326 Batch process vents—recordkeeping provisions.
63.1327 Batch process vents—reporting provisions.
63.1328 Heat exchange systems provisions.
63.1329 Process contact cooling towers provisions.
63.1330 Wastewater provisions.
63.1331 Equipment leak provisions.
63.1332 Emissions averaging provisions.
63.1333 Additional test methods and procedures.
63.1334 Parameter monitoring levels and excursions.
63.1335 General recordkeeping and reporting provisions.

Subpart JJJ—National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins

§ 63.1310 Applicability and designation of affected sources.

(a) *Definition of affected source.* The provisions of this subpart apply to each affected source. An affected source is either an existing affected source or a new affected source. Existing affected source is defined in paragraph (a)(6) of this section, and new affected source is defined in paragraph (a)(7) of this section. The affected source also includes the emission points and equipment specified in paragraphs (a)(1) through (a)(5) of this section that are associated with each group of TPPU.

(1) Each wastewater stream.

(2) Each wastewater operation.

(3) Each heat exchange system.

(4) Each process contact cooling tower used in the manufacture of PET that is associated with a new affected source.

(5) Each process contact cooling tower used in the manufacture of PET using a continuous terephthalic acid high viscosity multiple end finisher process that is associated with an existing affected source.

(6) Except as specified in paragraphs (b) through (d) of this section, an existing affected source is defined as each group of one or more thermoplastic product process units (TPPUs) that is not part of a new affected source as defined in paragraph (a)(7) of this section, that is manufacturing the same primary product, where each TPPU uses as a reactant, or uses as a process solvent, or produces as a by-product or co-product any organic hazardous air pollutant (organic HAP), and that is located at a plant site that is a major source.

(7) Except as specified in paragraphs (b) through (d) of this section, a new affected source is defined as a source meeting the criteria of paragraph (a)(7)(i), (a)(7)(ii), or (a)(7)(iii) of this section:

(i) At a plant site previously without HAP emissions points, each group of one or more TPPUs manufacturing the same primary product that is part of a major source on which construction commenced after March 29, 1995;

(ii) A TPPU meeting the criteria in paragraph (i)(1)(i) of this section; or

(iii) A reconstructed affected source meeting the criteria in paragraph (i)(2)(i) of this section.

(b) *TPPUs exempted from the affected source.* For a TPPU to be excluded from the designation of affected source due to the fact that it does not use as a reactant, or use as a process solvent, or produce as a by-product or co-product any organic HAP, the owner or operator shall comply with the requirements of paragraph (b)(1) of this section and shall comply with the requirements of paragraph (b)(2) of this section if requested to do so by the Administrator.

(1) Retain information, data, and analysis used to document the basis for the determination that the TPPU does not use as a reactant or use as a process solvent, or manufacture as a by-product or a co-product any organic HAP. Types of information that could document this determination include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, or engineering calculations.

(2) When requested by the Administrator, demonstrate that the TPPU does not use as a reactant, or use as a process solvent, or manufacture as a by-product or co-product any organic HAP.

(c) *Emission points exempted from the affected source.* The affected source does not include the emission points listed in paragraphs (c)(1) through (c)(6) of this section:

(1) Stormwater from segregated sewers;

(2) Water from fire-fighting and deluge systems in segregated sewers;

(3) Spills;

(4) Water from safety showers;

(5) Vessels and equipment storing and/or handling material that contain no organic HAP and/or organic HAP as impurities only; and

(6) Equipment that is intended to operate in organic HAP service for less than 300 hours during the calendar year.

(d) *Processes exempted from the affected source.* The processes specified in paragraphs (d)(1) through (d)(5) of this section are exempted from the affected source:

(1) Research and development facilities;

(2) Polymerization processes occurring in a mold;

(3) Processes which manufacture binder systems containing a thermoplastic product for paints, coatings, or adhesives;

(4) Finishing processes including equipment such as compounding units, spinning units, drawing units, extruding units, and other finishing steps; and

(5) Solid state polymerization processes.

(e) *Applicability determination of nonthermoplastic equipment included in a TPPU producing a thermoplastic product.* If a polymer that is not subject to this subpart is produced within the equipment (i.e., collocated) making up a TPPU and at least 50 percent of said polymer is used in the production of a thermoplastic product manufactured by said TPPU, the unit operations involved in the production of said polymer are considered part of the TPPU and are subject to this rule except as specified in this paragraph (e). If said unit operations are subject to another MACT standard regulating the same emission points, said unit operations are not subject to this subpart.

(f) *Primary product determination and applicability.* The primary product of a process unit shall be determined according to the procedures specified in paragraphs (f)(1) through (f)(2) of this section. Paragraphs (f)(3) through (f)(4) of this section describe whether or not a process unit is subject to this subpart. Paragraphs (f)(5) through (f)(7) of this section discuss compliance for those TPPUs operated as flexible operation units, as specified in paragraph (f)(2) of this section.

(1) If a process unit only manufactures one product, then that product shall represent the primary product of the process unit.

(2) If a process unit is designed and operated as a flexible operation unit, the primary product shall be determined as specified in paragraphs (f)(2)(i) or (f)(2)(ii) of this section based on the anticipated operations for the 5 years following September 12, 1996 for existing affected sources and for the first 5 years after initial start-up for new affected sources.

(i) If the flexible operation unit will manufacture one product for the greatest operating time over the five year period, then that product shall represent the primary product of the flexible operation unit.

(ii) If the flexible operation unit will manufacture multiple products equally based on operating time, then the product with the greatest production on a mass basis over the five year period shall represent the primary product of the flexible operation unit.

(3) If the primary product of a process unit is a thermoplastic product, then said process unit is considered a TPPU. If said TPPU meets all the criteria of paragraph (a) of this section, it is either an affected source or is part of an affected source comprised of other TPPU subject to this rule at the same plant site with the same primary product. The status of a process unit as a TPPU and as an affected source or part of an affected source shall not change regardless of what products are produced in the future by said TPPU, with the exception noted in paragraph (f)(3)(i) of this section.

(i) If a process unit terminates the production of all thermoplastic products and does not anticipate the production of any thermoplastic product in the future, the process unit is no longer a TPPU and is not subject to this rule after notification is made as specified in paragraph (f)(3)(ii) of this section.

(ii) The owner or operator of a process unit that wishes to remove the TPPU designation from the process unit, as specified in paragraph (f)(3)(i) of this section, shall notify the Administrator. This notification shall be accompanied by rationale for why it is anticipated that no thermoplastic products will be produced in the process unit in the future.

(iii) If a process unit meeting the criteria of paragraph (f)(3)(i) of this section begins the production of a thermoplastic product in the future, the owner or operator shall use the procedures in paragraph (f)(4)(i) of this section to determine if the process unit is re-designated as a TPPU.

(4) If the primary product of a process unit is not a thermoplastic product, then said process unit is not an affected source nor is it part of any affected source subject to this rule. Said process unit is not subject to this rule at any time, regardless of what product is being produced. The status of a process unit as not being a TPPU, and therefore not an affected source nor part of an affected source subject to this subpart, shall not change regardless of what products are produced in the future by said TPPU, with the exception noted in paragraph (f)(4)(i) of this section.

(i) If, at any time beginning September 12, 2001, the owner or operator determines that a thermoplastic product is the primary product for the process unit based on actual production data for any preceding consecutive five-year period, then the process unit shall be designated as a TPPU. If said TPPU meets all the criteria of paragraph (a) of this section and is not subject to another subpart of 40 CFR part 63, it is either an affected source or part of an affected source and shall be subject to this rule.

(ii) If a process unit meets the criteria of paragraph (f)(4)(i) of this section, the

owner or operator shall notify the Administrator within 6 months of making this determination. The TPPU, as the entire affected source or part of an affected source, shall be in compliance with the provisions of this rule within 3 years from the date of such notification.

(iii) If a process unit is re-designated as a TPPU but does not meet all the criteria of paragraph (a) of this section, the owner or operator shall notify the Administrator within 6 months of making this determination. Said notification shall include documentation justifying the TPPU's status as not being an affected source or not being part of an affected source.

(5) Once the primary product of a process unit has been determined to be a thermoplastic product and it has been determined that all the criteria of paragraph (a) of this section are met for said TPPU, the owner or operator of the affected source shall comply with the standards for the primary product. Owners or operators of flexible operation units shall comply with the standards for the primary product as specified in either paragraph (f)(5)(i) or (f)(5)(ii) of this section, except as specified in paragraph (f)(5)(iii) of this section.

(i) Each owner or operator shall determine the group status of each emission point that is part of said flexible operation unit based on emission point characteristics when the primary product is being manufactured. Based on this finding, the owner or operator shall comply with the applicable standards for the primary product for each emission point, as appropriate, at all times, regardless of what product is being produced.

(ii) Alternatively, each owner or operator shall determine the group status of each emission point that is part of said flexible operation unit based on the emission point characteristics when each product produced by the flexible operation unit is manufactured, regardless of whether said product is a thermoplastic product or not. Based on these findings, the owner or operator shall comply with the applicable standards for the primary product for each emission point, as appropriate, regardless of what product is being produced.

Note: Under this scenario it is possible that the group status, and therefore the requirement to achieve emission reductions, for an emission point may change depending on the product being produced.

(iii) Whenever a flexible operation unit manufactures a product that meets the criteria of paragraph (b) of this section (i.e., does not use or produce any organic HAP), all activities associated with the manufacture of said product shall be exempt from the requirements of this rule, to include the operation and monitoring of control or recovery devices.

(6) The determination of the primary product for a process unit, to include the determination of applicability of this subpart to process units that are designed and operated as flexible operation units, shall be reported in the Notification of Compliance Status required by § 63.1335(e)(5) when the primary product is determined to be a thermoplastic product. The Notification of Compliance Status shall include the information specified in either paragraph (f)(6)(i) or (f)(6)(ii) of this section. If the primary product is determined to be something other than a thermoplastic product, the owner or operator shall retain information, data, and analysis used to document the basis for the determination that the primary product is not a thermoplastic product.

(i) If the TPPU manufactures only one thermoplastic product, identification of said thermoplastic product.

(ii) If the TPPU is designed and operated as a flexible operation unit, the information specified in paragraphs (f)(6)(ii)(A) through (f)(6)(ii)(C) of this section, as appropriate.

(A) Identification of the primary product.

(B) Information concerning operating time and/or production mass for each product that was used to make the determination of the primary product under paragraph (f)(2)(i) or (f)(2)(ii) of this section.

(C) Identification of which compliance option, either paragraph (f)(5)(i) or (f)(5)(ii) of this section, has been selected by the owner or operator.

(7) To demonstrate compliance with the rule during those periods when a flexible operation unit that is subject to this subpart is producing a product other than a thermoplastic product or is producing a thermoplastic product that is not the primary product, the owner or operator shall comply with either paragraphs (f)(7)(i) through (f)(7)(ii) or paragraph (f)(7)(iii) of this section.

(i) Establish parameter monitoring levels, as specified in § 63.1334, for those emission points designated as Group 1, as appropriate.

(ii) Submit the parameter monitoring levels developed under paragraph (f)(7)(i) of this section and the basis for them in the Notification of Compliance Status report as specified in § 63.1335(e)(5).

(iii) Demonstrate that the parameter monitoring levels established for the primary product are also appropriate for those periods when products other than the primary product are being produced. Material demonstrating this finding shall be submitted in the Notification of Compliance Status report as specified in § 63.1335(e)(5).

(g) *Storage vessel ownership determination*. The owner or operator shall follow the procedures specified in paragraphs (g)(1) through (g)(8) of this section to determine to which process unit a storage vessel shall belong.

(1) If a storage vessel is already subject to another subpart of 40 CFR part 63 on September 12, 1996, said storage vessel shall belong to the process unit subject to the other subpart.

(2) If a storage vessel is dedicated to a single process unit, the storage vessel shall belong to that process unit.

(3) If a storage vessel is shared among process units, then the storage vessel shall belong to that process unit located on the same plant site as the storage vessel that has the greatest input into or output from the storage vessel (i.e., said process unit has the predominant use of the storage vessel).

(4) If predominant use cannot be determined for a storage vessel that is shared among process units and if one of those process units is a TPPU subject to this subpart, the storage vessel shall belong to said TPPU.

(5) If predominant use cannot be determined for a storage vessel that is shared among process units and if more than one of the process units are TPPUs that have different primary products and that are subject to this subpart, then the owner or operator shall assign the storage vessel to any one of the said TPPUs.

(6) If the predominant use of a storage vessel varies from year to year, then predominant use shall be determined based on the utilization that occurred during the year preceding September 12, 1996 or based on the expected utilization for the 5 years following September 12, 1996 for existing affected sources, whichever is more representative of the expected operations for said storage vessel, and based on the first 5 years after initial start-up for new affected sources. The determination of predominant use shall be reported in the Notification of Compliance Status required by § 63.1335(e)(5). If the predominant use changes, the redetermination of predominant use shall be reported in the next Periodic Report.

(7) If the storage vessel begins receiving material from (or sending material to) another process unit; or ceasing to receive material from (or send material to) a process unit; or if the

applicability of this subpart to a storage vessel has been determined according to the provisions of paragraphs (g)(1) through (g)(6) of this section and there is a significant change in the use of the storage vessel that could reasonably change the predominant use, the owner or operator shall reevaluate the applicability of this subpart to the storage vessel.

(8) Where a storage vessel is located at a major source that includes one or more process units which place material into, or receive materials from the storage vessel, but the storage vessel is located in a tank farm, the applicability of this subpart shall be determined according to the provisions in paragraphs (g)(8)(i) through (g)(8)(iv) of this section.

(i) The storage vessel may only be assigned to a process unit that utilizes the storage vessel and does not have an intervening storage vessel for that product (or raw materials, as appropriate). With respect to any process unit, an intervening storage vessel means a storage vessel connected by hard-piping to the process unit and to the storage vessel in the tank farm so that product or raw material entering or leaving the process unit flows into (or from) the intervening storage vessel and does not flow directly into (or from) the storage vessel in the tank farm.

(ii) If there is no process unit at the major source that meets the criteria of paragraph (g)(8)(i) of this section with respect to a storage vessel, this subpart does not apply to the storage vessel.

(iii) If there is only one process unit at the major source that meets the criteria of paragraph (g)(8)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to that process unit.

(iv) If there are two or more process units at the major source that meet the criteria of paragraph (g)(8)(i) of this section with respect to a storage vessel, the storage vessel shall be assigned to one of those process units according to the provisions of paragraph (g)(7) of this section. The predominant use shall be determined among only those thermoplastic product process units that meet the criteria of paragraph (g)(8)(i) of this section.

(h) *Recovery operation equipment ownership determination.* The owner or operator shall follow the procedures specified in paragraphs (h)(1) through (h)(7) of this section to determine to which process unit recovery operation equipment shall belong.

(1) If recovery operation equipment is already subject to another subpart of 40 CFR part 63 on September 12, 1996, said recovery operation equipment shall belong to the process unit subject to the other subpart.

(2) If recovery operation equipment is used exclusively by a single process unit, the recovery operation shall belong to that process unit.

(3) If recovery operation equipment is shared among process units, then the recovery operation equipment shall belong to that process unit located on the same plant site as the recovery operation equipment that has the greatest input into or output from the recovery operation equipment (i.e., said process unit has the predominant use of the recovery operation equipment).

(4) If predominant use cannot be determined for recovery operation equipment that is shared among process units and if one of those process units is a TPPU subject to this subpart, the recovery operation equipment shall belong to said TPPU.

(5) If predominant use cannot be determined for recovery operation equipment that is shared among process units and if more than one of the process units are TPPUs that have different primary products and that are subject to this subpart, then the owner or operator shall assign the recovery operation equipment to any one of said TPPUs.

(6) If the predominant use of recovery operation equipment varies from year to year, then predominant use shall be determined based on the utilization that occurred during the year preceding September 12, 1996 or based on the expected utilization for the 5 years following September 12, 1996 for existing affected sources, whichever is the more representative of the expected operations for said recovery operations equipment, and based on the first 5 years after initial start-up for new affected sources. This determination shall be reported in the Notification of Compliance Status required by § 63.1335(e)(5). If the predominant use changes, the redetermination of predominant use shall be reported in the next Periodic Report.

(7) If there is an unexpected change in the utilization of recovery operation equipment that could reasonably change the predominant use, the owner or operator shall redetermine to which process unit the recovery operation belongs by reperforming the procedures specified in paragraphs (h)(2) through (h)(6) of this section.

(i) *Changes or additions to plant sites.* The provisions of paragraphs (i)(1) through (i)(4) of this section apply to owners or operators that change or add to their plant site or affected source. Paragraph (i)(5) of this section provides examples of what are and are not considered process changes for purposes of paragraph (i) of this section.

(1) *Adding a TPPU to a plant site.* The provisions of paragraphs (i)(1)(i) through (i)(1)(ii) of this section apply to owners or operators that add TPPUs to a plant site.

(i) If a TPPU is added to a plant site, said addition shall be a new affected source and shall be subject to the requirements for a new affected source in this subpart upon initial start-up or by September 12, 1996, whichever is later, if said addition meets the criteria specified in paragraphs (i)(1)(i)(A) through (i)(1)(i)(B) and either (i)(1)(i)(C) or (i)(1)(i)(D) of this section:

(A) Said addition meets the definition of construction in § 63.2;

(B) Such construction commenced after March 29, 1995; and

(C) Said addition has the potential to emit 10 tons per year or more of any HAP or 25 tons per year or more of any combination of HAP, and the primary product of said addition is currently produced at the plant site as the primary product of an affected source; or

(D) The primary product of said addition is not currently produced at the plant site as the primary product of an affected source and the plant site meets, or after the addition is completed will meet, the definition of major source.

(ii) If a TPPU is added to a plant site, said addition shall be subject to the requirements for an existing affected source in this subpart upon initial start-up or by 3 years after September 12, 1996, whichever is later, if said addition does not meet the criteria specified in paragraph (i)(1)(i) of this section and the plant site meets, or after the addition is completed will meet, the definition of major source.

(2) *Adding emission points or making process changes to existing affected sources.* The provisions of paragraphs (i)(2)(i) through (i)(2)(ii) of this section apply to owners or operators that add emission points or make process changes to an existing affected source.

(i) If any process change is made or emission point is added to an existing affected source, or if a process change creating one or more additional Group 1 emission point(s) is made to an existing affected source, said affected source shall be a new affected source and shall be subject to the requirements for a new affected source in this subpart upon initial start-up or by September 12, 1996, whichever is later, if said process change or addition meets the criteria specified in paragraphs (i)(2)(i)(A) through (i)(2)(i)(B) of this section:

(A) Said process change or addition meets the definition of reconstruction in § 63.2; and

(B) Such reconstruction commenced after March 29, 1995.

(ii) If any process change is made or emission point is added to an existing affected source, or if a process change creating one or more additional Group 1 emission point(s) is made to an existing affected source and said process change or addition does not meet the criteria specified in paragraphs (i)(2)(i)(A) through (i)(2)(i)(B) of this section, the resulting emission point(s) shall be subject to the requirements for an existing affected source in this subpart. Said emission point(s) shall be in compliance upon initial start-up or by 3 years after September 12, 1996, whichever is later, unless the owner or operator demonstrates to the Administrator that achieving compliance will take longer than making said process change or addition. If this demonstration is made to the Administrator's satisfaction, the owner or operator shall follow the procedures in paragraphs (i)(2)(iii)(A) through (i)(2)(iii)(C) of this section to establish a compliance date.

(iii) To establish a compliance date for an emission point or points specified in paragraph (i)(2)(ii) of this section, the procedures specified in paragraphs (i)(2)(iii)(A) through (i)(2)(iii)(C) of this section shall be followed.

(A) The owner or operator shall submit to the Administrator for approval a compliance schedule, along with a justification for the schedule.

(B) The compliance schedule shall be submitted within 180 days after the process change or addition is made or the information regarding said change or addition is known to the owner or operator, unless the compliance schedule has been previously submitted to the permitting authority. The compliance schedule may be submitted in the next Periodic Report if the process change or addition is made after the date the Notification of Compliance Status report is due.

(C) The Administrator shall approve the compliance schedule or request changes within 120 calendar days of receipt of the compliance schedule and justification.

(3) *Existing source requirements for Group 2 emission points that become Group 1 emission points.* If a process change or addition that does not meet the criteria in paragraph (i)(1) or (i)(2) of this section is made to an existing plant site or existing affected source, and the change causes a Group 2 emission point to become a Group 1 emission point, for said emission point, the owner or operator shall comply with the requirements of this subpart for existing Group 1 emission points. Compliance shall be achieved as expeditiously as practicable, but in no event later than 3 years after said emission point becomes a Group 1 emission point.

(4) *Existing source requirements for some emission points that become subject to the requirements of subpart H of this part.* If a compressor becomes subject to § 63.164, the owner or operator shall be in compliance upon initial start-up or by 3 years after September 12, 1996, whichever is later, unless the owner or operator demonstrates to the Administrator that achieving compliance will take longer than making the change. If this demonstration is made to the Administrator's satisfaction, the owner or operator shall follow the procedures in paragraphs (i)(2)(iii)(A) through (i)(2)(iii)(C) of this section to establish a compliance date.

(5) *Determining what are and are not process changes.* For purposes of paragraph (i) of this section, examples of process changes include, but are not limited to, changes in production capacity, feedstock type, or catalyst type, or whenever there is a replacement, removal, or the addition of recovery equipment. For purposes of paragraph (i) of this section, process changes do not include: process upsets, unintentional temporary process changes, and changes that are within the equipment configuration and operating conditions documented in the Notification of Compliance Status report required by § 63.1335(e)(5).

(j) *Applicability of this subpart except during periods of start-up, shutdown, and malfunction.* Each provision set forth in this subpart or referred to in this subpart shall apply at all times except during periods of start-up, shutdown, and malfunction if the start-up, shutdown, or malfunction precludes the ability of a particular emission point of an affected source to comply with one or more specific provisions to which it is subject. Start-up, shutdown, and malfunction is defined in § 63.1312 for all emission points except equipment leaks subject to subpart H of this part, which shall follow the provisions for periods of start-up, malfunction, and process unit shutdown, as defined in § 63.161. Only then shall an emission point not be required to comply with all applicable provisions of this subpart.

§ 63.1311 Compliance schedule and relationship to existing applicable rules.

(a) Affected sources are required to achieve compliance on or before the dates specified in paragraphs (b) through (d) of this section. Paragraph (e) of this section provides information on requesting compliance extensions. Paragraphs (f) through (l) of this section discuss the relationship of this subpart to subpart A of this part and to other applicable rules. Where an override of another authority of the Act is indicated in this subpart, only compliance with the provisions of this subpart is required. Paragraph (m) of this section specifies the meaning of time periods.

(b) New affected sources that commence construction or reconstruction after March 29, 1995 shall be in compliance with this subpart upon initial start-up or September 12, 1996, whichever is later, as provided in § 63.6(b).

(c) Existing affected sources shall be in compliance with this subpart (except for § 63.1331 for which compliance is covered by paragraph (d) of this section) no later than 3 years after September 12, 1996, as provided in § 63.6(c), unless an extension has been granted as specified in paragraph (e) of this section.

(d) Except as provided for in paragraphs (d)(1) through (d)(5) of this section, existing affected sources shall be in compliance with § 63.1331 no later than March 12, 1997 unless a request for a compliance extension is granted pursuant to Section 112(i)(3)(B) of the Act, as discussed in § 63.182(a)(6).

(1) Compliance with the compressor provisions of § 63.164 shall occur no later than September 12, 1997 for any compressor meeting one or more of the criteria in paragraphs (d)(1)(i) through (d)(1)(iii) of this section if the work can be accomplished without a process unit shutdown, as defined in § 63.161:

(i) The seal system will be replaced;

(ii) A barrier fluid system will be installed; or

(iii) A new barrier fluid will be utilized which requires changes to the existing barrier fluid system.

(2) Compliance with the compressor provisions of § 63.164 shall occur no later than February 12, 1998 for any compressor meeting all the criteria in paragraphs (d)(2)(i) through (d)(2)(ii) of this section:

(i) The compressor meets one or more of the criteria specified in paragraphs (d)(1)(i)(A) through (d)(1)(i)(B) of this section:

(A) The work can be accomplished without a process unit shutdown as defined in § 63.161; or

(B) The additional time is actually necessary due to the unavailability of parts beyond the control of the owner or operator.

(ii) The owner or operator submits the request for a compliance extension to the Environmental Protection Agency

(EPA) Regional Office at the addresses listed in § 63.13 no later than 45 calendar days before March 12, 1997. The request for a compliance extension shall contain the information specified in § 63.6(i)(6)(i) (A), (B), and (D). Unless the EPA Regional Office objects to the request for a compliance extension within 30 calendar days after receipt of the request, the request shall be deemed approved.

(3) If compliance with the compressor provisions of § 63.164 cannot reasonably be achieved without a process unit shutdown, as defined in § 63.161, the owner or operator shall achieve compliance no later than September 14, 1998. The owner or operator who elects to use this provision shall submit a request for a compliance extension in accordance with the requirements of paragraph (d)(2)(ii) of this section.

(4) If compliance with the compressor provisions of § 63.164 cannot be achieved without replacing the compressor or recasting the distance piece, the owner or operator shall achieve compliance no later than September 13, 1999. The owner or operator who elects to use this provision shall submit a request for a compliance extension in accordance with the requirements of paragraph (d)(2)(ii) of this section.

(5) Compliance with the provisions of § 63.170 shall occur no later than September 13, 1999.

(e) Pursuant to section 112(i)(3)(B) of the Act, an owner or operator may request an extension allowing the existing source up to 1 additional year to comply with section 112(d) standards. For purposes of this subpart, a request for an extension shall be submitted to the operating permit authority as part of the operating permit application or to the Administrator as a separate submittal or as part of the Precompliance Report. Requests for extensions shall be submitted no later than the date the Precompliance Report is required to be submitted in § 63.1335(e)(3)(i). The dates specified in § 63.6(i) for submittal of requests for extensions shall not apply to this subpart.

(1) A request for an extension of compliance shall include the data described in § 63.6(i)(6)(i) (A),(B), and (D).

(2) The requirements in § 63.6(i)(8) through § 63.6(i)(14) shall govern the review and approval of requests for extensions of compliance with this subpart.

(f) Table 1 of this subpart specifies the provisions of subpart A of this part that apply and those that do not apply to owners and operators of affected sources subject to this subpart.

(g)(1) After the compliance dates specified in this section, an affected source subject to this subpart that is also subject to the provisions of subpart I of this part, is required to comply only with the provisions of this subpart. After the compliance dates specified in this section, said affected source shall no longer be subject to subpart I of this part.

(2) Said affected sources that elected to comply with subpart I of this part through a quality improvement program, as specified in § 63.175 or § 63.176 or both, may elect to continue these programs without interruption as a means of complying with this subpart. In other words, becoming subject to this subpart does not restart or reset the ''compliance clock'' as it relates to reduced burden earned through a quality improvement program.

(h) After the compliance dates specified in this section, a storage vessel that belongs to an affected source subject to this subpart that is also subject to the provisions of 40 CFR part 60, subpart Kb, is required to comply only with the provisions of this subpart. After the compliance dates specified in this section, said storage vessel shall no longer be subject to 40 CFR part 60, subpart Kb.

(i)(1) Except as provided in paragraph (i)(2) of this section, after the compliance dates specified in this section, affected sources producing PET using a continuous terephthalic acid process, producing PET using a continuous dimethyl terephthalate process, or producing polystyrene resin using a continuous process subject to this subpart that are also subject to the provisions of 40 CFR part 60, subpart DDD, are required to comply only with the provisions of this subpart. After the compliance dates specified in this section, said sources shall no longer be subject to 40 CFR part 60, subpart DDD.

(2) Existing affected sources producing PET using a continuous terephthalic acid high viscosity multiple end finisher process shall continue to be subject to 40 CFR 60.562–1(c)(2)(ii)(C). Once said affected source becomes subject to and achieves compliance with § 63.1329(c) of this subpart, said affected source is no longer subject to the provisions of 40 CFR part 60, subpart DDD.

(j) Affected sources subject to this subpart that are also subject to the provisions of subpart Q of this part shall comply with both subparts.

(k) After the compliance dates specified in this section, an affected source subject to this subpart that is also subject to the provisions of 40 CFR part 60, subpart VV, is required to comply only with the provisions of this subpart. After the compliance dates specified in this section, said source shall no longer be subject to 40 CFR part 60, subpart VV.

(l) After the compliance dates specified in this section, a distillation operation that belongs to an affected source subject to this subpart that is also subject to the provisions of 40 CFR part 60, subpart NNN, is required to comply only with the provisions of this subpart. After the compliance dates specified in this section, said distillation operation shall no longer be subject to 40 CFR part 60, subpart NNN.

(m) All terms in this subpart that define a period of time for completion of required tasks (e.g., weekly, monthly, quarterly, annual), unless specified otherwise in the section or subsection that imposes the requirement, refer to the standard calendar periods.

(1) Notwithstanding time periods specified in this subpart for completion of required tasks, such time periods may be changed by mutual agreement between the owner or operator and the Administrator, as specified in subpart A of this part (e.g., a period could begin on the compliance date or another date, rather than on the first day of the standard calendar period). For each time period that is changed by agreement, the revised period shall remain in effect until it is changed. A new request is not necessary for each recurring period.

(2) Where the period specified for compliance is a standard calendar period, if the initial compliance date occurs after the beginning of the period, compliance shall be required according to the schedule specified in paragraphs (m)(i) or (m)(ii) of this section, as appropriate.

(i) Compliance shall be required before the end of the standard calendar period within which the compliance deadline occurs, if there remain at least 3 days for tasks that must be performed weekly, at least 2 weeks for tasks that must be performed monthly, at least 1 month for tasks that must be performed each quarter, or at least 3 months for tasks that must be performed annually; or

(ii) In all other cases, compliance shall be required before the end of the first full standard calendar period after the period within which the initial compliance deadline occurs.

(3) In all instances where a provision of this subpart requires completion of a task during each multiple successive period, an owner or operator may perform the required task at any time during the specified period, provided

that the task is conducted at a reasonable interval after completion of the task during the previous period.

§ 63.1312 Definitions.

(a) The following terms used in this subpart shall have the meaning given them in § 63.2, § 63.101, § 63.111, and § 63.161 as specified after each term:

Act (§ 63.2)
Administrator (§ 63.2)
Automated monitoring and recording system (§ 63.111)
Average concentration (§ 63.111)
Boiler (§ 63.111)
Bottoms receiver (§ 63.161)
By compound (§ 63.111)
By-product (§ 63.101)
Car-seal (§ 63.111)
Chemical manufacturing process unit (§ 63.101)
Closed-vent system (§ 63.111)
Co-product (§ 63.101)
Combustion device (§ 63.111)
Commenced (§ 63.2)
Compliance date (§ 63.2)
Compliance schedule (§ 63.2)
Connector (§ 63.161)
Construction (§ 63.2)
Continuous monitoring system (§ 63.2)
Continuous record (§ 63.111)
Continuous recorder (§ 63.111)
Cover (§ 63.111)
Distillation unit (§ 63.111)
Emission standard (§ 63.2)
Emissions averaging (§ 63.2)
EPA (§ 63.2)
Equipment (§ 63.161)
Equipment leak (§ 63.101)
Existing source (§ 63.2)
External floating roof (§ 63.111)
Fill (§ 63.111)
Fixed roof (§ 63.111)
Flame zone (§ 63.111)
Flexible operation unit (§ 63.101)
Floating roof (§ 63.111)
Flow indicator (§ 63.111)
Group 1 wastewater streams (§ 63.111)
Group 2 wastewater streams (§ 63.111)
Halogens and hydrogen halides (§ 63.111)
Hazardous air pollutant (§ 63.2)
Impurity (§ 63.101)
In organic hazardous air pollutant service (§ 63.161)
Incinerator (§ 63.111)
Instrumentation system (§ 63.161)
Internal floating roof (§ 63.111)
Lesser quantity (§ 63.2)
Major source (§ 63.2)
Malfunction (§ 63.2)
Mass flow rate (§ 63.111)
Maximum true vapor pressure (§ 63.111)
New source (§ 63.2)
Open-ended valve or line (§ 63.161)
Operating permit (§ 63.101)
Organic HAP service (§ 63.161)
Organic monitoring device (§ 63.111)
Owner or operator (§ 63.2)
Performance evaluation (§ 63.2)
Performance test (§ 63.2)
Permitting authority (§ 63.2)
Plant site (§ 63.101)
Point of generation (§ 63.111)
Potential to emit (§ 63.2)
Primary fuel (§ 63.111)
Process heater (§ 63.111)
Process unit shutdown (§ 63.161)
Process wastewater (§ 63.101)
Process wastewater stream (§ 63.111)
Product separator (§ 63.111)
Reactor (§ 63.111)
Reconstruction (§ 63.2)
Recovery device (§ 63.111)
Reference control technology for process vents (§ 63.111)
Reference control technology for storage vessels (§ 63.111)
Reference control technology for wastewater (§ 63.111)
Relief valve (§ 63.111)
Research and development facility (§ 63.101)
Residual (§ 63.111)
Run (§ 63.2)
Secondary fuel (§ 63.111)
Sensor (§ 63.161)
Shutdown (§ 63.2)
Specific gravity monitoring device (§ 63.111)
Start-up (§ 63.2)
Start-up, shutdown, and malfunction plan (§ 63.101)
State (§ 63.2)
Surge control vessel (§ 63.161)
Temperature monitoring device (§ 63.111)
Test method (§ 63.2)
Total resource effectiveness index value (§ 63.111)
Treatment process (§ 63.111)
Unit operation (§ 63.101)
Visible emission (§ 63.2)
Waste management unit (§ 63.111)
Wastewater (§ 63.101)
Wastewater stream (§ 63.111)

(b) All other terms used in this subpart shall have the meaning given them in this section. If a term is defined in §§ 63.2, 63.101, 63.111, or 63.161 and in this section, it shall have the meaning given in this section for purposes of this subpart.

Acrylonitrile butadiene styrene latex resin (ABS latex) means ABS produced through an emulsion process, however the product is not coagulated or dried as typically occurs in an emulsion process.

Acrylonitrile butadiene styrene resin (ABS) means styrenic terpolymers consisting primarily of acrylonitrile, 1,3-butadiene, and styrene monomer units. ABS is usually composed of a styrene-acrylonitrile copolymer continuous phase with dispersed butadiene derived rubber.

Acrylonitrile styrene acrylate resin (ASA) means a resin formed using acrylic ester-based elastomers to impact-modify styrene acrylonitrile resin matrices.

Aggregate batch vent stream means a gaseous emission stream containing only the exhausts from two or more batch process vents that are ducted together before being routed to a control device that is in continuous operation.

Affected source is defined in § 63.1310(a).

Alpha methyl styrene acrylonitrile resin (AMSAN) means copolymers consisting primarily of alpha methyl styrene and acrylonitrile.

Average flow rate, as used in conjunction with wastewater provisions, is determined by the specifications in § 63.144(c); or, as used in conjunction with batch process vent provisions, is determined by the specifications in § 63.1323(e).

Batch cycle means the operational step or steps, from start to finish, that occur as part of a batch unit operation. Batch cycle limitation means an enforceable restriction on the number of batch cycles that can be performed in a year for an individual batch process vent.

Batch emission episode means a discrete emission venting episode associated with a single batch unit operation. Multiple batch emission episodes may occur from a single batch unit operation.

Batch process means a discontinuous process involving the bulk movement of material through sequential manufacturing steps. Mass, temperature, concentration, and other properties of the process vary with time. Addition of raw material and withdrawal of product do not typically occur simultaneously in a batch process. For the purposes of this subpart, a process producing polymers is characterized as continuous or batch based on the operation of the polymerization reactors.

Batch process vent means a point of emission from a batch unit operation having a gaseous emission stream with annual organic HAP emissions greater than 225 kilograms per year. Batch process vents exclude relief valve discharges and leaks from equipment regulated under § 63.1331.

Batch unit operation means a unit operation operated in a batch process mode.

Compounding unit means a unit operation which blends, melts, and resolidifies solid polymers for the purpose of incorporating additives, colorants, or stabilizers into the final thermoplastic product. A unit operation whose primary purpose is to remove residual monomers from polymers is not a compounding unit.

Continuous process means a process where the inputs and outputs flow continuously through sequential manufacturing steps throughout the duration of the process. Continuous processes typically approach steady-state conditions. Continuous processes typically involve the simultaneous addition of raw material and withdrawal of product. For the purposes of this subpart, a process producing polymers is characterized as continuous or batch based on the operation of the polymerization reactors.

Continuous process vent means a point of emission from a continuous unit operation within an affected source having a gaseous emission stream containing greater than 0.005 weight percent total organic HAP. Continuous process vents exclude relief valve discharges and leaks from equipment regulated under § 63.1331.

Continuous unit operation means a unit operation operated in a continuous process mode.

Control device is defined in § 63.111, except that the term ''process vents'' shall be replaced with the term ''continuous process vents subject to § 63.1315'' for the purpose of this subpart.

Drawing unit means a unit operation which converts polymer into a different shape by melting or mixing the polymer and then pulling it through an orifice to create a continuously extruded product.

Emission point means an individual continuous process vent, batch process vent, storage vessel, wastewater stream, equipment leak, heat exchange system, or process contact cooling tower.

Emulsion process means a process carried out with the reactants in an emulsified form (e.g., polymerization reaction).

Expandable polystyrene resin (EPS) means a polystyrene bead to which a blowing agent has been added using either an in-situ suspension process or a post-impregnation suspension process.

Extruding unit means a unit operation which converts polymer into a different shape by melting or mixing the polymer and then forcing it through an orifice to create a continuously extruded product.

Group 1 batch process vent means a batch process vent releasing annual organic HAP emissions greater than the level specified in § 63.1323(d) and with a cutoff flow rate, calculated in accordance with § 63.1323(f), greater than or equal to the annual average flow rate.

Group 2 batch process vent means a batch process vent that does not fall within the definition of a Group 1 batch process vent.

Group 1 continuous process vent means a continuous process vent releasing a gaseous emission stream that has a total resource effectiveness index value, calculated according to § 63.115, less than or equal to 1.0 unless the continuous process vent is associated with existing thermoplastic product process units that produce methyl methacrylate butadiene styrene resin, then said vent falls within the Group 1 definition if the released emission stream has a total resource effectiveness index value less than or equal to 3.7.

Group 2 continuous process vent means a continuous process vent that does not fall within the definition of a Group 1 continuous process vent.

Group 1 storage vessel means a storage vessel at an existing affected source that meets the applicability criteria specified in Table 2 or Table 3 of this subpart, or a storage vessel at a new affected source that meets the applicability criteria specified in Table 4 or Table 5 of this subpart.

Group 2 storage vessel means a storage vessel that does not fall within the definition of a Group 1 storage vessel.

Halogenated aggregate batch vent stream means an aggregate batch vent stream determined to have a total mass emission rate of halogen atoms contained in organic compounds of 3,750 kilograms per year or greater determined by the procedures specified in § 63.1323(h).

Halogenated batch process vent means a batch process vent determined to have a mass emission rate of halogen atoms contained in organic compounds of 3,750 kilograms per year or greater determined by the procedures specified in § 63.1323(h).

Halogenated continuous process vent means a continuous process vent determined to have a mass emission rate of halogen atoms contained in organic compounds of 0.45 kilograms per hour or greater determined by the procedures specified in § 63.115(d)(2)(v).

Heat exchange system means any cooling tower system or once-through cooling water system (e.g., river or pond water) designed and operated to not allow contact between the cooling medium and process fluid or gases (i.e., a noncontact system). A heat exchange system can include more than one heat exchanger and can include recirculating or once-through cooling systems.

Maintenance wastewater means wastewater generated by the draining of process fluid from components in the TPPU into an individual drain system prior to or during maintenance activities. Maintenance wastewater can be generated during planned and unplanned shutdowns and during periods not associated with a shutdown. Examples of activities that can generate maintenance wastewater include descaling of heat exchanger tubing bundles, cleaning distillation column traps, draining of low legs and high point bleeds, draining of pumps into an individual drain system, reactor and equipment washdown, and draining of portions of the TPPU for repair.

Mass process means a process carried out through the use of thermal energy (e.g., polymerization reaction). Mass processes do not utilize emulsifying or suspending agents, but can utilize catalysts or other additives.

Material recovery section means the equipment that recovers unreacted or by-product materials from any process section for return to the TPPU, off-site purification or treatment, or sale. Equipment used to store recovered materials are not included. Equipment designed to separate unreacted or by-product material from the polymer product are to be included in this process section, provided that at the time of initial compliance some of the material is recovered for reuse in the process, off-site purification or treatment, or sale. Otherwise, such equipment are to be assigned to one of the other process sections, as appropriate. If equipment are used to recover unreacted or by-product material and return it directly to the same piece of process equipment from which it was emitted, then said recovery equipment are considered part of the process section that contains the process equipment. On the other hand, if equipment are used to recover unreacted or by-product material and return it to a different piece of process equipment in the same process section, said recovery equipment are considered part of a material recovery section. Equipment that treats recovered materials are to be included in this process section, but equipment that also treats raw materials are not to be included in this process section. The latter equipment are to be included in the raw materials preparation section. Equipment used for the on-site recovery of ethylene glycol from PET plants, however, are not included in the material recovery section; they are to be included in the polymerization reaction section. Equipment used for the on-site recovery of ethylene glycol *and* other materials (e.g., methanol) from PET plants are not included in the material recovery section; these equipment are to be included in the polymerization reaction section.

Methyl methacrylate acrylonitrile butadiene styrene resin (MABS) means

styrenic polymers containing methyl methacrylate, acrylonitrile, butadiene, and styrene. MABS is prepared by dissolving or dispersing polybutadiene rubber in a mixture of methyl methacrylate-acrylonitrile-styrene and butadiene monomer. The graft polymerization is carried out by a bulk or a suspension process.

Methyl methacrylate butadiene styrene resin (MBS) means styrenic polymers containing methyl methacrylate, butadiene, and styrene. Production of MBS is achieved using an emulsion process in which methyl methacrylate and styrene are grafted onto a styrene-butadiene rubber.

Nitrile resin means a resin produced through the polymerization of acrylonitrile, methyl acrylate, and butadiene latex using an emulsion process.

Organic hazardous air pollutant(s) (organic HAP) means one or more of the chemicals listed in Table 6 of this subpart or any other chemical which is:

(1) Knowingly introduced into the manufacturing process other than as an impurity, or has been or will be reported under any Federal or State program, such as Title V or the Emergency Planning and Community Right-To-Know Act section 311, 312, or 313; and

(2) Listed in Table 2 of subpart F of this part.

PET using a dimethyl terephthalate process means the manufacturing of PET based on the esterification of dimethyl terephthalate with ethylene glycol to form the intermediate monomer bis-(2-hydroxyethyl)-terephthalate that is subsequently polymerized to form PET.

PET using a terephthalic acid process means the manufacturing of PET based on the esterification reaction of terephthalic acid with ethylene glycol to form the intermediate monomer bis-(2-hydroxyethyl)-terephthalate that is subsequently polymerized to form PET.

Poly(ethylene terephthalate) resin (PET) means a polymer or copolymer comprised of at least 50 percent bis-(2-hydroxyethyl)-terephthalate by weight.

Polymerization reaction section means the equipment designed to cause monomer(s) to react to form polymers, including equipment designed primarily to cause the formation of short polymer chains (e.g., oligomers or low polymers), but not including equipment designed to prepare raw materials for polymerization (e.g., esterification vessels). For the purposes of these standards, the polymerization reaction section begins with the equipment used to transfer the materials from the raw materials preparation section and ends with the last vessel in which polymerization occurs. Equipment used for the on-site recovery of ethylene glycol from PET plants, however, are included in this process section, rather than in the material recovery process section.

Polystyrene resin means a thermoplastic polymer or copolymer comprised of at least 80 percent styrene or para-methylstyrene by weight.

Primary product is defined in and determined by the procedures specified in § 63.1310(f).

Process contact cooling tower system means a cooling tower system that is designed and operated to allow contact between the cooling medium and process fluid or gases.

Process section means the equipment designed to accomplish a general but well-defined task in polymers production. Process sections include, but are not limited to, raw materials preparation, polymerization reaction, and material recovery. A process section may be dedicated to a single TPPU or common to more than one TPPU.

Process unit means a collection of equipment assembled and connected by pipes or ducts to process raw materials and to manufacture a product.

Process vent means a point of emission from a unit operation having a gaseous emission stream. Typical process vents include condenser vents, dryer vents, vacuum pumps, steam ejectors, and atmospheric vents from reactors and other process vessels, but do not include pressure relief valves.

Product means a compound or material which is manufactured by a process unit. By-products, isolated intermediates, impurities, wastes, and trace contaminants are not considered products.

Raw materials preparation section means the equipment at a polymer manufacturing plant designed to prepare raw materials, such as monomers and solvents, for polymerization. For the purposes of these standards, this process section begins with the equipment used to transfer raw materials from storage and/or the equipment used to transfer recovered material from the material recovery process sections, and ends with the last piece of equipment that prepares the material for polymerization. The raw materials preparation section may include equipment that is used to purify, dry, or otherwise treat raw materials or raw and recovered materials together; to activate catalysts; and to promote esterification including the formation of some short polymer chains (oligomers). The raw materials preparation section does not include equipment that is designed primarily to accomplish the formation of oligomers, the treatment of recovered materials alone, or the storage of raw materials.

Recovery operations equipment means the equipment used to separate the components of process streams. Recovery operations equipment includes distillation unit, condensers, etc. Equipment used for wastewater treatment shall not be considered recovery operations equipment.

Solid state polymerization unit means a unit operation which, through the application of heat, furthers the polymerization (i.e., increases the intrinsic viscosity) of polymer chips.

Steady-state conditions means that all variables (temperatures, pressures, volumes, flow rates, etc.) in a process do not vary significantly with time; minor fluctuations about constant mean values can occur.

Storage vessel means a tank or other vessel that is used to store liquids that contain one or more organic HAP and that has been assigned, according to the procedures in § 63.1310(g), to a TPPU that is subject to this subpart. Storage vessels do not include:

(1) vessels permanently attached to motor vehicles such as trucks, railcars, barges, or ships;

(2) pressure vessels designed to operate in excess of 204.9 kilopascals and without breathing or working losses to the atmosphere;

(3) vessels with capacities smaller than 38 cubic meters;

(4) vessels and equipment storing and/or handling material that contains no organic HAP and/or organic HAP as impurities only; and

(5) wastewater storage tanks.

Styrene acrylonitrile resin (SAN) means copolymers consisting primarily of styrene and acrylonitrile monomer units.

Suspension process means a process carried out with the reactants in a state of suspension, typically achieved through the use of water and/or suspending agents (e.g., polymerization reaction).

Thermoplastic product means one of the following types of products:

(1) ABS latex;

(2) ABS using a batch emulsion process;

(3) ABS using a batch suspension process;

(4) ABS using a continuous emulsion process;

(5) ABS using a continuous mass process;

(6) ASA/AMSAN;

(7) EPS;

(8) MABS;

(9) MBS;

(10) nitrile resin;
(11) PET using a batch dimethyl terephthalate process;
(12) PET using a batch terephthalic acid process;
(13) PET using a continuous dimethyl terephthalate process;
(14) PET using a continuous terephthalic acid process;
(15) PET using a continuous terephthalic acid high viscosity multiple end finisher process;
(16) polystyrene resin using a batch process;
(17) polystyrene resin using a continuous process;
(18) SAN using a batch process; or
(19) SAN using a continuous process.

Thermoplastic product process unit (TPPU) means a collection of equipment assembled and connected by process pipes or ducts, excluding gas, sanitary sewage, water (i.e., not wastewater), and steam connections, used to process raw materials and to manufacture a thermoplastic product as its primary product. This collection of equipment includes process vents from process vessels; storage vessels, as determined in § 63.1310(g); and the equipment (i.e., pumps, compressors, agitators, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems that are associated with the thermoplastic product process unit) that are subject to the equipment leak provisions as specified in § 63.1331.

Total organic compounds (TOC) means those compounds excluding methane and ethane measured according to the procedures of Method 18 or Method 25A, 40 CFR part 60, appendix A.

Year means any consecutive 12-month period or 365 rolling days. For the purposes of emissions averaging, the term year applies to any 12-month period selected by the facility and defined in its Emissions Averaging Plan. For the purposes of batch cycle limitations, the term year applies to the 12-month period defined by the facility in its Notification of Compliance Status.

§ 63.1313 Emission standards.

(a) Except as allowed under paragraphs (b) and (c) of this section, the owner or operator of an existing or new affected source shall comply with the provisions in:
(1) Section 63.1314 for storage vessels;
(2) Sections 63.1315 or 63.1316 through 63.1320, as appropriate, for continuous process vents;
(3) Section 63.1321 for batch process vents;
(4) Section 63.1328 for heat exchange systems;
(5) Section 63.1329 for process contact cooling towers;
(6) Section 63.1330 for wastewater;
(7) Section 63.1331 for equipment leaks;
(8) Section 63.1333 for additional test methods and procedures;
(9) Section 63.1334 for parameter monitoring levels and excursions; and
(10) Section 63.1335 for general recordkeeping and reporting requirements.

(b) Instead of complying with §§ 63.1314, 63.1315, 63.1316 through 63.1320, 63.1321, and 63.1330, the owner or operator of an existing affected source may elect to control any or all of the storage vessels, batch process vents, continuous process vents, and wastewater streams within the affected source to different levels using an emissions averaging compliance approach that uses the procedures specified in § 63.1332. An owner or operator electing to use emissions averaging must still comply with the provisions of §§ 63.1314, 63.1315, 63.1316 through 63.1320, 63.1321, and 63.1330 for affected source emission points not included in the emissions average.

(c) A State may decide not to allow the use of the emissions averaging compliance approach specified in paragraph (b) of this section.

§ 63.1314 Storage vessel provisions.

(a) This section applies to each storage vessel that belongs to an affected source, as determined by § 63.1310(g). Except as provided in paragraphs (b) through (d) of this section, the owner or operator of said storage vessels shall comply with the requirements of §§ 63.119 through 63.123 and 63.148, with the differences noted in paragraphs (a)(1) through (a)(16) of this section for the purposes of this subpart.

(1) When the term ''storage vessel'' is used in §§ 63.119 through 63.123 and 63.148, the definition of this term in § 63.1312 shall apply for the purposes of this subpart.

(2) When the term ''Group 1 storage vessel'' is used in §§ 63.119 through 63.123 and 63.148, the definition of this term in § 63.1312 shall apply for the purposes of this subpart.

(3) When the term ''Group 2 storage vessel'' is used in §§ 63.119 through 63.123 and 63.148, the definition of this term in § 63.1312 shall apply for the purposes of this subpart.

(4) When the emissions averaging provisions of § 63.150 are referred to in §§ 63.119 and 63.123, the emissions averaging provisions contained in § 63.1332 shall apply for the purposes of this subpart.

(5) When December 31, 1992, is referred to in § 63.119, March 29, 1995 shall apply instead, for the purposes of this subpart.

(6) When April 22, 1994, is referred to in § 63.119, September 12, 1996 shall apply instead, for the purposes of this subpart.

(7) Each owner or operator shall comply with this paragraph (a)(7) instead of § 63.120(d)(1)(ii) for the purposes of this subpart. If the control device used to comply with this section is also used to comply with §§ 63.1315 through 63.1330, the performance test required for these sections is acceptable for demonstrating compliance with § 63.119(e) for the purposes of this subpart. The owner or operator is not required to prepare a design evaluation for the control device as described in § 63.120(d)(1)(i) for the purposes of this subpart if the performance test meets the criteria specified in § 63.120 (d)(1)(ii)(A) and (d)(1)(ii)(B).

(8) When the term ''operating range'' is used in § 63.120(d)(3), the term ''level'' shall apply instead, for the purposes of this subpart. This level shall be established using the procedures specified in § 63.1334.

(9) When the Notification of Compliance Status requirements contained in § 63.152(b) are referred to in §§ 63.120, 63.122, and 63.123, the Notification of Compliance Status requirements contained in § 63.1335(e)(5) shall apply for the purposes of this subpart.

(10) When the Periodic Report requirements contained in § 63.152(c) are referred to in §§ 63.120, 63.122, and 63.123, the Periodic Report requirements contained in § 63.1335(e)(6) shall apply for the purposes of this subpart.

(11) When other reports as required in § 63.152(d) are referred to in § 63.122, the reporting requirements contained in § 63.1335(e)(7) shall apply for the purposes of this subpart.

(12) When the Implementation Plan requirements contained in § 63.151(c) are referred to in § 63.120 and § 63.122, the owner or operator of an affected source subject to this subpart need not comply for the purposes of this subpart.

(13) When the Initial Notification Plan requirements contained in § 63.151(b) are referred to in § 63.122, the owner or operator of an affected source subject to this subpart need not comply for the purposes of this subpart.

(14) When the determination of equivalence criteria in § 63.102(b) is referred to in § 63.121(a), the provisions in § 63.6(g) shall apply for the purposes of this subpart.

(15) When a performance test is required under the provisions of § 63.120(d)(1)(ii), the use of Method 18 or Method 25A, 40 CFR part 60, appendix A is allowed for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A shall comply with paragraphs (a)(15)(i) and (a)(15)(ii) of this section.

(i) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A, 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(16) The compliance date for storage vessels at affected sources subject to the provisions of this section is specified in § 63.1311.

(b) Owners or operators of Group 1 storage vessels that belong to a new affected source producing SAN using a continuous process shall control emissions to the levels indicated in paragraphs (b)(1) and (b)(2) of this section.

(1) For storage vessels with capacities greater than or equal to 2,271 cubic meters (m^3) containing a liquid mixture having a vapor pressure greater than or equal to 0.5 kilopascal (kPa) but less than 0.7 kPa, emissions shall be controlled by at least 90 percent relative to uncontrolled emissions.

(2) For storage vessels with capacities less than 151 m^3 containing a liquid mixture having a vapor pressure greater than or equal to 10 kPa, emissions shall be controlled by at least 98 percent relative to uncontrolled emissions.

(c) Owners or operators of Group 1 storage vessels that belong to a new or existing affected source producing ASA/AMSAN shall control emissions by at least 98 percent relative to uncontrolled emissions.

(d) The provisions of this subpart do not apply to storage vessels containing ethylene glycol at existing or new affected sources and storage vessels containing styrene at existing affected sources.

§ 63.1315 Continuous process vents provisions.

(a) Except as provided in paragraphs (b) through (d) of this section, the owner or operator of continuous process vents shall comply with the requirements of §§ 63.113 through 63.118, with the differences noted in paragraphs (a)(1) through (a)(15) of this section for the purposes of this subpart.

(1) When the term ''process vent'' is used in §§ 63.113 through 63.118, apply the term ''continuous process vent,'' and the definition of this term in § 63.1312 shall apply for the purposes of this subpart.

(2) When the term ''Group 1 process vent'' is used in §§ 63.113 through 63.118, apply the term ''Group 1 continuous process vent,'' and the definition of this term in § 63.1312 shall apply for the purposes of this subpart.

(3) When the term ''Group 2 process vent'' is used in §§ 63.113 through 63.118, apply the term ''Group 2 continuous process vent,'' and the definition of this term in § 63.1312 shall apply for the purposes of this subpart.

(4) When December 31, 1992, (i.e., subpart G of this part proposal date) is referred to in § 63.113, apply the date March 29, 1995 (i.e., proposal date for this subpart) for the purposes of this subpart.

(5) When § 63.151(f), alternative monitoring parameters, and § 63.152(e), submission of an operating permit, are referred to in §§ 63.114(c) and 63.117(e), § 63.1335(f), alternative monitoring parameters, and § 63.1335(e)(8), submission of an operating permit, respectively, shall apply for the purposes of this subpart.

(6) When the Notification of Compliance Status requirements contained in § 63.152(b) are referred to in §§ 63.114, 63.117, and 63.118, the Notification of Compliance Status requirements contained in § 63.1335(e)(5) shall apply for the purposes of this subpart.

(7) When the Periodic Report requirements contained in § 63.152(c) are referred to in §§ 63.117 and 63.118, the Periodic Report requirements contained in § 63.1335(e)(6) shall apply for the purposes of this subpart.

(8) When the definition of excursion in § 63.152(c)(2)(ii)(A) is referred to in § 63.118(f)(2), the definition of excursion in § 63.1334(f) of this subpart shall apply for the purposes of this subpart.

(9) Owners and operators shall comply with § 63.1334, parameter monitoring levels and excursions, instead of § 63.114(e) for the purposes of this subpart. When the term ''range'' is used in §§ 63.117 and 63.118, the term ''level'' shall be used instead for the purposes of this subpart. This level is determined in accordance with § 63.1334.

(10) If a batch process vent is combined with a continuous process vent prior to being routed to a control device, the combined vent stream shall comply with either paragraph (a)(10)(i) or (a)(10)(ii) of this section, as appropriate.

(i) If the continuous process vent is a Group 1 continuous process vent, the combined vent stream shall comply with all requirements for a Group 1 continuous process vent stream in §§ 63.113 through 63.118, with the differences noted in paragraphs (a)(1) through (a)(9) of this section, for the purposes of this subpart.

(ii) If the continuous process vent is a Group 2 continuous process vent, the total resource effectiveness (TRE) index value for the combined vent stream shall be calculated at the exit of any recovery device and prior to the control device at maximum representative operating conditions. For combined vent streams containing continuous and batch process vents, the maximum representative operating conditions shall be during periods when batch emission episodes are venting to the control device, resulting in the highest concentration of organic HAP in the combined vent stream.

(11) If a batch process vent is combined with a continuous process vent prior to being routed to a recovery device, the TRE index value for the combined vent stream shall be calculated at the exit of the recovery device at maximum representative operating conditions for the purposes of this subpart. For combined vent streams containing continuous and batch process vents, the maximum representative operating conditions shall be during periods when batch emission episodes are venting to the recovery device, resulting in the highest concentration of organic HAP in the combined vent stream.

(12) When reports of process changes are required under § 63.118 (g), (h), (i), and (j), paragraphs (a)(12)(i) through (a)(12)(iv) of this section shall apply for the purposes of this subpart.

(i) For the purposes of this subpart, whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 continuous process vent to become a Group 1 continuous process vent, the owner or operator shall submit a report within 180 operating days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report, as specified in § 63.1335(e)(6)(iii)(D)(*2*). The following information shall be submitted:

(A) A description of the process change; and

(B) A schedule for compliance with the provisions of this subpart, as required under § 63.1335(e)(6)(iii)(D)(*2*).

(ii) Whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 process vent with a TRE greater than 4.0 to become a Group 2 process vent with a TRE less than 4.0, the owner or operator shall submit a report within 180 operating days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report, as specified in § 63.1335(e)(6)(iii)(D)(*2*). The following information shall be submitted:

(A) A description of the process change; and

(B) A schedule for compliance with the provisions of this subpart, as required under § 63.1335(e)(6)(iii)(D)(*2*).

(iii) Whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 process vent with a flow rate less than 0.005 standard cubic meter per minute to become a Group 2 process vent with a flow rate of 0.005 standard cubic meter per minute or greater and a TRE index value less than or equal to 4.0, the owner or operator shall submit a report within 180 operating days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report, as specified in § 63.1335(e)(6)(iii)(D)(*2*). The following information shall be submitted:

(A) A description of the process change; and

(B) A schedule for compliance with the provisions of this subpart, as required under § 63.1335(e)(6)(iii)(D)(*2*).

(iv) Whenever a process change, as defined in § 63.115(e), is made that causes a Group 2 process vent with an organic HAP concentration less than 50 parts per million by volume to become a Group 2 process vent with an organic HAP concentration of 50 parts per million by volume or greater and a TRE index value less than or equal to 4.0, the owner or operator shall submit a report within 180 operating days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report, as specified in § 63.1335(e)(6)(iii)(D)(*2*). The following information shall be submitted:

(A) A description of the process change; and

(B) A schedule for compliance with the provisions of this subpart, as required under § 63.1335(e)(6)(iii)(D)(*2*).

(13) When the provisions of § 63.116 (c)(3) and (c)(4) specify that Method 18, 40 CFR part 60, appendix A shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A may be used for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A shall comply with paragraphs (a)(13)(i) and (a)(13)(ii) of this section.

(i) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A, 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(14) When the provisions of § 63.116(b) identify conditions under which a performance test is not required, for purposes of this subpart, the exemption in paragraph (a)(14)(i) shall also apply. Further, if a performance test meeting the conditions specified in paragraph (a)(14)(ii) of this section has been conducted by the owner or operator, the results of said performance test may be submitted and a performance test, as required by this section, is not required.

(i) An incinerator burning hazardous waste for which the owner or operator complies with the requirements of 40 CFR part 264, subpart O.

(ii) Performance tests done for other subparts in 40 CFR part 60 or part 63 where total organic HAP or TOC was measured, provided the owner or operator can demonstrate that operating conditions for the process and control or recovery device during the performance test are representative of current operating conditions.

(15) The compliance date for continuous process vents subject to the provisions of this section is specified in § 63.1311.

(b) Existing affected sources producing MBS shall comply with either paragraph (b)(1) or (b)(2) of this section.

(1) Comply with paragraph (a) of this section, as specified in paragraphs (b)(1)(i) and (b)(1)(ii).

(i) As specified in § 63.1312, Group 1 continuous process vents at MBS existing affected sources are those with a total resource effectiveness value less than or equal to 3.7.

(ii) When complying with this paragraph (b), the term ''TRE of 4.0'', or related terms indicating a TRE value of 4.0, referred to in § 63.113 through § 63.118 shall be replaced with ''TRE of 6.7,'' for the purposes of this subpart. The TRE range of 3.7 to 6.7 for continuous process vents at existing affected sources producing MBS corresponds to the TRE range of 1.0 to 4.0 for other continuous process vents, as it applies to monitoring, recordkeeping, and reporting.

(2) Not allow organic HAP emissions from the collection of continuous process vents at the affected source to be greater than 0.000590 kg organic HAP/Mg of product. Compliance with this paragraph (b)(2) shall be determined using the procedures specified in § 63.1333(b).

(c) New affected sources producing SAN using a batch process shall comply with the applicable requirements in § 63.1321.

(d) Affected sources producing PET or polystyrene using a continuous process are subject to the emissions control provisions of § 63.1316, the monitoring provisions of § 63.1317, the testing and compliance demonstration provisions of § 63.1318, the recordkeeping provisions of § 63.1319, and the reporting provisions of § 63.1320.

§ 63.1316 PET and polystyrene continuous process affected sources—emissions control provisions.

(a) The owner or operator of an affected source producing PET using a continuous process shall comply with paragraph (b) of this section. The owner or operator of an affected source producing polystyrene using a continuous process shall comply with paragraph (c) of this section.

(b) Each owner or operator of an affected source producing PET using a continuous process shall comply with the requirements specified in paragraphs (b)(1) or (b)(2) of this section, as appropriate, and not with any of the requirements specified in 40 CFR part 60, subpart DDD. Compliance can be based on either organic HAP or TOC.

(1) Each owner or operator of an affected source producing PET using a continuous dimethyl terephthalate process shall comply with paragraphs (b)(1)(i) through (b)(1)(iv) of this section.

(i) For existing affected sources with organic HAP emissions from continuous process vents in the collection of material recovery sections (i.e., methanol recovery) within the affected source greater than 0.12 kg organic HAP/Mg of product, as determined by the procedure specified in § 63.1318(b) and for all new affected sources, limit organic HAP emissions from continuous process vents in the collection of material recovery sections within the affected source by complying with one of the following:

(A) Not allow emissions to be greater than 0.018 kg organic HAP/Mg of product; or

(B) Not allow the outlet gas stream temperature from each final condenser in a material recovery section to exceed +3° C (+37° F).

(ii) Limit organic HAP emissions from the continuous process vents in the collection of polymerization reaction sections within the affected source (including emissions from any equipment used to further recover ethylene glycol, but excluding emissions from process contact cooling towers) to 0.02 kg organic HAP/Mg of product or less.

(iii) Limit organic HAP emissions from continuous process vents not included in a material recovery section, as specified in paragraph (b)(1)(i) of this section, or not included in a polymerization reaction section, as specified in paragraph (b)(1)(ii) of this section, by complying with § 63.1315.

(iv) Limit organic HAP emissions from all batch process vents by complying with § 63.1321.

(2) Each owner or operator of an affected source producing PET using a continuous terephthalic acid process shall comply with paragraphs (b)(2)(i) through (b)(2)(iv) of this section.

(i) Limit organic HAP emissions from the continuous process vents associated with the esterification vessels in the collection of raw materials preparation sections within the affected source to 0.04 kg organic HAP/Mg of product or less. Limit organic HAP emissions associated with other continuous process vents in the collection of raw materials preparation sections within the affected source by complying with § 63.1315.

(ii) Limit organic HAP emissions from the continuous process vents in the collection of polymerization reaction sections within the affected source (including emissions from any equipment used to further recover ethylene glycol, but excluding emissions from process contact cooling towers) to 0.02 kg organic HAP/Mg of product or less.

(iii) Limit organic HAP emissions from continuous process vents not included in a raw materials preparation section, as specified in paragraphs (b)(2)(i) of this section, or not included in a polymerization reaction section, as specified in paragraph (b)(2)(ii) of this section, by complying with § 63.1315.

(iv) Limit organic HAP emissions from all batch process vents by complying with § 63.1321.

(c) Each owner or operator of an affected source producing polystyrene resin using a continuous process shall comply with the requirements specified in paragraphs (c)(1) through (c)(3) of this section, as appropriate, and not with any of the requirements specified in 40 CFR part 60, subpart DDD. Compliance can be based on either organic HAP or TOC.

(1) Limit organic HAP emissions from continuous process vents in the collection of material recovery sections within the affected source by complying with one of the following:

(i) Not allow emissions to be greater than 0.0036 kg organic HAP/Mg of product;

(ii) Not allow the outlet gas stream temperature from each final condenser in a material recovery section to exceed −25°C (−13°F); or

(iii) Comply with one of the following:

(A) Reduce emissions by 98 weight percent or to a concentration of 20 parts per million by volume (ppmv) on a dry basis, whichever is less stringent. If an owner or operator elects to comply with the 20 ppmv standard, the concentration shall include a correction to 3 percent oxygen only when supplemental combustion air is used to combust the emissions;

(B) Combust the emissions in a boiler or process heater with a design heat input capacity of 150 million Btu/hr or greater by introducing the emissions into the flame zone of the boiler or process heater; or

(C) Combust the emissions in a flare that complies with the requirements of § 63.11(b).

(2) Limit organic HAP emissions from continuous process vents not included in a material recovery section, as specified in paragraph (c)(1)(i) of this section, by complying with § 63.1315.

(3) Limit organic HAP emissions from all batch process vents by complying with § 63.1321.

§ 63.1317 PET and polystyrene continuous process affected sources—monitoring provisions.

Continuous process vents using a control or recovery device to comply with § 63.1316 shall comply with the applicable monitoring provisions specified for continuous process vents in § 63.1315(a), except as specified in paragraphs (a) and (b) of this section.

(a) For the purposes of paragraph (a) of this section, owners or operators shall ignore references to group determinations (i.e., total resource effectiveness) and are not required to comply with § 63.113.

(b) The monitoring period for condenser exit temperature when complying with § 63.1316(b)(1)(i)(B) or § 63.1316(c)(1)(ii) shall be each consecutive 3-hour continuous period (e.g., 6 am to 9 am, 9 am to 12 pm). Each owner or operator shall designate said monitoring period in the Notification of Compliance Status required by § 63.1335(e)(5).

§ 63.1318 PET and polystyrene continuous process affected sources—testing and compliance demonstration provisions.

(a) Except as specified in paragraphs (b) through (d) of this section, continuous process vents using a control or recovery device to comply with § 63.1316 shall comply with the applicable testing and compliance provisions for continuous process vents specified in § 63.1315, except that, for the purposes of this paragraph (a), owners or operators shall ignore references to group determination (i.e., total resource effectiveness) and are not required to comply with § 63.113.

(b) *PET Affected Sources Using a Dimethyl Terephthalate Process—Applicability Determination Procedure.* Owners or operators shall calculate organic HAP emissions from the collection of material recovery sections at an existing affected source producing PET using a continuous dimethyl terephthalate process to determine whether § 63.1316(a)(1)(i) is applicable using the procedures specified in either paragraph (b)(1) or (b)(2) of this section.

(1) Use Equation 1 of this subpart to determine mass emissions per mass product as specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this section.

$$ER = \sum_{i=1}^{n} \frac{E_i}{\left(0.001\ P_p\right)} \qquad \text{[Eq. 1]}$$

where:

ER=Emission rate of total organic HAP or TOC, kg/Mg product.

E_i=Emission rate of total organic HAP or TOC in continuous process vent i, kg/hr.

P_p=The rate of polymer produced, kg/hr.

n=Number of continuous process vents in the collection of material recovery sections at the affected source.

0.001=Conversion factor, kg to Mg.

(i) The mass emission rate for each continuous process vent, E_i, shall be determined according to the procedures specified in § 63.116(c)(4). The sampling site for determining whether § 63.1316(a)(1)(i) is applicable shall be before any add-on control devices (i.e., those required by regulation) and after those recovery devices installed as part of operating the material recovery section. When the provisions of § 63.116(c)(4) specify that Method 18, 40 CFR part 60, appendix A shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A may be used for the purposes of this subpart. The use of

Method 25A, 40 CFR part 60, appendix A shall comply with paragraphs (b)(1)(i)(A) and (b)(1)(i)(B) of this section.

(A) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of the emissions.

(B) The use of Method 25A, 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(ii) The rate of polymer produced, P_p (kg/hr), shall be determined by dividing the weight (kg) of polymer pulled from the process line during the performance test by the number of hours taken to perform the performance test. The weight of polymer pulled shall be determined by direct measurement or by an alternate methodology, such as materials balance. If an alternate methodology is used, a description of the methodology, including all procedures, data, and assumptions shall be submitted as part of the Notification of Compliance Status required by § 63.1335(e)(5).

(2) Use engineering assessment, as described in § 63.1323(b)(6)(i), to demonstrate that mass emissions per mass product are less than or equal to 0.07 kg organic HAP/Mg product. If engineering assessment shows that mass emissions per mass product are greater than 0.07 kg organic HAP/Mg product and the owner or operator wishes to demonstrate that mass emissions per mass product are less than the threshold emission rate of 0.12 kg organic HAP/Mg product, the owner or operator shall use the procedures specified in paragraph (b)(1) of this section.

(c) *Compliance with Mass Emissions per Mass Product Standards.* Owners or operators complying with § 63.1316 (b)(1)(i)(A), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), and (c)(1)(i) shall demonstrate compliance with the mass emissions per mass product requirements using the procedures specified in paragraph (b)(1) of this section, except that the sampling site specified in paragraph (b)(1)(i) of this section shall be at the outlet of the last control or recovery device.

(d) *Compliance with Temperature Limits for Final Condensers.* Owners or operators complying with § 63.1316(b)(1)(i)(B) or § 63.1316(c)(1)(ii) shall perform an initial performance test as specified in paragraph (d)(1) of this section to demonstrate initial compliance with the temperature limit requirements and shall demonstrate continuous compliance as specified in paragraph (d)(2) of this section.

(1) Using the temperature monitoring device specified by the applicable monitoring provisions specified for continuous process vents in § 63.1315, an average exit temperature shall be determined based on the average exit temperature for three performance tests. The average exit temperature for each 3-hour performance test shall be based on measurements taken at least every 15 minutes for 3 hours of continuous operation under maximum representative operating conditions for the process. For emissions streams containing continuous and batch process vents, the maximum representative operating conditions shall be during periods when batch emission episodes are venting to the control device resulting in the highest concentration of organic HAP in the emissions stream.

(2) As specified in § 63.1317(b), continuous compliance shall be determined based on an average exit temperature determined for each consecutive 3-hour continuous period. Each 3-hour period where the average exit temperature is more than 6 °C (10 °F) above the applicable specified temperature limit shall be considered an exceedance of the monitoring provisions.

§ 63.1319 PET and polystyrene continuous process affected sources—recordkeeping provisions.

(a) Except as specified in paragraphs (b) and (c) of this section, owners or operators using a control or recovery device to comply with § 63.1316 shall comply with the applicable recordkeeping provisions specified in § 63.1315, except that, for the purposes of this paragraph (a), owners or operators shall ignore references to group determinations (i.e., total resource effectiveness) and are not required to comply with § 63.113.

(b) *Records Demonstrating Compliance With the Applicability Determination Procedure for PET Affected Sources Using a Dimethyl Terephthalate Process.* Each owner or operator, as appropriate, shall keep the following data, as appropriate, up-to-date and readily accessible:

(1) Results of the mass emissions per mass product calculation specified in § 63.1318(b).

(2) If complying with § 63.1316 by demonstrating that mass emissions per mass product are less than or equal to the level specified in § 63.1316(a)(1)(i), the information specified in paragraphs (b)(2)(i) and (b)(2)(ii) of this section.

(i) Each process operation variable (e.g., pressure, temperature, type of catalyst) that may result in an increase in the mass emissions per mass product should said variable be changed.

(ii) Records of any change in process operation that increases the mass emissions per mass product.

(c) *Records Demonstrating Compliance with Temperature Limits for Final Condensers.* Owners or operators of continuous process vents complying with § 63.1316(b)(1)(i)(B) or § 63.1316(c)(1)(ii) shall keep the following data, as appropriate, up-to-date and readily accessible:

(1) Records of monitoring data as specified in § 63.1315, except that the monitoring period shall be each consecutive 3-hour continuous period.

(2) Results of the performance test specified in § 63.1318(d)(1) and any other performance test that may be subsequently required.

§ 63.1320 PET and polystyrene continuous process affected sources—reporting provisions.

(a) Except as specified in paragraphs (b) and (c) of this section, owners and operators using a control or recovery device to comply with § 63.1316 shall comply with the applicable reporting provisions specified in § 63.1315, except that, for the purposes of this paragraph (a), owners or operators shall ignore references to group determinations (i.e., total resource effectiveness) and are not required to comply with § 63.113.

(b) *Reporting for PET Affected Sources Using a Dimethyl Terephthalate Process.* Each owner or operator complying with § 63.1316 by demonstrating that mass emissions per mass product are less than or equal to the level specified in § 63.1316(a)(1)(i) shall comply with paragraphs (b)(1) through (b)(3) of this section.

(1) Include the information specified in § 63.1319(b)(2)(ii) in each Periodic Report, required by § 63.1335(e)(6), as appropriate.

(2) Include the information specified in § 63.1319 (b)(1) or (b)(2) in the Notification of Compliance Status, required by § 63.1335(e)(5), for the initial determination and in the appropriate Periodic Report, required by § 63.1335(e)(6), for any subsequent determinations that may be required.

(3) Whenever a process change, as defined in § 63.115(e), is made that causes emissions from continuous process vents in the collection of material recovery sections (i.e., methanol recovery) within the affected source to be greater than 0.12 kg organic HAP/Mg of product, the owner or operator shall submit a report within

180 operating days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report as specified in § 63.1335(e)(6)(iii)(D)(*2*). The following information shall be submitted:

(i) A description of the process change; and

(ii) A schedule for compliance with the provisions of this subpart, as required under § 63.1335(e)(6)(iii(D)(*2*).

(c) *Reporting for Affected Sources Complying With Temperature Limits for Final Condensers.* Each owner or operator complying with § 63.1316(b)(1)(i)(B) or § 63.1316(c)(1)(ii) shall comply with paragraphs (c)(1) and (c)(2) of this section.

(1) Report periods when the 3-hour average exit temperature is more than 6° C (10° F) above the applicable specified temperature limit in each Periodic Report, required by § 63.1335(e)(6), as appropriate.

(2) Include the information specified in § 63.1319(c)(2) in the Notification of Compliance Status, required by § 63.1335(e)(5), for the initial performance test and in the appropriate Periodic Report, required by § 63.1335(e)(6), for any subsequent performance tests that may be required.

(3) Include the information specified in § 63.1317(b) in the Notification of Compliance Status, required by § 63.1335(e)(5).

§ 63.1321 Batch process vents provisions.

(a) *Batch process vents.* Except as specified in paragraphs (b) and (c) of this section, owners and operators of new and existing affected sources with batch process vents shall comply with the requirements in §§ 63.1322 through 63.1327. The batch process vent group status shall be determined in accordance with § 63.1323. Batch process vents classified as Group 1 shall comply with the reference control technology requirements for Group 1 batch process vents in § 63.1322, the monitoring requirements in § 63.1324, the performance test methods and procedures to determine compliance requirements in § 63.1325, the recordkeeping requirements in § 63.1326, and the reporting requirements in § 63.1327. All Group 2 batch process vents shall comply with the applicable reference control technology requirements in § 63.1322, the recordkeeping requirements in § 63.1326, and the reporting requirements in § 63.1327.

(b) *New SAN batch affected sources.* Owners and operators of new SAN affected sources using a batch process shall comply with the requirements of § 63.1322 through § 63.1327 for batch process vents and aggregate batch vent streams except as specified in paragraphs (b)(1) through (b)(2) of this section. For continuous process vents, owners and operators shall comply with the requirements of § 63.1322 through § 63.1327 except as specified in paragraph (b)(3) of this section.

(1) For batch process vents, the determination of group status (i.e., Group 1/Group 2) under § 63.1323 is not required.

(2) For batch process vents and aggregate batch vent streams, the control requirements for individual batch process vents or aggregate batch vent streams (e.g., 90 percent emission reduction) as specified in § 63.1322(a)(1), (a)(2), (b)(1), and (b)(2) shall not apply.

(3) Continuous process vents using a control or recovery device to comply with § 63.1322(a)(3) are subject to the applicable requirements in § 63.1315(a), as appropriate, except as specified in paragraphs (b)(3)(i) and (b)(3)(ii) of this section.

(i) Said continuous process vents are not subject to the group determination procedures of § 63.115 for the purposes of this subpart.

(ii) Said continuous process vents are not subject to the reference control technology provisions of § 63.113 for the purposes of this subpart.

(c) *Aggregate batch vent streams.* Aggregate batch vent streams, as defined in § 63.1312, are subject to the control requirements for individual batch process vents, as specified in § 63.1322(b), as well as the monitoring, testing, recordkeeping, and reporting requirements specified in § 63.1324 through § 63.1327.

§ 63.1322 Batch process vents—reference control technology.

(a) *Batch process vents.* The owner or operator of a Group 1 batch process vent, as determined using the procedures in § 63.1323, shall comply with the requirements of either paragraph (a)(1) or (a)(2) of this section, except as provided for in paragraph (a)(3) of this section. Compliance can be based on either organic HAP or TOC.

(1) For each batch process vent, reduce organic HAP emissions using a flare.

(i) The flare shall comply with the requirements of § 63.11(b).

(ii) Halogenated batch process vents, as defined in § 63.1312, shall not be vented to a flare.

(2) For each batch process vent, reduce organic HAP emissions for the batch cycle by 90 weight percent using a control device. Owners or operators may achieve compliance with this paragraph (a)(2) through the control of selected batch emission episodes or the control of portions of selected batch emission episodes. Documentation demonstrating how the 90 weight percent emission reduction is achieved is required by § 63.1325(c)(2).

(3) The owner or operator of a new affected source producing SAN using a batch process shall reduce organic HAP emissions from the collection of batch process vents, aggregate batch vent streams, and continuous process vents by 84 weight percent. Compliance with this paragraph (a)(3) shall be demonstrated using the procedures specified in § 63.1333(c).

(b) *Aggregate batch vent streams.* The owner or operator of an aggregate batch vent stream that contains one or more Group 1 batch process vents shall comply with the requirements of either paragraph (b)(1) or (b)(2) of this section, except as provided for in paragraph (b)(3) of this section. Compliance can be based on either organic HAP or TOC.

(1) For each aggregate batch vent stream, reduce organic HAP emissions using a flare.

(i) The flare shall comply with the requirements of § 63.11(b).

(ii) Halogenated aggregate batch vent streams, as defined in § 63.1312, shall not be vented to a flare.

(2) For each aggregate batch vent stream, reduce organic HAP emissions by 90 weight percent on a continuous basis using a control device.

(3) The owner or operator of a new affected source producing SAN using a batch process shall comply with paragraph (a)(3) of this section.

(c) *Halogenated emissions.* Halogenated Group 1 batch process vents, halogenated aggregate batch vent streams, and halogenated continuous process vents that are combusted as part of complying with paragraph (a)(2), (a)(3), (b)(2), or (b)(3) of this section, as appropriate, shall be controlled according to either paragraph (c)(1) or (c)(2) of this section.

(1) If a combustion device is used to comply with paragraph (a)(2), (a)(3), (b)(2), or (b)(3) of this section for a halogenated batch process vent, halogenated aggregate batch vent stream, or halogenated continuous process vent, said emissions shall be ducted from the combustion device to an additional control device that reduces overall emissions of hydrogen halides and halogens by 99 percent before said emissions are discharged to the atmosphere.

(2) A control device may be used to reduce the halogen atom mass emission

rate of said emissions to less than 3,750 kg/yr for batch process vents or aggregate batch vent streams and to less than 0.45 kilograms per hour for continuous process vents prior to venting to any combustion control device, and thus make the batch process vent, aggregate batch vent stream, or continuous process vent nonhalogenated. The nonhalogenated batch process vent, aggregate batch vent stream, or continuous process vent must then comply with the requirements of either paragraph (a) or (b) of this section, as appropriate.

(d) If a boiler or process heater is used to comply with the percent reduction requirement specified in paragraph (a)(2), (a)(3), (b)(2), or (b)(3) of this section, the batch process vent, aggregate batch vent stream, or continuous process vent shall be introduced into the flame zone of such a device.

(e) *Combination of batch process vents or aggregate batch vent streams with continuous process vents.* A batch process vent or aggregate batch vent stream combined with a continuous process vent is not subject to the provisions of §§ 63.1323 through 63.1327, providing the requirements of paragraphs (e)(1), (e)(2), and either (e)(3) or (e)(4) of this section are met.

(1) The batch process vent or aggregate batch vent stream is combined with a continuous process vent prior to routing the continuous process vent to a control or recovery device. In this paragraph (e)(1), the definitions of control device and recovery device as they relate to continuous process vents shall be used.

(2) The only emissions to the atmosphere from the batch process vent or aggregate batch vent stream prior to being combined with the continuous process vent are from equipment subject to and in compliance with § 63.1331.

(3) If the batch process vent or aggregate batch vent stream is combined with a continuous process vent prior to being routed to a control device, the combined vent stream shall comply with the requirements in § 63.1315(a)(10). In this paragraph (e)(3), the definition of control device as it relates to continuous process vents shall be used.

(4) If the batch process vent or aggregate batch vent stream is combined with a continuous process vent prior to being routed to a recovery device, the combined vent stream shall comply with the requirements in § 63.1315(a)(11). In this paragraph (e)(4), the definition of recovery device as it relates to continuous process vents shall be used.

(f) *Group 2 batch process vents with annual emissions greater than or equal to the level specified in § 63.1323(d).* The owner or operator of a Group 2 batch process vent with annual emissions greater than or equal to the level specified in § 63.1323(d) shall comply with the provisions of (f)(1) and (f)(2) of this section.

(1) Establish a batch cycle limitation that ensures the Group 2 batch process vent does not become a Group 1 batch process vent.

(2) Comply with the recordkeeping requirements in § 63.1326(d)(2), and the reporting requirements in § 63.1327 (a)(3) and (b).

(g) *Group 2 batch process vents with annual emissions less than the level specified in § 63.1323(d).* The owner or operator of a Group 2 batch process vent with annual emissions less than the level specified in § 63.1323(d) shall comply with either paragraphs (g)(1) and (g)(2) of this section or with paragraphs (f)(1) and (f)(2) of this section.

(1) Establish a batch cycle limitation that ensures emissions do not exceed the level specified in § 63.1323(d).

(2) Comply with the recordkeeping requirements in § 63.1326(d)(1), and the reporting requirements in § 63.1327 (a)(2), (b), and (c).

§ 63.1323 Batch process vents—methods and procedures for group determination.

(a) *General requirements.* Except as provided in paragraph (a)(3) of this section and in § 63.1321(b)(1), the owner or operator of batch process vents at affected sources shall determine the group status of each batch process vent in accordance with the provisions of this section. This determination may be based on either organic HAP or TOC emissions.

(1) The procedures specified in paragraphs (b) through (h) of this section shall be followed for the expected mix of products for a given batch process vent, as specified in paragraph (a)(1)(i) of this section, or for the worst-case HAP emitting product, as specified in paragraphs (a)(1)(ii) through (a)(1)(iv) of this section. ''Worst-case HAP emitting product'' is defined in paragraph (a)(1)(iii) of this section.

(i) If an owner or operator chooses to follow the procedures specified in paragraphs (b) through (h) of this section for the expected mix of products, an identification of the different products and the number of batch cycles accomplished for each is required as part of the group determination documentation, as specified in § 63.1326(a)(1).

(ii) If an owner or operator chooses to follow the procedures specified in paragraphs (b) through (h) of this section for the worst-case HAP emitting product, documentation identifying the worst-case HAP emitting product is required as part of the group determination documentation, as specified in § 63.1326(a)(1).

(iii) Except as specified in paragraph (a)(1)(iii)(B) of this section, the worst-case HAP emitting product is as defined in paragraph (a)(1)(iii)(A) of this section.

(A) The worst-case HAP emitting product is the one with the highest mass emission rate (kg organic HAP per hour) averaged over the entire time period of the batch cycle.

(B) Alternatively, when one product is produced more than 75 percent of the time, accounts for more than 75 percent of the annual mass of product, and the owner or operator can show that the mass emission rate (kg organic HAP per hour) averaged over the entire time period of the batch cycle can reasonably be expected to be similar to the mass emission rate for other products having emissions from the same batch process vent, said product may be considered the worst-case HAP emitting product.

(C) An owner or operator shall determine the worst-case HAP emitting product for a batch process vent as specified in paragraphs (a)(1)(iii)(C)(*1*) through (a)(1)(iii)(C)(*3*) of this section.

(*1*) The emissions per batch emission episode shall be determined using any of the procedures specified in paragraph (b) of this section. The mass emission rate (kg organic HAP per hour) averaged over the entire time period of the batch cycle shall be determined by summing the emissions for each batch emission episode making up a complete batch cycle and dividing by the total duration in hours of the batch cycle.

(*2*) To determine the worst-case HAP emitting product as specified under paragraph (a)(1)(iii)(A) of this section, the mass emission rate for each product shall be determined and compared.

(*3*) To determine the worst-case HAP emitting product as specified under paragraph (a)(1)(iii)(B) of this section, the mass emission rate for the product meeting the time and mass criteria of paragraph (a)(1)(iii)(B) of this section shall be determined, and the owner or operator shall provide adequate information to demonstrate that the mass emission rate for said product is similar to the mass emission rates for the other products having emissions from the same batch process vent. In addition, the owner or operator shall provide information demonstrating that the selected product meets the time and

mass criteria of paragraph (a)(1)(iii)(B) of this section.

(iv) The annual production of the worst-case HAP emitting product shall be determined by ratioing the production time of said product up to a 12 month period of actual production. It is not necessary to ratio up to a maximum production rate (i.e., 8,760 hours per year at maximum design production).

(2) The annual uncontrolled organic HAP or TOC emissions and average flow rate shall be determined at the exit from the batch unit operation. For the purposes of these determinations, the primary condenser operating as a reflux condenser on a distillation column, the primary condenser recovering monomer or solvent from a batch stripping operation, and the primary condenser recovering monomer or solvent from a batch distillation operation shall be considered part of the batch unit operation. All other devices that recover or oxidize organic HAP or TOC vapors shall be considered control devices as defined in § 63.1312.

(3) The owner or operator of a batch process vent complying with the flare provisions in § 63.1322(a)(1) or § 63.1322(b)(1) or routing the batch process vent to a control device to comply with the requirements in § 63.1322(a)(2) or § 63.1322(b)(2) is not required to perform the batch process vent group determination described in this section, but shall comply with all requirements applicable to Group 1 batch process vents for said batch process vent.

(b) *Determination of annual emissions.* The owner or operator shall calculate annual uncontrolled TOC or organic HAP emissions for each batch process vent using the methods described in paragraphs (b)(1) through (b)(8) of this section. Paragraphs (b)(1) through (b)(4) of this section present procedures that can be used to calculate the emissions from individual batch emission episodes. Emissions from batch processes involving multicomponent systems are to be calculated using the procedures in paragraphs (b)(1) through (b)(4) of this section. Individual HAP partial pressures in multicomponent systems shall be determined by the following methods: If the components are miscible in one another, use Raoult's law to calculate the partial pressures; if the solution is a dilute aqueous mixture use Henry's law constants to calculate partial pressures; if Raoult's law or Henry's law are not appropriate (or available) use experimentally obtained activity coefficients, Henry's law constants, or solubility data; if Raoult's law or Henry's law are not appropriate use models, such as the group-contribution models, to predict activity coefficients; and if Raoult's law or Henry's law are not appropriate assume the components of the system behave independently and use the summation of all vapor pressures from the HAP's as the total HAP partial pressure. Chemical property data can be obtained from standard reference texts. Paragraph (b)(5) of this section describes how direct measurement can be used to estimate emissions. If the owner or operator can demonstrate that the procedures in paragraphs (b)(1) through (b)(4) of this section are not appropriate to estimate emissions from a batch emission episode, emissions may be estimated using engineering assessment, as described in paragraph (b)(6) of this section. Owners or operators are not required to demonstrate that direct measurement is not appropriate before utilizing engineering assessment. Paragraph (b)(6)(ii) of this section describes how an owner or operator shall demonstrate that the procedures in paragraphs (b)(1) through (b)(4) of this section are not appropriate. Emissions from a batch cycle shall be calculated in accordance with paragraph (b)(7) of this section, and annual emissions from the batch process vent shall be calculated in accordance with paragraph (b)(8) of this section.

(1) TOC or organic HAP emissions from the purging of an empty vessel shall be calculated using Equation 2 of this subpart. Equation 2 of this subpart does not take into account evaporation of any residual liquid in the vessel.

$$E_{episode} = \frac{(V_{ves})(P)(MW_{wavg})}{RT}\left(1 - 0.37^{m}\right) \qquad \text{[Eq. 2]}$$

where:

$E_{episode}$=Emissions, kg/episode.

V_{ves}=Volume of vessel, m^3.

P=TOC or total organic HAP partial pressure, kPa.

MW_{wavg}=Weighted average molecular weight of TOC or organic HAP in vapor, determined in accordance with paragraph (b)(4)(iii) of this section, kg/kmol.

R=Ideal gas constant, 8.314 m^3•kPa/kmol•K.

T=Temperature of vessel vapor space, K.

m=Number of volumes of purge gas used.

(2) TOC or organic HAP emissions from the purging of a filled vessel shall be calculated using Equation 3 of this subpart.

$$E_{episode} = \frac{(y)(V_{dr})(P^2)(MW_{wavg})}{RT\left(P - \sum_{i=1}^{n} P_i x_i\right)}(T_m) \qquad \text{[Eq. 3]}$$

where:

$E_{episode}$=Emissions, kg/episode.

y=Saturated mole fraction of all TOC or organic HAP in vapor phase.

V_{dr}=Volumetric gas displacement rate, m^3/min.

P=Pressure in vessel vapor space, kPa.

MW_{wavg}=Weighted average molecular weight of TOC or organic HAP in vapor, determined in accordance with paragraph (b)(4)(iii) of this section, kg/kmol.

R=Ideal gas constant, 8.314 m^3•kPa/kmol•K.

T=Temperature of vessel vapor space, K.

P_i=Vapor pressure of TOC or individual organic HAP i, kPa.

x_i=Mole fraction of TOC or organic HAP i in the liquid.

n=Number of organic HAP in stream.

Note: Summation not required if TOC emissions are being estimated.

T_m=Minutes/episode.

(3) Emissions from vapor displacement due to transfer of material into or out of a vessel shall be calculated using Equation 4 of this subpart.

$$E_{episode} = \frac{(y)(V)(P)(MW_{wavg})}{RT} \qquad \text{[Eq. 4]}$$

where:

$E_{episode}$=Emissions, kg/episode.

y=Saturated mole fraction of all TOC or organic HAP in vapor phase.

V=Volume of gas displaced from the vessel, m^3.

P=Pressure in vessel vapor space, kPa.

MW_{wavg}=Weighted average molecular weight of TOC or organic HAP in vapor, determined in accordance with paragraph (b)(4)(i)(D) of this section, kg/kmol.

R=Ideal gas constant, 8.314 m^3•kPa/kmol•K.

T=Temperature of vessel vapor space, K.

(4) Emissions caused by the heating of a vessel shall be calculated using the procedures in either paragraphs (b)(4)(i), (b)(4)(ii), or (b)(4)(iii) of this section, as appropriate.

(i) If the final temperature to which the vessel contents is heated is lower than 50 K below the boiling point of the HAP in the vessel, then emissions shall be calculated using the equations in paragraphs (b)(4)(i)(A) through (b)(4)(i)(D) of this section.

(A) Emissions caused by heating of a vessel shall be calculated using Equation 5 of this subpart. The assumptions made for this calculation are atmospheric pressure of 760 millimeters of mercury (mm Hg) and the displaced gas is always saturated with volatile organic compounds (VOC) vapor in equilibrium with the liquid mixture.

$$E_{episode} = \left[\frac{\dfrac{\sum_{i=1}^{n}(P_i)_{T1}}{101.325 - \sum_{i=1}^{n}(P_i)_{T1}} + \dfrac{\sum_{i=1}^{n}(P_i)_{T2}}{101.325 - \sum_{i=1}^{n}(P_i)_{T2}}}{2} \right] (\Delta^n)(MW_{wavg}) \qquad \text{[Eq. 5]}$$

where:

$E_{episode}$=Emissions, kg/episode.

$(P_i)T1$, $(P_i)T2$=Partial pressure (kPa) of TOC or each organic HAP i in the vessel headspace at initial (T1) and final (T2) temperature.

n=Number of organic HAP in stream. Note: Summation not required if TOC emissions are being estimated.

> n=Number of kilogram-moles (kg-moles) of gas displaced, determined in accordance with paragraph (b)(4)(i)(B) of this section.

101.325=Constant, kPa.

MW_{wavg}=Weighted average molecular weight of TOC or organic HAP in vapor, determined in accordance with paragraph (b)(4)(i)(D) of this section, kg/kmol.

(B) The moles of gas displaced, > n, is calculated using Equation 6 of this subpart.

$$\Delta^n = \frac{V_{fs}}{R}\left[\left(\frac{Pa_1}{T_1}\right) - \left(\frac{Pa_2}{T_2}\right)\right] \qquad \text{[Eq. 6]}$$

where:

> n=Number of kg-moles of gas displaced.

V_{fs}=Volume of free space in the vessel, m^3.

R=Ideal gas constant, 8.314 m^3•kPa/kmol•K.

Pa_1=Initial noncondensible gas pressure in the vessel, kPa.

Pa_2=Final noncondensible gas pressure, kPa.

T_1=Initial temperature of vessel, K.

T_2=Final temperature of vessel, K.

(C) The initial and final pressure of the noncondensible gas in the vessel shall be calculated using Equation 7 of this subpart.

$$Pa = 101.325 - \sum_{i=1}^{n}(P_i)_T \qquad \text{[Eq. 7]}$$

where:

Pa=Initial or final partial pressure of noncondensible gas in the vessel headspace, kPa.

101.325=Constant, kPa.

$(P_i)T$=Partial pressure of TOC or each organic HAP i in the vessel headspace, kPa, at the initial or final temperature (T1 or T2).

n=Number of organic HAP in stream.

Note: Summation not required if TOC emissions are being estimated.

(D) The weighted average molecular weight of TOC or organic HAP in the displaced gas, MW_{wavg}, shall be calculated using Equation 8 of this subpart.

$$MW_{wavg} = \frac{\sum_{i=1}^{n}(\text{mass of C})_i\,(\text{molecular weight of C})_i}{\sum_{i=1}^{n}(\text{mass of C})_i} \qquad \text{[Eq. 8]}$$

where:

C=TOC or organic HAP component

n=Number of TOC or organic HAP components in stream.

(ii) If the vessel contents are heated to a temperature greater than 50 K below the boiling point, then emissions from

the heating of a vessel shall be calculated as the sum of the emissions calculated in accordance with paragraphs (b)(4)(ii)(A) and (b)(4)(ii)(B) of this section.

(A) For the interval from the initial temperature to the temperature 50 K below the boiling point, emissions shall be calculated using Equation 5 of this subpart, where T_2 is the temperature 50 K below the boiling point.

(B) For the interval from the temperature 50 K below the boiling point to the final temperature, emissions shall be calculated as the summation of emissions for each 5 K increment, where the emissions for each increment shall be calculated using Equation 5 of this subpart.

(*1*) If the final temperature of the heatup is lower than 5 K below the boiling point, the final temperature for the last increment shall be the final temperature for the heatup, even if the last increment is less than 5 K.

(*2*) If the final temperature of the heatup is higher than 5 K below the boiling point, the final temperature for the last increment shall be the temperature 5 K below the boiling point, even if the last increment is less than 5 K.

(*3*) If the vessel contents are heated to the boiling point and the vessel is not operating with a condenser, the final temperature for the final increment shall be the temperature 5 K below the boiling point, even if the last increment is less than 5 K.

(iii) If the vessel is operating with a condenser, and the vessel contents are heated to the boiling point, the primary condenser, as specified in paragraph (a)(2) of this section, is considered part of the process. Emissions shall be calculated as the sum of emissions calculated using Equation 5 of this subpart, which calculates emissions due to heating the vessel contents to the temperature of the gas existing the condenser, and emissions calculated using Equation 4 of this subpart, which calculates emissions due to the displacement of the remaining saturated noncondensible gas in the vessel. The final temperature in Equation 5 of this subpart shall be set equal to the exit gas temperature of the condenser. Equation 4 of this subpart shall be used as written below in Equation 4a of this subpart, using free space volume, and T is set equal to the condenser exit gas temperature.

$$E_{episode} = \frac{(y)(V_{fs})(P)(MW_{wavg})}{RT} \quad \text{[Eq. 4a]}$$

where:

$E_{episode}$=Emissions, kg/episode.

y=Saturated mole fraction of all TOC or organic HAP in vapor phase.

V_{fs}=Volume of the free space in the vessel, m^3.

P=Pressure in vessel vapor space, kPa.

MW_{wavg}=Weighted average molecular weight of TOC or organic HAP in vapor, determined in accordance with paragraph (b)(4)(i)(D) of this section, kg/kmol.

R=Ideal gas constant, 8.314 m^3•kPa/kmol•K.

T=Temperature of condenser exit stream, K.

(5) The owner or operator may estimate annual emissions for a batch emission episode by direct measurement. If direct measurement is used, the owner or operator shall either perform a test for the duration of a representative batch emission episode or perform a test during only those periods of the batch emission episode for which the emission rate for the entire episode can be determined or for which the emissions are greater than the average emission rate of the batch emission episode. The owner or operator choosing either of these options must develop an emission profile for the entire batch emission episode, based on either process knowledge or test data collected, to demonstrate that test periods are representative. Examples of information that could constitute process knowledge include calculations based on material balances and process stoichiometry. Previous test results may be used provided the results are still relevant to the current batch process vent conditions. Performance tests shall follow the procedures specified in paragraphs (b)(5)(i) through (b)(5)(iii) of this section. The procedures in either paragraph (b)(5)(iv) or (b)(5)(v) of this section shall be used to calculate the emissions per batch emission episode.

(i) Method 1 or 1A, 40 CFR part 60, appendix A as appropriate, shall be used for selection of the sampling sites if the flow measuring device is a pitot tube. No traverse is necessary when Method 2A or 2D, 40 CFR part 60, appendix A is used to determine gas stream volumetric flow rate.

(ii) Gas stream volumetric flow rate and/or average flow rate shall be determined as specified in paragraph (e) of this section.

(iii) Method 18 or Method 25A, 40 CFR part 60, appendix A, shall be used to determine the concentration of TOC or organic HAP, as appropriate. Alternatively, any other method or data that has been validated according to the applicable procedures in Method 301 of appendix A of this part may be used. The use of Method 25A, 40 CFR part 60, appendix A shall comply with paragraphs (b)(5)(iii)(A) and (b)(5)(iii)(B) of this section.

(A) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of the emissions.

(B) The use of Method 25A, 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(iv) If an integrated sample is taken over the entire batch emission episode to determine TOC or average total organic HAP concentration, emissions shall be calculated using Equation 9 of this subpart.

$$E_{episode} = K\left[\sum_{j=1}^{n}(C_j)(M_j)\right]AFR(T_h) \quad \text{[Eq. 9]}$$

where:

$E_{episode}$=Emissions, kg/episode.

K=Constant, 2.494×10^{-6} $(ppmv)^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20 °C.

C_j=Average concentration of TOC or sample organic HAP component j of the gas stream, dry basis, ppmv.

M_j=Molecular weight of TOC or sample organic HAP component j of the gas stream, gm/gm-mole.

AFR=Average flow rate of gas stream, dry basis, scmm.

T_h=Hours/episode.

n=Number of organic HAP in stream.

Note: Summation not required if TOC emissions are being estimated using a TOC concentration measured using Method 25A, 40 CFR part 60, appendix A.

(v) If grab samples are taken to determine TOC or average total organic HAP concentration, emissions shall be calculated according to paragraphs (b)(5)(v)(A) and (b)(5)(v)(B) of this section.

(A) For each measurement point, the emission rate shall be calculated using Equation 10 of this subpart.

$$E_{point} = K\left[\sum_{j=1}^{n} C_j M_j\right] FR \qquad [Eq. 10]$$

where:

E_{point}=Emission rate for individual measurement point, kg/hr.

K=Constant, 2.494 × 10–6 $(ppmv)^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20 °C.

C_j=Concentration of TOC or sample organic HAP component j of the gas stream, dry basis, ppmv.

M_j=Molecular weight of TOC or sample organic HAP component j of the gas stream, gm/gm-mole.

FR=Flow rate of gas stream for the measurement point, dry basis, scmm.

n=Number of organic HAP in stream.

Note: Summation not required if TOC emissions are being estimated using a TOC concentration measured using Method 25A, 40 CFR part 60, appendix A.

(B) The emissions per batch emission episode shall be calculated using Equation 11 of this subpart.

$$E_{episode} = (DUR)\left[\sum_{i=1}^{n} \frac{E_i}{n}\right] \qquad [Eq. 11]$$

where:

$E_{episode}$=Emissions, kg/episode.

DUR=Duration of the batch emission episode, hr/episode.

E_i=Emissions for measurement point i, kg/hr.

n=Number of measurements.

(6) If the owner or operator can demonstrate that the methods in paragraphs (b)(1) through (b)(4) of this section are not appropriate to estimate emissions for a batch emissions episode, the owner or operator may use engineering assessment to estimate emissions as specified in paragraphs (b)(6)(i) and (b)(6)(ii) of this section. All data, assumptions, and procedures used in an engineering assessment shall be documented.

(i) Engineering assessment includes, but is not limited to, the following:

(A) Previous test results, provided the tests are representative of current operating practices;

(B) Bench-scale or pilot-scale test data representative of the process under representative operating conditions;

(C) Flow rate, TOC emission rate, or organic HAP emission rate specified or implied within a permit limit applicable to the batch process vent; and

(D) Design analysis based on accepted chemical engineering principles, measurable process parameters, or physical or chemical laws or properties. Examples of analytical methods include, but are not limited to:

(*1*) Use of material balances;

(*2*) Estimation of flow rate based on physical equipment design such as pump or blower capacities; and

(*3*) Estimation of TOC or organic HAP concentrations based on saturation conditions.

(ii) The emissions estimation equations in paragraphs (b)(1) through (b)(4) of this section shall be considered inappropriate for estimating emissions for a given batch emissions episode if one or more of the criteria in paragraphs (b)(6)(ii)(A) through (b)(6)(ii)(B) of this section are met.

(A) Previous test data are available that show a greater than 20 percent discrepancy between the test value and the estimated value.

(B) The owner or operator can demonstrate to the Administrator that the emissions estimation equations are not appropriate for a given batch emissions episode.

(C) Data or other information supporting a finding that the emissions estimation equations are inappropriate as specified under paragraph (b)(6)(ii)(A) of this section shall be reported in the Notification of Compliance Status, as required in § 63.1335(e)(5).

(D) Data or other information supporting a finding that the emissions estimation equations are inappropriate as specified under paragraph (b)(6)(ii)(B) of this section shall be reported in the Precompliance Report, as required in § 63.1335(e)(3).

(7) For each batch process vent, the TOC or organic HAP emissions associated with a single batch cycle shall be calculated using Equation 12 of this subpart.

$$E_{cycle} = \sum_{i=1}^{n} E_{episode_i} \qquad [Eq. 12]$$

where:

where:

E_{cycle}=Emissions for an individual batch cycle, kg/batch cycle

$E_{episode\ i}$=Emissions from batch emission episode i, kg/episode

n=Number of batch emission episodes for the batch cycle

(8) Annual TOC or organic HAP emissions from a batch process vent shall be calculated using Equation 13 of this subpart.

$$AE = \sum_{i=1}^{n} (N_i)(E_{cycle_i}) \qquad [Eq. 13]$$

where:

AE=Annual emissions from a batch process vent, kg/yr.

N_i=Number of type i batch cycles performed annually, cycles/year

$E_{cycle\ i}$=Emissions from the batch process vent associated with a single type i batch cycle, as determined in paragraph (b)(7) of this section, kg/batch cycle

n=Number of different types of batch cycles that cause the emission of TOC or organic HAP from the batch process vent

(c) (Reserved)

(d) *Minimum emission level exemption.* A batch process vent with annual emissions less than 11,800 kg/yr is considered a Group 2 batch process vent and the owner or operator of said batch process vent shall comply with the requirements in § 63.1322 (f) or (g). The owner or operator of said batch process vent is not required to comply with the provisions in paragraphs (e) through (g) of this section.

(e) *Determination of average flow rate.* The owner or operator shall determine the average flow rate for each batch emission episode in accordance with one of the procedures provided in paragraphs (e)(1) through (e)(2) of this section. The annual average flow rate for a batch process vent shall be calculated as specified in paragraph (e)(3) of this section.

(1) Determination of the average flow rate for a batch emission episode by direct measurement shall be made using the procedures specified in paragraphs (e)(1)(i) through (e)(1)(iii) of this section.

(i) The volumetric flow rate for a batch emission episode, in standard cubic meters per minute (scmm) at 20° C, shall be determined using Method 2, 2A, 2C, or 2D, 40 CFR part 60, appendix A, as appropriate.

(ii) The volumetric flow rate of a representative batch emission episode shall be measured every 15 minutes.

(iii) The average flow rate for a batch emission episode shall be calculated using Equation 14 of this subpart.

$$AFR_{episode} = \frac{\sum_{i=1}^{n} FR_i}{n} \qquad [Eq. 14]$$

where:

$AFR_{episode}$ = Average flow rate for the batch emission episode, scmm.

FR_i = Flow rate for individual measurement i, scmm.

n = Number of flow rate measurements taken during the batch emission episode.

(2) The average flow rate for a batch emission episode may be determined by engineering assessment, as defined in paragraph (b)(6)(i) of this section. All data, assumptions, and procedures used shall be documented.

(3) The annual average flow rate for a batch process vent shall be calculated using Equation 15 of this subpart.

$$AFR = \frac{\sum_{i=1}^{n} (DUR_i)(AFR_{episode,i})}{\sum_{i=1}^{n} (DUR_i)} \qquad [Eq. 15]$$

where:

AFR = Annual average flow rate for the batch process vent, scmm.

DUR_i = Duration of type i batch emission episodes annually, hrs/yr.

$AFR_{episode,\ i}$ = Average flow rate for type i batch emission episode, scmm.

n = Number of types of batch emission episodes venting from the batch process vent.

(f) *Determination of cutoff flow rate.* For each batch process vent, the owner or operator shall calculate the cutoff flow rate using Equation 16 of this subpart.

$$CFR = (0.00437)\ (AE) - 51.6 \qquad [Eq. 16]$$

where:

CFR = Cutoff flow rate, scmm.

AE = Annual TOC or organic HAP emissions, as determined in paragraph (b)(8) of this section, kg/yr.

(g) *Group 1/Group 2 status determination.* The owner or operator shall compare the cutoff flow rate, calculated in accordance with paragraph (f) of this section, with the annual average flow rate, determined in accordance with paragraph (e)(4) of this section. The group determination status for each batch process vent shall be made using the criteria specified in paragraphs (g)(1) and (g)(2) of this section.

(1) If the cutoff flow rate is greater than or equal to the annual average flow rate of the stream, the batch process vent is classified as a Group 1 batch process vent.

(2) If the cutoff flow rate is less than the annual average flow rate of the stream, the batch process vent is classified as a Group 2 batch process vent.

(h) *Determination of halogenation status.* To determine whether a batch process vent or an aggregate batch vent stream is halogenated, the annual mass emission rate of halogen atoms contained in organic compounds shall be calculated using the procedures specified in paragraphs (h)(1) through (h)(3) of this section.

(1) The concentration of each organic compound containing halogen atoms (ppmv, by compound) for each batch emission episode shall be determined based on any one of the following procedures:

(i) Process knowledge that no halogens or hydrogen halides are present in the process may be used to demonstrate that a batch emission episode is nonhalogenated. Halogens or hydrogen halides that are unintentionally introduced into the process shall not be considered in making a finding that a batch emission episode is nonhalogenated.

(ii) Engineering assessment as discussed in paragraph (b)(6)(i) of this section.

(iii) Concentration of organic compounds containing halogens and hydrogen halides as measured by Method 26 or 26A, 40 CFR part 60, appendix A.

(iv) Any other method or data that has been validated according to the applicable procedures in Method 301 of appendix A of this part.

(2) The annual mass emissions of halogen atoms for a batch process vent shall be calculated using Equation 17 of this subpart.

$$E_{halogen} = K\left[\sum_{j=1}^{n}\sum_{i=1}^{m}(C_{avgj})(L_{j,i})(M_{j,i})\right]AFR \qquad [Eq. 17]$$

where:

$E_{halogen}$ = Mass of halogen atoms, dry basis, kg/yr.

K = Constant, 0.022 $(ppmv)^{-1}$ (kg-mole per scm) (minute/yr), where standard temperature is 20°C.

AFR = Annual average flow rate of the batch process vent, determined according to paragraph (e) of this section, scmm.

$M_{j,\ i}$ = Molecular weight of halogen atom i in compound j, kg/kg-mole.

$L_{j,\ i}$ = Number of atoms of halogen i in compound j.

n = Number of halogenated compounds j in the batch process vent.

m = Number of different halogens i in each compound j of the batch process vent.

C_{avgj} = Average annual concentration of halogenated compound j in the batch process vent as determined by using Equation 18 of this subpart, dry basis, ppmv.

$$C_{avg_j} = \frac{\sum_{i=1}^{n}(DUR_i)(C_i)}{\sum_{i=1}^{n}(DUR_i)} \qquad [Eq. 18]$$

where:

DUR_i = Duration of type i batch emission episodes annually, hrs/yr.

C_i = Average concentration of halogenated compound j in type i batch emission episode, ppmv.

n = Number of types of batch emission episodes venting from the batch process vent.

(3) The annual mass emissions of halogen atoms for an aggregate batch vent stream shall be the sum of the annual mass emissions of halogen atoms for all batch process vents included in the aggregate batch vent stream.

(i) *Process changes affecting Group 2 batch process vents.* Whenever process changes, as described in paragraph (i)(1)

of this section, are made that affect one or more Group 2 batch process vents, the owner or operator shall comply with paragraphs (i) (2) and (3) of this section.

(1) Examples of process changes include, but are not limited to, changes in production capacity, production rate, feedstock type, or catalyst type; or whenever there is replacement, removal, or modification of recovery equipment considered part of the batch unit operation as specified in paragraph (a)(2) of this section. An increase in the annual number of batch cycles beyond the batch cycle limitation constitutes a process change. For purposes of this paragraph (i), process changes do not include: process upsets; unintentional, temporary process changes; and changes that are within the margin of variation on which the original group determination was based.

(2) For each batch process vent affected by a process change, the owner or operator shall redetermine the group status by repeating the procedures specified in paragraphs (b) through (g) of this section, as applicable; alternatively, engineering assessment, as described in paragraph (b)(6)(i) of this section, can be used to determine the effects of the process change.

(3) Based on the results from paragraph (i)(2) of this section, owners or operators shall comply with either paragraph (i)(3) (i), (ii), or (iii) of this section.

(i) If the redetermination described in paragraph (i)(2) of this section indicates that a Group 2 batch process vent has become a Group 1 batch process vent as a result of the process change, the owner or operator shall submit a report as specified in § 63.1327(b) and shall comply with the Group 1 provisions in § 63.1322 through § 63.1327 in accordance with the compliance schedule described in § 63.1335(e)(6)(iii)(D)(*2*).

(ii) If the redetermination described in paragraph (i)(2) of this section indicates that a Group 2 batch process vent with annual emissions less than the level specified in paragraph (d) of this section, that is in compliance with § 63.1322(g), now has annual emissions greater than or equal to the level specified in paragraph (d) of this section but remains a Group 2 batch process vent, the owner or operator shall submit a report as specified in § 63.1327(c) and shall comply with § 63.1322(f) in accordance with the compliance schedule required by § 63.1335(e)(6)(iii)(D)(*2*).

(iii) If the redetermination described in paragraph (i)(2) of this section indicates no change in group status or no change in the relation of annual emissions to the levels specified in paragraph (d) of this section, the owner or operator is not required to submit a report, as described in § 63.1327(e).

(j) *Process changes to new SAN affected sources using a batch process.* Whenever process changes, as described in paragraph (j)(1) of this section, are made to a new affected source producing SAN using a batch process, the owner or operator shall comply with paragraphs (j) (2) and (3) of this section.

(1) Examples of process changes include, but are not limited to, changes in production capacity, production rate, feedstock type, or catalyst type; replacement, removal, or addition of recovery equipment considered part of a batch unit operation, as specified in paragraph (a)(1) of this section; replacement, removal, or addition of control equipment associated with a continuous or batch process vent or an aggregate batch vent stream. For purposes of this paragraph (j)(1), process changes do not include process upsets or unintentional, temporary process changes.

(2) The owner or operator shall redetermine the percent emission reduction achieved using the procedures specified in § 63.1333(c). If engineering assessment, as described in paragraph (b)(6)(i) of this section, can demonstrate that the process change did not cause the percent emission reduction to decrease, it may be used in lieu of redetermining the percent reduction using the procedures specified in § 63.1333(c).

(3) Where the redetermined percent reduction is less than 84 percent, the owner or operator shall submit a report as specified in § 63.1327(d) and shall comply with § 63.1322(a)(3) and all associated provisions in accordance with the compliance schedule described in § 63.1335(e)(6)(iii)(D)(*2*).

§ 63.1324 Batch process vents—monitoring provisions.

(a) *General requirements.* Each owner or operator of a batch process vent or aggregate batch vent stream that uses a control device to comply with the requirements in § 63.1322(a) or § 63.1322(b), shall install the monitoring equipment specified in paragraph (c) of this section.

(1) This monitoring equipment shall be in operation at all times when batch emission episodes, or portions thereof, that the owner or operator has selected to control are vented to the control device, or at all times when an aggregate batch vent stream is vented to the control device.

(2) The owner or operator shall operate control devices such that monitored parameters remain above the minimum level or below the maximum level, as appropriate, established as specified in paragraph (f) of this section.

(b) *Continuous process vents.* Each owner or operator of a continuous process vent that uses a control device or recovery device to comply with the requirements in § 63.1322(a)(3) shall comply with the applicable requirements of § 63.1315(a) as specified in § 63.1321(b).

(c) *Batch process vent and aggregate batch vent stream monitoring parameters.* The monitoring equipment specified in paragraphs (c)(1) through (c)(8) of this section shall be installed as specified in paragraph (a) of this section. The parameters to be monitored are specified in Table 7 of this subpart.

(1) Where an incinerator is used, a temperature monitoring device equipped with a continuous recorder is required.

(i) Where an incinerator other than a catalytic incinerator is used, the temperature monitoring device shall be installed in the firebox or in the ductwork immediately downstream of the firebox in a position before any substantial heat exchange occurs.

(ii) Where a catalytic incinerator is used, temperature monitoring devices shall be installed in the gas stream immediately before and after the catalyst bed.

(2) Where a flare is used, a device (including but not limited to a thermocouple, ultra-violet beam sensor, or infrared sensor) capable of continuously detecting the presence of a pilot flame is required.

(3) Where a boiler or process heater of less than 44 megawatts design heat input capacity is used, a temperature monitoring device in the firebox equipped with a continuous recorder is required. Any boiler or process heater in which all batch process vents or aggregate batch vent streams are introduced with the primary fuel or are used as the primary fuel is exempt from this requirement.

(4) Where a scrubber is used with an incinerator, boiler, or process heater in concert with the combustion of halogenated batch process vents or halogenated aggregate batch vent streams, the following monitoring equipment is required for the scrubber.

(i) A pH monitoring device equipped with a continuous recorder to monitor the pH of the scrubber effluent.

(ii) A flow meter equipped with a continuous recorder shall be located at the scrubber influent to monitor the scrubber liquid flow rate.

(5) Where an absorber is used, a scrubbing liquid temperature

monitoring device and a specific gravity monitoring device are required, each equipped with a continuous recorder.

(6) Where a condenser is used, a condenser exit temperature (product side) monitoring device equipped with a continuous recorder is required.

(7) Where a carbon adsorber is used, an integrating regeneration stream flow monitoring device having an accuracy of ±10 percent, capable of recording the total regeneration stream mass flow for each regeneration cycle; and a carbon bed temperature monitoring device, capable of recording the carbon bed temperature after each regeneration and within 15 minutes of completing any cooling cycle are required.

(8) As an alternate to paragraphs (c)(5) through (c)(7) of this section, the owner or operator may install an organic monitoring device equipped with a continuous recorder.

(d) *Alternative monitoring parameters.* An owner or operator of a batch process vent or aggregate batch vent stream may request approval to monitor parameters other than those required by paragraph (c) of this section. The request shall be submitted according to the procedures specified in § 63.1335(f). Approval shall be requested if the owner or operator:

(1) Uses a control device other than those included in paragraph (c) of this section; or

(2) Uses one of the control devices included in paragraph (c) of this section, but seeks to monitor a parameter other than those specified in Table 7 of this subpart and paragraph (c) of this section.

(e) *Monitoring of bypass lines.* Owners or operators of a batch process vent or aggregate batch vent stream using a vent system that contains bypass lines that could divert emissions away from a control device used to comply with § 63.1322(a) or § 63.1322(b) shall comply with either paragraph (d)(1), (d)(2), or (d)(3) of this section. Equipment such as low leg drains, high point bleeds, analyzer vents, open-ended valves or lines, and pressure relief valves needed for safety purposes are not subject to this paragraph (e).

(1) Properly install, maintain, and operate a flow indicator that takes a reading at least once every 15 minutes. Records shall be generated as specified in § 63.1326(e)(3). The flow indicator shall be installed at the entrance to any bypass line that could divert emissions away from the control device and to the atmosphere; or

(2) Secure the bypass line valve in the non-diverting position with a car-seal or a lock-and-key type configuration. A visual inspection of the seal or closure mechanism shall be performed at least once every month to ensure that the valve is maintained in the non-diverting position and emissions are not diverted through the bypass line. Records shall be generated as specified in § 63.1326(e)(4).

(3) Continuously monitor the bypass line valve position using computer monitoring and record any periods when the position of the bypass line valve has changed as specified in § 63.1326(e)(4).

(f) *Establishment of parameter monitoring levels.* Parameter monitoring levels for batch process vents and aggregate batch vent streams shall be established as specified in paragraphs (f)(1) through (f)(3) of this section. For continuous process vents complying with § 63.1322(a)(3), parameter monitoring levels shall be established as specified in § 63.1315(a), except as specified in paragraph (f)(4) of this section.

(1) For each parameter monitored under paragraph (c) of this section, the owner or operator shall establish a level, defined as either a maximum or minimum operating parameter as denoted in Table 8 of this subpart, that indicates proper operation of the control device. The level shall be established in accordance with the procedures specified in § 63.1334.

(i) For batch process vents using a control device to comply with § 63.1322(a)(2), the established level shall reflect the control efficiency established as part of the initial compliance demonstration specified in § 63.1325(c)(2).

(ii) For aggregate batch vent streams using a control device to comply with § 63.1322(b)(2), the established level shall reflect the control efficiency requirement specified in § 63.1322(b)(2).

(iii) For batch process vents and aggregate batch vent streams using a control device to comply with § 63.1322(a)(3), the established level shall reflect the control efficiency established as part of the initial compliance demonstration specified in § 63.1325(f)(4).

(2) The established level, along with supporting documentation, shall be submitted in the Notification of Compliance Status or the operating permit application as required in § 63.1335(e)(5) or § 63.1335(e)(8), respectively.

(3) The operating day shall be defined as part of establishing the parameter monitoring level and shall be submitted with the information in paragraph (f)(2) of this section. The definition of operating day shall specify the times at which an operating day begins and ends. The operating day shall not exceed 24 hours.

(4) For continuous process vents using a control or recovery device to comply with § 63.1322(a)(3), the established level shall reflect the control efficiency established as part of the initial compliance demonstration specified in § 63.1325(f)(4).

§ 63.1325 Batch process vents—performance test methods and procedures to determine compliance.

(a) *Use of a flare.* When a flare is used to comply with §§ 63.1322 (a)(1), (a)(3), (b)(1), or (b)(3), the owner or operator shall comply with the flare provisions in § 63.11(b).

(b) *Exceptions to performance tests.* An owner or operator is not required to conduct a performance test when a control device specified in paragraphs (b)(1) through (b)(5) of this section is used to comply with § 63.1322 (a)(2) or (a)(3). Further, if a performance test meeting the conditions specified in paragraph (b)(6) of this section has been conducted by the owner or operator, the results of said performance test may be submitted and a performance test, as required by this section, is not required.

(1) A boiler or process heater with a design heat input capacity of 44 megawatts or greater.

(2) A boiler or process heater where the vent stream is introduced with the primary fuel or is used as the primary fuel.

(3) A control device for which a performance test was conducted for determining compliance with a New Source Performance Standard (NSPS) and the test was conducted using the same procedures specified in this section and no process changes have been made since the test. Recovery devices used for controlling emissions from continuous process vents complying with § 63.1322(a)(3) are also eligible for the exemption described in this paragraph (b)(3).

(4) A boiler or process heater burning hazardous waste for which the owner or operator:

(i) Has been issued a final permit under 40 CFR part 270 and complies with the requirements of 40 CFR part 266, subpart H; or

(ii) Has certified compliance with the interim status requirements of 40 CFR part 266, subpart H.

(5) An incinerator burning hazardous waste for which the owner or operator complies with the requirements of 40 CFR part 264, subpart O.

(6) Performance tests done for other subparts in 40 CFR part 60 or part 63 where total organic HAP or TOC was measured, provided the owner or

operator can demonstrate that operating conditions for the process and control device during the performance test are representative of current operating conditions.

(c) *Batch process vent testing and procedures for compliance with § 63.1322(a)(2).* Except as provided in paragraph (b) of this section, an owner or operator using a control device to comply with § 63.1322(a)(2) shall conduct a performance test using the procedures specified in paragraph (c)(1) of this section in order to determine the control efficiency of the control device. An owner or operator shall determine the percent reduction for the batch cycle using the control efficiency of the control device as specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section and the procedures specified in paragraph (c)(2) of this section. Compliance may be based on either total organic HAP or TOC. For purposes of this paragraph (c) and all paragraphs that are part of this paragraph (c), the term ''batch emission episode'' shall have the meaning ''period of the batch emission episode selected for control,'' which may be the entire batch emission episode or may only be a portion of the batch emission episode.

(1) Performance tests shall be conducted as specified in paragraphs (c)(1)(i) through (c)(1)(v) of this section.

(i) Except as specified in paragraph (c)(1)(i)(A) of this section, a test shall be performed for the entire period of each batch emission episode in the batch cycle that the owner or operator selects to control as part of achieving the required 90 percent emission reduction for the batch cycle specified in § 63.1322(a)(2). Only one test is required for each batch emission episode selected by the owner or operator for control. The owner or operator shall follow the procedures listed in paragraphs (c)(1)(i)(B) through (c)(1)(i)(D) of this section.

(A) Alternatively, an owner or operator may choose to test only those periods of the batch emission episode during which the emission rate for the entire episode can be determined or during which the emissions are greater than the average emission rate of the batch emission episode. The owner or operator choosing either of these options must develop an emission profile for the entire batch emission episode, based on either process knowledge or test data collected, to demonstrate that test periods are representative. Examples of information that could constitute process knowledge include calculations based on material balances and process stoichiometry. Previous test results may be used provided the results are still relevant to the current batch process vent conditions.

(B) Method 1 or 1A, 40 CFR part 60, appendix A, as appropriate, shall be used for selection of the sampling sites if the flow measuring device is a pitot tube. No traverse is necessary when Method 2A or 2D, 40 CFR part 60, appendix A is used to determine gas stream volumetric flow rate. Inlet sampling sites shall be located as specified in paragraphs (c)(1)(i)(B)(*1*) and (c)(1)(i)(B)(*2*) of this section. Outlet sampling sites shall be located at the outlet of the control device prior to release to the atmosphere.

(*1*) The control device inlet sampling site shall be located at the exit from the batch unit operation before any control device. § 63.1323(a)(2) describes those recovery devices considered part of the unit operation. Inlet sampling sites would be after these specified recovery devices.

(*2*) If a batch process vent is introduced with the combustion air or as a secondary fuel into a boiler or process heater with a design capacity less than 44 megawatts, selection of the location of the inlet sampling sites shall ensure the measurement of total organic HAP or TOC (minus methane and ethane) concentrations in all batch process vents and primary and secondary fuels introduced into the boiler or process heater.

(C) Gas stream volumetric flow rate and/or average flow rate shall be determined as specified in § 63.1323(e).

(D) Method 18 or Method 25A, 40 CFR part 60, appendix A shall be used to determine the concentration of organic HAP or TOC, as appropriate. Alternatively, any other method or data that has been validated according to the applicable procedures in Method 301 of appendix A of this part may be used. The use of Method 25A, 40 CFR part 60, appendix A shall comply with paragraphs (c)(1)(i)(D)(*1*) and (c)(1)(i)(D)(*2*) of this section.

(*1*) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of the emissions.

(*2*) The use of Method 25A, 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(ii) If an integrated sample is taken over the entire test period to determine TOC or average total organic HAP concentration, emissions per batch emission episode shall be calculated using Equations 19 and 20 of this subpart.

$$E_{episode,inlet} = K\left[\sum_{j=1}^{n}\left(C_{j,inlet}\right)\left(M_j\right)\right]\left(AFR_{inlet}\right)\left(T_h\right) \qquad \text{[Eq. 19]}$$

$$E_{episode,outlet} = K\left[\sum_{j=1}^{n}\left(C_{j,outlet}\right)\left(M_j\right)\right]\left(AFR_{outlet}\right)\left(T_h\right) \qquad \text{[Eq. 20]}$$

where:

$E_{episode}$ = Inlet or outlet emissions, kg/episode.

K = Constant, 2.494 x 10^{-6} $(ppmv)^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20°C.

C_j = Average inlet or outlet concentration of TOC or sample component j of the gas stream for the batch emission episode, dry basis, ppmv.

M_j = Molecular weight of TOC or sample component j of the gas stream, gm/gm-mole.

AFR = Average inlet or outlet flow rate of gas stream for the batch emission episode, dry basis, scmm.

T_h = Hours/episode

n = Number of organic HAP in stream.

Note: Summation not required if TOC emissions are being estimated using a TOC concentration measured using Method 25A, 40 CFR part 60, appendix A.

(iii) If grab samples are taken to determine TOC or total organic HAP concentration, emissions shall be calculated according to paragraphs (c)(1)(iii) (A) and (B) of this section.

(A) For each measurement point, the emission rates shall be calculated using Equations 21 and 22 of this subpart.

$$E_{point,inlet} = K\left[\sum_{j=1}^{n} C_j M_j\right] FR_{inlet} \qquad [Eq. 21]$$

$$E_{point,outlet} = K\left[\sum_{j=1}^{n} C_j M_j\right] FR_{outlet} \qquad [Eq. 22]$$

where:

E_{point} = Inlet or outlet emission rate for the measurement point, kg/hr.

K = Constant, 2.494 x 10^{-6} $(ppmv)^{-1}$ (gm-mole/scm) (kg/gm) (min/hr), where standard temperature is 20°C.

C_j = Inlet or outlet concentration of TOC or sample organic HAP component j of the gas stream, dry basis, ppmv.

M_j = Molecular weight of TOC or sample organic HAP component j of the gas stream, gm/gm-mole.

FR = Inlet or outlet flow rate of gas stream for the measurement point, dry basis, scmm.

n = Number of organic HAP in stream.

Note: Summation not required if TOC emissions are being estimated using a TOC concentration measured using Method 25A, 40 CFR part 60, appendix A.

(B) The emissions per batch emission episode shall be calculated using Equations 23 and 24 of this subpart.

$$E_{episode,inlet} = (DUR)\left[\sum_{i=1}^{n} \frac{E_{point,inlet,i}}{n}\right] \qquad [Eq. 23]$$

$$E_{episode,outlet} = (DUR)\left[\sum_{i=1}^{n} \frac{E_{point,outlet,i}}{n}\right] \qquad [Eq. 24]$$

where:

$E_{episode}$ = Inlet or outlet emissions, kg/episode.

DUR = Duration of the batch emission episode, hr/episode.

$E_{point,\ i}$ = Inlet or outlet emissions for measurement point i, kg/hr.

n = Number of measurements.

(iv) The control efficiency for the control device shall be calculated using Equation 25 of this subpart.

$$R = \frac{\sum_{i=1}^{n} E_{inlet,i} - \sum_{i=1}^{n} E_{outlet,i}}{\sum_{i=1}^{n} E_{inlet,i}}(100) \qquad [Eq. 25]$$

where:

R = Control efficiency of control device, percent.

E_{inlet} = Mass rate of TOC or total organic HAP for batch emission episode i at the inlet to the control device as calculated under paragraph (c)(1)(ii) or (c)(1)(iii) of this section, kg/hr.

E_{outlet} = Mass rate of TOC or total organic HAP for batch emission episode i at the outlet of the control device, as calculated under paragraph (c)(1)(ii) or (c)(1)(iii) of this section, kg/hr.

n = Number of batch emission episodes in the batch cycle selected to be controlled.

(v) If the batch process vent entering a boiler or process heater with a design capacity less than 44 megawatts is introduced with the combustion air or as a secondary fuel, the weight-percent reduction of total organic HAP or TOC across the device shall be determined by comparing the TOC or total organic HAP

in all combusted batch process vents and primary and secondary fuels with the TOC or total organic HAP exiting the combustion device, respectively.

(2) The percent reduction for the batch cycle shall be determined using Equation 26 of this subpart and the control device efficiencies specified in paragraphs (c)(2)(i) through (c)(2)(iii) of this section. All information used to calculate the batch cycle percent reduction, including a definition of the batch cycle identifying all batch emission episodes, must be recorded as specified in § 63.1326(b)(2). This information shall include identification of those batch emission episodes, or portions thereof, selected for control.

$$PR = \frac{\sum_{i=1}^{n} E_{unc} \sum_{i=1}^{n} E_{inlet,con} - (1-R)\sum_{i=1}^{n} E_{inlet,con}}{\sum_{i=1}^{n} E_{unc} + \sum_{i=1}^{n} E_{inlet,con}}(100) \qquad [\text{Eq. } 26]$$

where:

PR = Percent reduction

E_{unc} = Mass rate of TOC or total organic HAP for uncontrolled batch emission episode i, kg/hr.

$E_{inlet,con}$ = Mass rate of TOC or total organic HAP for controlled batch emission episode i at the inlet to the control device, kg/hr.

R = Control efficiency of control device as specified in paragraphs (c)(2) (i) through (c) (2)(iii) of this section.

n = Number of uncontrolled batch emission episodes, controlled batch emission episodes, and control devices. The value of n is not necessarily the same for these three items.

(i) If a performance test is required by paragraph (c) of this section, the control efficiency of the control device shall be as determined in paragraph (c)(1)(iv) of this section.

(ii) If a performance test is not required by paragraph (c) of this section for a combustion control device, as specified in paragraph (b) of this section, the control efficiency shall be 98 percent. The control efficiency for a flare shall be 98 percent.

(iii) If a performance test is not required by paragraph (c) of this section for a noncombustion control device, the control efficiency shall be determined by the owner or operator based on engineering assessment.

(d) *Batch process vent and aggregate batch vent stream testing for compliance with § 63.1322(c) [halogenated emission streams].* An owner or operator controlling halogenated emissions in compliance with § 63.1322(c) shall conduct a performance test to determine compliance with the control efficiency specified in § 63.1322(c)(1) or the emission limit specified in § 63.1322(c)(2) for hydrogen halides and halogens.

(1) Sampling sites shall be located at the inlet and outlet of the scrubber or other control device used to reduce halogen emissions in complying with § 63.1322(c)(1) or at the outlet of the control device used to reduce halogen emissions in complying with § 63.1322(c)(2).

(2) The mass emissions of each hydrogen halide and halogen compound for the batch cycle or aggregate batch vent stream shall be calculated from the measured concentrations and the gas stream flow rate(s) determined by the procedures specified in paragraphs (d)(2)(i) and (d)(2)(ii) of this section except as specified in paragraph (d)(5) of this section.

(i) Method 26 or Method 26A, 40 CFR part 60, appendix A, shall be used to determine the concentration, in Mg per dry scm, of total hydrogen halides and halogens present in the emissions stream.

(ii) Gas stream volumetric flow rate and/or average flow rate shall be determined as specified in § 63.1323(e).

(3) To determine compliance with the percent reduction specified in § 63.1322(c)(1), the mass emissions for any hydrogen halides and halogens present at the inlet of the scrubber or other control device shall be summed together. The mass emissions of any hydrogen halides or halogens present at the outlet of the scrubber or other control device shall be summed together. Percent reduction shall be determined by subtracting the outlet mass emissions from the inlet mass emissions and then dividing the result by the inlet mass emissions.

(4) To determine compliance with the emission limit specified in § 63.1322(c)(2), the annual mass emissions for any hydrogen halides and halogens present at the outlet of the control device and prior to any combustion device shall be summed together and compared to the emission limit specified in § 63.1322(c)(2).

(5) The owner or operator may use any other method to demonstrate compliance if the method or data has been validated according to the applicable procedures of Method 301 of appendix A of this part.

(e) *Aggregate batch vent stream testing for compliance with § 63.1322 (b)(2) or (b)(3).* Owners or operators of aggregate batch vent streams complying with § 63.1322 (b)(2) or (b)(3) shall conduct a performance test using the performance testing procedures for continuous process vents in § 63.116(c). For the purposes of this subpart, when the provisions of § 63.116(c) specify that Method 18, 40 CFR part 60, appendix A, shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A, may be used. The use of Method 25A, 40 CFR part 60, appendix A, shall comply with paragraphs (e)(1) and (e)(2) of this section.

(1) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A, shall be the single organic HAP representing the largest percent by volume of the emissions.

(2) The use of Method 25A, 40 CFR part 60, appendix A, is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(f) *Compliance with § 63.1322(a)(3) [new SAN batch affected sources].* Except as provided in paragraph (b) of this section, an owner or operator using a control or recovery device to comply with the percent reduction requirement in § 63.1322(a)(3) shall conduct performance tests as specified in either paragraph (f)(1), (f)(2), or (f)(3) of this section, as applicable. Compliance with § 63.1322(a)(3) shall be determined as specified in paragraph (f)(4) of this section.

(1) For batch process vents, performance tests shall be conducted using the procedures specified in paragraph (c) of this section, except that the owner or operator is not required to determine the percent reduction for the batch cycle as specified in paragraph (c)(2) of this section.

(2) For continuous process vents, performance tests shall be conducted as required by the applicable requirements

of § 63.1315(a) as specified in § 63.1321(b).

(3) For aggregate batch vent streams, performance tests shall be conducted as specified in paragraph (e) of this section.

(4) Compliance with the percent reduction requirement of § 63.1322(a)(3) shall be demonstrated using the procedures specified in § 63.1333(c) and the control device efficiencies specified in either paragraph (f)(4)(i) or (f)(4)(ii) of this section. Emissions for uncontrolled continuous process vents and aggregate batch vent streams shall be determined based on the direct measurement procedures specified in paragraph (f)(2) and (f)(3) of this section, respectively, or based on engineering assessment, as specified in § 63.1323(b)(6)(i). At the discretion of the owner or operator, emissions for uncontrolled batch process vents shall be determined based on any of the procedures in § 63.1323(b).

(i) For noncombustion devices, the control efficiency shall be as determined by the performance test required by paragraph (f)(1), (f)(2), or (f)(3) of this section. Alternatively, if a performance test is not required by paragraph (c) of this section, the control efficiency shall be determined by the owner or operator based on engineering assessment.

(ii) For combustion devices, the control efficiency shall be as determined by the performance test required by paragraph (f)(1), (f)(2), or (f)(3) of this section. Alternatively, if a performance test is not required, the control efficiency shall be 98 percent. The control efficiency for a flare shall be 98 percent.

(g) *Batch cycle limitation.* The batch cycle limitation required by § 63.1322 (f) and (g) shall be established as specified in paragraph (g)(1) of this section and shall include the elements specified in paragraph (g)(2) of this section.

(1) The batch cycle limitation shall be determined by the owner or operator such that annual emissions for the batch process vent remain less than the level specified in § 63.1323(d) when complying with § 63.1322(g). Alternatively, when complying with § 63.1322(f), the batch cycle limitation shall ensure that annual emissions remain at a level such that said batch process vent remains a Group 2 batch process vent, given the actual annual flow rate for said batch process vent determined according to the procedures specified in § 63.1323(e). The batch cycle limitation shall be determined using the same basis, as described in § 63.1323(a)(1), used to make the group determination (i.e., expected mix of products or worst-case HAP emitting product). The establishment of the batch cycle limitation is not dependent upon any past production or activity level.

(i) If the expected mix of products serves as the basis for the batch cycle limitation, the batch cycle limitation shall be determined such that any foreseeable combination of products which the owner or operator desires the flexibility to manufacture shall be allowed. Combinations of products not accounted for in the documentation required by paragraph (g)(2)(iv) of this section shall not be allowed within the restrictions of the batch cycle limitation.

(ii) If, for a batch process vent with more than one product, a single worst-case HAP emitting product serves as the basis for the batch cycle limitation, the batch cycle limitation shall be determined such that the maximum number of batch cycles the owner or operator desires the flexibility to accomplish, using the worst-case HAP emitting product and ensuring that the batch process vent remains a Group 2 batch process vent or that emissions remain less than the level specified in § 63.1323(d), shall be allowed. This value shall be the total number of batch cycles allowed within the restrictions of the batch cycle limitation regardless of which products are manufactured.

(2) Documentation supporting the establishment of the batch cycle limitation shall include the information specified in paragraphs (g)(2)(i) through (g)(2)(v) of this section, as appropriate.

(i) Identification that the purpose of the batch cycle limitation is to comply with § 63.1322 (f)(1) or (g)(1).

(ii) Identification that the batch cycle limitation is based on a single worst-case HAP emitting product or on the expected mix of products for said batch process vent as allowed under § 63.1323(a)(1).

(iii) Definition of operating year for purposes of determining compliance with the batch cycle limitation.

(iv) If the batch cycle limitation is based on a single worst-case HAP emitting product, documentation specified in § 63.1323 (a)(1)(ii) through (a)(1)(iv), as appropriate, describing how the single product meets the requirements for worst-case HAP emitting product and the number of batch cycles allowed under the batch cycle limitation.

(v) If the batch cycle limitation is based on the expected mix of products, the owner or operator shall provide documentation that describes as many scenarios for differing mixes of products (i.e., how many batch cycles for each product) that the owner or operator desires the flexibility to accomplish. Alternatively, the owner or operator shall provide a description of the relationship among the mix of products that will allow a determination of compliance with the batch cycle limitation under an infinite number of scenarios. For example, if a batch process vent has two products, each product has the same flow rate and emits for the same amount of time, and product No. 1 has twice the emissions as product No. 2, the relationship describing an infinite number of scenarios would be that the owner or operator can accomplish two batch cycles of product No. 2 for each batch cycle of product No. 1 within the restriction of the batch cycle limitation.

§ 63.1326 Batch process vents—recordkeeping provisions.

(a) *Group determination records for batch process vents.* Except as provided in paragraphs (a)(7) through (a)(9) of this section, each owner or operator of an affected source shall maintain the records specified in paragraphs (a)(1) through (a)(6) of this section for each batch process vent subject to the group determination procedures of § 63.1323. Except for paragraph (a)(1) of this section, the records required by this paragraph (a) are restricted to the information developed and used to make the group determination under § 63.1323(b) through § 63.1323(g), as appropriate. The information required by paragraph (a)(1) of this section is required for all batch process vents subject to the group determination procedures of § 63.1323. If an owner or operator did not need to develop certain information (e.g., annual average flow rate) to determine the group status, this paragraph (a) does not require that additional information be developed.

(1) An identification of each unique product that has emissions from one or more batch emission episodes venting from the batch process vent.

(2) A description of, and an emission estimate for, each batch emission episode, and the total emissions associated with one batch cycle for each unique product identified in paragraph (a)(1) of this section that was considered in making the group determination under § 63.1323.

(3) Total annual uncontrolled TOC or organic HAP emissions, determined at the exit from the batch unit operation before any control device, determined in accordance with § 63.1323(b).

(i) For Group 2 batch process vents, said emissions shall be determined at the batch cycle limitation.

(ii) For Group 1 batch process vents, said emissions shall be those used to determine the group status of the batch process vent.

(4) The annual average flow rate for the batch process vent, determined in accordance with § 63.1323(e).

(5) The cutoff flow rate, determined in accordance with § 63.1323(f).

(6) The results of the batch process vent group determination, conducted in accordance with § 63.1323(g).

(7) If a batch process vent is in compliance with § 63.1322 (a) or (b) and the control device is operating at all times when batch emission episodes are venting from the batch process vent, none of the records in paragraphs (a)(1) through (a)(6) of this section are required.

(8) If a batch process vent is in compliance with § 63.1322 (a) or (b), but the control device is operated only during selected batch emission episodes, only the records in paragraphs (a)(1) through (a)(3) of this section are required.

(9) If the total annual emissions from the batch process vent are less than the appropriate level specified in § 63.1323(d), only the records in paragraphs (a)(1) through (a)(3) of this section are required.

(b) *Compliance demonstration records.* Each owner or operator of a batch process vent or aggregate batch vent stream complying with § 63.1322 (a) or (b), shall keep the following records, as applicable, up-to-date and readily accessible:

(1) The annual mass emissions of halogen atoms in the batch process vent or aggregate batch vent stream determined according to the procedures specified in § 63.1323(h);

(2) If a batch process vent is in compliance with § 63.1322(a)(2), records documenting the batch cycle percent reduction as specified in § 63.1325(c)(2); and

(3) When using a flare to comply with § 63.1322 (a)(1), (a)(3), (b)(1), or (b)(3):

(i) The flare design (i.e., steam-assisted, air-assisted or non-assisted);

(ii) All visible emission readings, heat content determinations, flow rate measurements, and exit velocity determinations made during the compliance determination required by § 63.1325(a); and

(iii) All periods during the compliance determination required by § 63.1325(a) when the pilot flame is absent.

(4) The following information when using a control device to achieve compliance with § 63.1322 (a)(2), (a)(3), (b)(2), or (b)(3):

(i) For an incinerator or non-combustion control device, the percent reduction of organic HAP or TOC achieved, as determined using the procedures specified in § 63.1325(c) for batch process vents and § 63.1325(e) for aggregate batch vent streams;

(ii) For a boiler or process heater, a description of the location at which the vent stream is introduced into the boiler or process heater;

(iii) For a boiler or process heater with a design heat input capacity of less than 44 megawatts and where the vent stream is introduced with combustion air or used as a secondary fuel and is not mixed with the primary fuel, the percent reduction of organic HAP or TOC achieved, as determined using the procedures specified in § 63.1325(c) for batch process vents and § 63.1325(e) for aggregate batch vent streams; and

(iv) For a scrubber or other control device following a combustion device to control halogenated batch process vents or halogenated aggregate batch vent streams, the percent reduction of total hydrogen halides and halogens as determined under § 63.1325(d)(3) or the emission limit determined under § 63.1325(d)(4).

(c) *Establishment of parameter monitoring level records.* For each parameter monitored according to § 63.1324(c) and Table 7 of this subpart, or for alternate parameters and/or parameters for alternate control devices monitored according to § 63.1327(f) as allowed under § 63.1324(d), maintain documentation showing the establishment of the level that indicates proper operation of the control device as required by § 63.1324(f) for parameters specified in § 63.1324(c) and as required by § 63.1335(e) for alternate parameters. Said documentation shall include the parameter monitoring data used to establish the level.

(d) *Group 2 batch process vent continuous compliance records.* The owner or operator of a Group 2 batch process vent shall comply with either paragraph (d)(1) or (d)(2) of this section, as appropriate.

(1) The owner or operator of a Group 2 batch process vent complying with § 63.1322(g) shall keep the following records up-to-date and readily accessible:

(i) Records designating the established batch cycle limitation required by § 63.1322(g)(1) and specified in § 63.1325(g).

(ii) Records specifying the number and type of batch cycles accomplished for each three month period.

(2) The owner or operator of a Group 2 batch process vent complying with § 63.1322(f) shall keep the following records up-to-date and readily accessible:

(i) Records designating the established batch cycle limitation required by § 63.1322(f)(1) and specified in § 63.1325(g).

(ii) Records specifying the number and type of batch cycles accomplished for each three month period.

(e) *Controlled batch process vent continuous compliance records.* Each owner or operator of a batch process vent that uses a control device to comply with § 63.1322(a) shall keep the following records, as applicable, up-to-date and readily accessible:

(1) Continuous records of the equipment operating parameters specified to be monitored under § 63.1324(c) as applicable, and listed in Table 7 of this subpart, or specified by the Administrator in accordance with § 63.1327(f) as allowed under § 63.1324(d). Said records shall be kept as specified under § 63.1335(d), except as specified in paragraphs (e)(1)(i) and (e)(1)(ii) of this section.

(i) For flares, the records specified in Table 7 of this subpart shall be kept rather than averages.

(ii) For carbon adsorbers, the records specified in Table 7 of this subpart shall be kept rather than averages.

(2) Records of the batch cycle daily average value of each continuously monitored parameter, except as provided in paragraph (e)(2)(iii) of this section, as calculated using the procedures specified in paragraphs (e)(2)(i) through (e)(2)(ii) of this section.

(i) The batch cycle daily average shall be calculated as the average of all parameter values measured for an operating day during those batch emission episodes, or portions thereof, in the batch cycle that the owner or operator has selected to control.

(ii) Monitoring data recorded during periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments shall not be included in computing the batch cycle daily averages.

(iii) If all recorded values for a monitored parameter during an operating day are above the minimum or below the maximum level established in accordance with § 63.1324(f), the owner or operator may record that all values were above the minimum or below the maximum level established rather than calculating and recording a batch cycle daily average for that operating day.

(3) Hourly records of whether the flow indicator for bypass lines specified in § 63.1324(e)(1) was operating and whether a diversion was detected at any time during the hour. Also, records of the times of all periods when the vent is diverted from the control device or the flow indicator specified in § 63.1324(e)(1) is not operating.

(4) Where a seal or closure mechanism is used to comply with § 63.1324(e)(2) or where computer monitoring of the position of the bypass valve is used to comply with § 63.1324(e)(3), hourly records of flow are not required.

(i) For compliance with § 63.1324(e)(2), the owner or operator shall record whether the monthly visual inspection of the seals or closure mechanisms has been done, and shall record the occurrence of all periods when the seal mechanism is broken, the bypass line valve position has changed, or the key for a lock-and-key type configuration has been checked out, and records of any car-seal that has broken.

(ii) For compliance with § 63.1324(e)(3), the owner or operator shall record the times of all periods when the bypass line valve position has changed.

(5) Records specifying the times and duration of periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments. In addition, records specifying any other periods of process or control device operation when monitors are not operating.

(f) *Aggregate batch vent stream continuous compliance records.* In addition to the records specified in paragraphs (b) and (c) of this section, each owner or operator of an aggregate batch vent stream using a control device to comply with § 63.1322(b) shall keep records in accordance with the requirements for continuous process vents in § 63.118 (a) and (b), as applicable and as appropriate, except that when complying with § 63.118(b), owners or operators shall disregard statements concerning TRE index values for the purposes of this subpart.

§ 63.1327 Batch process vents—reporting requirements.

(a) The owner or operator of a batch process vent or aggregate batch vent stream at an affected source shall submit the information specified in paragraphs (a)(1) through (a)(4) of this section, as appropriate, as part of the Notification of Compliance Status specified in § 63.1335(e)(5).

(1) For each batch process vent complying § 63.1322(a) and each aggregate batch vent stream complying § 63.1322(b), the information specified in § 63.1326 (b) and (c), as applicable.

(2) For each Group 2 batch process vent with annual emissions less than the level specified in § 63.1323(d), the information specified in § 63.1326(d)(1)(i).

(3) For each Group 2 batch process vent with annual emissions greater than or equal to the level specified in § 63.1323(d), the information specified in § 63.1326(d)(2)(i).

(4) For each batch process vent subject to the group determination procedures, the information specified in § 63.1326(a), as appropriate.

(b) Whenever a process change, as defined in § 63.1323(i)(1), is made that causes a Group 2 batch process vent to become a Group 1 batch process vent, the owner or operator shall submit a report within 180 operating days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report, as specified in § 63.1335(e)(6)(iii)(D)(*2*). The following information shall be submitted:

(1) A description of the process change; and

(2) A schedule for compliance with the provisions of § 63.1322 (a) or (b), as appropriate, as required under § 63.1335(e)(6)(iii)(D)(*2*).

(c) Whenever a process change, as defined in § 63.1323(i)(1), is made that causes a Group 2 batch process vent with annual emissions less than the level specified in § 63.1323(d) that is in compliance with § 63.1322(g) to have annual emissions greater than or equal to the level specified in § 63.1323(d) but remains a Group 2 batch process vent, the owner or operator shall submit a report within 180 operating days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report, as specified in § 63.1335(e)(6)(iii)(D)(*2*). The following information shall be submitted:

(1) A description of the process change;

(2) The results of the redetermination of the annual emissions, average flow rate, and cutoff flow rate required under § 63.1323(i) and recorded under § 63.1326 (a)(3) through (a)(5); and

(3) The batch cycle limitation determined in accordance with § 63.1322(f)(1).

(d) Whenever a process change, as defined in § 63.1323(j)(1), is made that causes the percent reduction for all process vents at a new SAN affected source using a batch process to be less than 84 percent, the owner or operator shall submit a report within 180 operating days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report, as specified in § 63.1335(e)(6)(iii)(D)(*2*). The following information shall be submitted:

(1) A description of the process change; and

(2) A schedule for compliance with the provisions of § 63.1322(a)(3), as required under § 63.1335(e)(6)(iii)(D)(*2*).

(e) The owner or operator is not required to submit a report of a process change if one of the conditions specified in paragraphs (e)(1) and (e)(2) of this section is met.

(1) The process change does not meet the description of a process change in § 63.1323 (i) or (j).

(2) The redetermined group status remains Group 2 for an individual batch process vent with annual emissions greater than or equal to the level specified in § 63.1323(d), a Group 2 batch process vent with annual emissions less than the level specified in § 63.1323(d) complying with § 63.1322(g) continues to have emissions less than the level specified in § 63.1323(d), or the achieved emission reduction remains at 84 percent or greater for new SAN affected sources using a batch process.

(f) If an owner or operator uses a control device other than those specified in § 63.1324(c) and listed in Table 7 of this subpart or requests approval to monitor a parameter other than those specified § 63.1324(c) and listed in Table 7 of this subpart, the owner or operator shall submit a description of planned reporting and recordkeeping procedures, as specified in § 63.1335(f), as part of the Precompliance Report required under § 63.1335(e)(3). The Administrator will specify appropriate reporting and recordkeeping requirements as part of the review of the Precompliance Report.

(g) Owners or operators complying with § 63.1324(e), shall comply with paragraph (g)(1) or (g)(2) of this section, as appropriate.

(1) Reports of the times of all periods recorded under § 63.1326(e)(3) when the batch process vent is diverted from the control device through a bypass line.

(2) Reports of all occurrences recorded under § 63.1326(e)(4) in which the seal mechanism is broken, the bypass line valve position has changed, or the key to unlock the bypass line valve was checked out.

§ 63.1328 Heat exchange systems provisions.

(a) This section applies to each affected source with the exception of each process contact cooling tower that is associated with an affected source manufacturing PET. The owner or operator of said affected source shall comply with § 63.104, with the differences noted in paragraphs (b)

through (d) of this section, for the purposes of this subpart.

(b) When the Periodic Report requirements contained in § 63.152(c) are referred to in § 63.104(b), the Periodic Report requirements contained in § 63.1335(e)(6) shall apply for the purposes of this subpart.

(c) When an owner or operator invokes the delay of repair provisions as specified in § 63.104(b)(3), the information required by § 63.104 (b)(4)(i) through (b)(4)(v) shall be included in the next semi-annual Periodic Report required under § 63.1335(e)(6), for the purposes of this subpart. If the leak remains unrepaired, the information shall also be submitted in each subsequent Periodic Report, until the repair of the leak is reported.

(d) The compliance date for heat exchange systems subject to the provisions of this section is specified in § 63.1311.

§ 63.1329 Process contact cooling towers provisions.

(a) This section applies to each new affected source that manufactures PET and each existing affected source that manufactures PET using a continuous terephthalic acid high viscosity multiple end finisher process. The owner or operator a new affected source shall comply with paragraph (b) of this section. The owner or operator of an existing affected source that manufactures PET using a continuous terephthalic acid high viscosity multiple end finisher process shall comply with paragraph (c) of this section. The compliance data for process contact cooling towers subject to the provisions of this section is specified in § 63.1311.

(b) *New affected source requirements.* The owner or operator of a new affected source subject to this section shall comply with paragraphs (b)(1) through (b)(2) of this section.

(1) The owner or operator of a new affected source subject to this section shall not send contact condenser effluent associated with a vacuum system to a process contact cooling tower.

(2) The owner or operator of a new affected source subject to this section shall indicate in the Notification of Compliance Status, as required in § 63.1335(e)(5), that contact condenser effluent associated with vacuum systems is not sent to process contact cooling towers.

(c) *Existing affected source requirements.* The owner or operator of an existing affected source subject to this section who manufactures PET using a continuous terephthalic acid high viscosity multiple end finisher process, and who is subject or becomes subject to 40 CFR part 60, subpart DDD, shall maintain an ethylene glycol concentration in the cooling tower at or below 4.0 percent by weight averaged on a daily basis over a rolling 14-day period of operating days. Compliance with this paragraph (c) shall be determined as specified in paragraphs (c)(1) through (c)(4) of this section.

(1) To determine the ethylene glycol concentration, owners or operators shall follow the procedures specified in 40 CFR 60.564(j)(1), except as provided in paragraph (c)(2) of this section.

(i) At least one sample per operating day shall be collected using the procedures specified in 40 CFR 60.564(j)(1)(i). An average ethylene glycol concentration by weight shall be calculated on a daily basis over a rolling 14-day period of operating days. Each daily average ethylene glycol concentration so calculated constitutes a performance test. Exceedance of the standard during the reduced testing program specified in paragraph (b)(1)(ii) of this section is a violation of these standards.

(ii) The owner or operator may elect to reduce the sampling program to any 14 consecutive day period once every two calendar months, if at least seventeen consecutive 14-day rolling average concentrations immediately preceding the reduced sampling program are each less than 1.2 weight percent ethylene glycol. If the average concentration obtained over the 14 day sampling during the reduced test period exceeds the upper 95 percent confidence interval calculated from the most recent test results in which no one 14-day average exceeded 1.2 weight percent ethylene glycol, then the owner or operator shall reinstitute a daily sampling program. The 95 percent confidence interval shall be calculated as specified in paragraph (b)(1)(iii) of this section. A reduced program may be reinstituted if the requirements specified in this paragraph (c)(1)(ii) are met.

(iii) The upper 95 percent confidence interval shall be calculated using the Equation 27 of this subpart:

$$CI_{95} = \frac{\sum_{i=1}^{n} X_i}{n} + 2\sqrt{\frac{n\sum x^2 - \left(\sum x\right)^2}{n(n-1)}} \qquad \text{[Eq. 27]}$$

where:

X_i = daily ethylene glycol concentration for each day used to calculate each 14-day rolling average used in test results to justify implementing the reduced testing program.

n = number of ethylene glycol concentrations.

(2) Measuring an alternative parameter, such as carbon oxygen demand or biological oxygen demand, that is demonstrated to be directly proportional to the ethylene glycol concentration shall be allowed. Such parameter shall be measured during the initial 14-day performance test during which the facility is shown to be in compliance with the ethylene glycol concentration standard whereby the ethylene glycol concentration is determined using the procedures described in paragraph (b)(1) of this section. The alternative parameter shall be measured on a daily basis and the average value of the alternative parameter shall be calculated on a daily basis over a rolling 14-day period of operating days. Each daily average value of the alternative parameter constitutes a performance test.

(3) During each performance test, daily measurement and daily average 14-day rolling averages of the ethylene glycol concentration in the cooling tower water shall be recorded. For the initial performance test, these records shall be submitted in the Notification of Compliance Status report.

(4) All periods when the 14-day rolling average exceeds the standard shall be reported in the Periodic Report.

§ 63.1330 Wastewater provisions.

(a) The owner or operator of each affected source shall comply with the requirements of §§ 63.131 through 63.148, with the differences noted in paragraphs (a)(1) through (a)(12) of this section for the purposes of this subpart.

(1) When the determination of equivalence criteria in § 63.102(b) is referred to in §§ 63.132, 63.133, and 63.137, the provisions in § 63.6(g) shall apply.

(2) When the storage tank requirements contained in §§ 63.119 through 63.123 are referred to in §§ 63.132 through 63.148, §§ 63.119 through 63.123 are applicable, with the exception of the differences referred to in § 63.1314, for the purposes of this subpart.

(3) When the owner or operator requests to use alternatives to the continuous operating parameter monitoring and recordkeeping provisions referred to in § 63.151(g), or the owner or operator submits an operating permit application instead of an Implementation Plan as specified in § 63.152(e), as referred to in § 63.146(a)(3), § 63.1335(g) and § 63.1335(e)(8), respectively, shall apply for the purposes of this subpart.

(4) When the Notification of Compliance Status requirements contained in § 63.152(b) are referred to in §§ 63.146 and 63.147, the Notification of Compliance Status requirements contained in § 63.1335(e)(5) shall apply for the purposes of this subpart.

(5) When the Periodic Report requirements contained in § 63.152(c) are referred to in §§ 63.146 and 63.147, the Periodic Report requirements contained in § 63.1335(e)(6) shall apply for the purposes of this subpart.

(6) When the Initial Notification Plan requirements in § 63.151(b) are referred to in § 63.146, the owner or operator of an affected source subject to this subpart need not comply for the purposes of this subpart.

(7) When the Implementation Plan requirements contained in § 63.151 are referred to in § 63.146, the owner or operator of an affected source subject to this subpart need not comply for the purposes of this subpart.

(8) When the term ''range'' is used in § 63.143(f), the term ''level'' shall be used instead for the purposes of this subpart. This level shall be determined using the procedures specified in § 63.1334.

(9) For the purposes of this subpart, owners or operators are not required to comply with the provisions of § 63.138(e)(2) which specify that owners or operators shall demonstrate that 95 percent of the mass of HAP, as listed in Table 9 of subpart G of this part, is removed from the wastewater stream or combination of wastewater streams by the procedure specified in § 63.145(i) for a biological treatment unit.

(10) For the purposes of this subpart, owners or operators are not required to comply with the provisions of § 63.138(j)(3) which specify that owners or operators shall use the procedures specified in appendix C of this part to demonstrate compliance when using a biological treatment unit.

(11) When the provisions of § 63.139(c)(1)(ii) or the provisions of § 63.145(e)(2)(ii)(B) specify that Method 18, 40 CFR part 60, appendix A, shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A, may be used for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A, shall comply with paragraphs (a)(11)(i) and (a)(11)(ii) of this section.

(i) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A, shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A, 40 CFR part 60, appendix A, is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(12) The compliance date for the affected source subject to the provisions of this section is specified in § 63.1311.

(b) For each affected source, the owner or operator shall comply with the requirements for maintenance wastewater in § 63.105, except that when § 63.105(a) refers to ''organic HAPs,'' the definition of organic HAP in § 63.1312 shall apply for the purposes of this subpart.

§ 63.1331 Equipment leak provisions.

(a) Except as provided for in paragraphs (b) and (c) of this section, the owner or operator of each affected source shall comply with the requirements of subpart H of this part, with the differences noted in paragraphs (a)(1) through (a)(9) of this section.

(1) For an affected source producing polystyrene resin, the indications of liquids dripping, as defined in subpart H of this part, from bleed ports in pumps and agitator seals in light liquid service shall not be considered to be a leak. For purposes of this subpart, a ''bleed port'' is a technologically-required feature of the pump or seal whereby polymer fluid used to provide lubrication and/or cooling of the pump or agitator shaft exits the pump, thereby resulting in a visible dripping of fluid.

(2) The compliance date for the equipment leak provisions contained in this section is provided in § 63.1311.

(3) Owners and operators of an affected source subject to this subpart are not required to submit the Initial Notification required by § 63.182(a)(1) and § 63.182(b).

(4) The Notification of Compliance Status required by paragraphs § 63.182(a)(2) and § 63.182(c) shall be submitted within 150 days (rather than 90 days) of the applicable compliance date specified in § 63.1311 for the equipment leak provisions. Said notification can be submitted as part of the Notification of Compliance Status required by § 63.1335(e)(5).

(5) The Periodic Reports required by § 63.182(a)(3) and § 63.182(d) may be submitted as part of the Periodic Reports required by § 63.1335(e)(6).

(6) For an affected source producing PET, an owner or operator shall comply with the requirements of paragraphs (a)(6)(i) and (a)(6)(ii) of this section instead of with the requirements of § 63.169 for pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in light liquid or heavy liquid service; and instrumentation systems.

(i) A leak is determined to be detected if there is evidence of a potential leak found by visual, audible, olfactory, or any other detection method except that Method 21, 40 CFR part 60, appendix A shall not be used to determine if a leak is detected.

(ii)(A) When a leak is detected, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in § 63.171.

(B) The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(C) Repaired shall mean that the visual, audible, olfactory, or other indications of a leak have been eliminated; that no bubbles are observed at potential leak sites during a leak check using soap solution; or that the system will hold a test pressure.

(7) For each affected source producing PET, an owner or operator is not required to develop an initial list of identification numbers for the equipment identified in paragraph (a)(6) of this section (i.e., pumps, valves, connectors, and agitators in heavy liquid service; pressure relief devices in light liquid or heavy liquid service; and instrumentation systems) as would otherwise be required under § 63.181(b)(1)(i).

(8) When the provisions of subpart H of this part specify that Method 18, 40 CFR part 60, appendix A, shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A, may be used for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A, shall comply with paragraphs (a)(8)(i) and (a)(8)(ii) of this section.

(i) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A, shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A, 40 CFR part 60, appendix A, is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(9) For purposes of this subpart, bottoms receivers and surge control vessels are not considered equipment for purposes of this section and are not subject to the requirements of subpart H of this part.

(b) The provisions of this section do not apply to each TPPU producing PET using a process other than a continuous terephthalic acid (TPA) high viscosity multiple end finisher process that is part of an affected source if all of the components in the TPPU are either in vacuum service or in heavy liquid service.

(1) Owners and operators of a TPPU exempted under paragraph (b) of this section shall retain at the facility information, data, and analyses used to demonstrate that all of the components in the exempted TPPU are either in vacuum service or in heavy liquid service. Such documentation shall include an analysis or demonstration that the process fluids do not meet the criteria of ''in light liquid service'' or ''in gas or vapor service.'' Examples of information that could document this include, but are not limited to, records of chemicals purchased for the process, analyses of process stream composition, engineering calculations, or process knowledge.

(2) If changes occur at a TPPU exempted under paragraph (b) of this section such that all of the components in the TPPU are no longer either in vacuum service or in heavy liquid service (e.g., by either process changes or the addition of new components), the owner or operator shall comply with the provisions of this section for all of the components at the TPPU. The owner or operator shall submit a report within 180 days after the process change is made or the information regarding the process change is known to the owner or operator. This report may be included in the next Periodic Report, as specified in paragraph (a)(5) of this section. The following information shall be submitted:

(i) A description of the process change; and

(ii) A schedule for compliance with the provisions of § 63.1331(a), as specified in paragraphs (b)(2)(ii)(A) and (b)(2)(ii)(B) of this section.

(A) The owner or operator shall submit to the Administrator for approval a compliance schedule and a justification for the schedule.

(B) The Administrator shall approve the compliance schedule or request changes within 120 operating days of receipt of the compliance schedule and justification.

(c) The provisions of this section do not apply to each affected source producing PET using a continuous TPA high viscosity multiple end finisher process.

§ 63.1332 Emissions averaging provisions.

(a) This section applies to owners or operators of existing affected sources who seek to comply with § 63.1313(b) by using emissions averaging rather than following the provisions of §§ 63.1314, 63.1315, 63.1316 through 63.1320, 63.1321, and 63.1330.

(1) The following emission point limitations apply to the use of these provisions:

(i) All emission points included in an emissions average shall be from the same affected source. There may be an emissions average for each affected source located at a plant site.

(ii)(A) If a plant site has only one affected source for which emissions averaging is being used to demonstrate compliance, the number of emission points allowed in the emissions average for said affected source is limited to twenty. This number may be increased by up to five additional emission points if pollution prevention measures are used to control five or more of the emission points included in the emissions average.

(B) If a plant site has two or more affected sources for which emissions averaging is being used to demonstrate compliance, the number of emission points allowed in the emissions averages for said affected sources is limited to twenty. This number may be increased by up to five additional emission points if pollution prevention measures are used to control five or more of the emission points included in the emissions averages.

(2) Compliance with the provisions of this section can be based on either organic HAP or TOC.

(3) For the purposes of these provisions, whenever Method 18, 40 CFR part 60, appendix A is specified within the paragraphs of this section or is specified by reference through provisions outside this section, Method 18 or Method 25A, 40 CFR part 60, appendix A may be used. The use of Method 25A, 40 CFR part 60, appendix A shall comply with paragraphs (a)(3)(i) and (a)(3)(ii) of this section.

(i) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A shall be the single organic HAP representing the largest percent by volume of the emissions.

(ii) The use of Method 25A, 40 CFR part 60, appendix A is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(b) Unless an operating permit application has been submitted, the owner or operator shall develop and submit for approval an Emissions Averaging Plan containing all of the information required in § 63.1335(e)(4) for all emission points to be included in an emissions average.

(c) Paragraphs (c)(1) through (c)(5) of this section describe the emission points that can be used to generate emissions averaging credits if control was applied after November 15, 1990, and if sufficient information is available to determine the appropriate value of credits for the emission point. Paragraph (c)(6) of this section discusses the use of pollution prevention in generating emissions averaging credits.

(1) Storage vessels, batch process vents, aggregate batch vent streams, continuous process vents subject to § 63.1315, and process wastewater streams that are determined to be Group 2 emission points. The term ''continuous process vents subject to § 63.1315'' includes continuous process vents subject to § 63.1316 (b)(1)(iii), (b)(2)(iii), and (c)(2), which reference § 63.1315.

(2) Continuous process vents located in the collection of material recovery sections within the affected source at an existing affected source producing PET using a continuous dimethyl terephthalate process subject to § 63.1316(b)(1)(i) where the uncontrolled organic HAP emissions from said continuous process vents are equal to or less than 0.12 kg organic HAP per Mg of product. These continuous process vents shall be considered Group 2 emission points for the purposes of this section.

(3) Storage vessels, continuous process vents subject to § 63.1315, and process wastewater streams that are determined to be Group 1 emission points and that are controlled by a technology that the Administrator or permitting authority agrees has a higher nominal efficiency than the reference control technology. Information on the nominal efficiencies for such technologies must be submitted and approved as provided in paragraph (i) of this section.

(4) Batch process vents and aggregate batch vent streams that are determined to be Group 1 emission points and that

are controlled to a level more stringent than the applicable standard.

(5) Continuous process vents subject to § 63.1316 (b)(1)(i), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1) located in the collection of process sections within the affected source, as specified in paragraphs (c)(5)(i) through (c)(5)(ii) of this section. The continuous process vents identified in paragraphs (c)(5)(i) through (c)(5)(ii) of this section shall be considered to be Group 1 emission points for the purposes of this section.

(i) Continuous process vents subject to § 63.1316(b)(1)(i) located in the collection of material recovery sections within the affected source where the uncontrolled organic HAP emissions for said continuous process vents are greater than 0.12 kg organic HAP per Mg of product and said continuous process vents are controlled to a level more stringent than the applicable standard.

(ii) Continuous process vents subject to § 63.1316(b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1) located in the collection of process sections within the affected source where the uncontrolled organic HAP emissions from said continuous process vents are controlled to a level more stringent than the applicable standard.

(6) The percent reduction for any storage vessel, batch process vent, aggregate batch vent stream, continuous process vent, and process wastewater stream from which emissions are reduced by pollution prevention measures shall be determined using the procedures specified in paragraph (j) of this section.

(i) For a Group 1 storage vessel, batch process vent, aggregate batch vent stream, continuous process vent, or process wastewater stream, the pollution prevention measure must reduce emissions more than if the applicable reference control technology or standard had been applied to the emission point instead of the pollution prevention measure, except as provided in paragraph (c)(6)(ii) of this section.

(ii) If a pollution prevention measure is used in conjunction with other controls for a Group 1 storage vessel, batch process vent, aggregate batch vent stream, continuous process vent, or process wastewater stream, the pollution prevention measure alone does not have to reduce emissions more than the applicable reference control technology or standard, but the combination of the pollution prevention measure and other controls must reduce emissions more than if the applicable reference control technology or standard had been applied instead of the pollution prevention measure.

(d) The following emission points cannot be used to generate emissions averaging credits:

(1) Emission points already controlled on or before November 15, 1990, cannot be used to generate credits unless the level of control is increased after November 15, 1990. In this case, credit will be allowed only for the increase in control after November 15, 1990.

(2) Group 1 emission points, identified in paragraph (c)(3) of this section, that are controlled by a reference control technology cannot be used to generate credits unless the reference control technology has been approved for use in a different manner and a higher nominal efficiency has been assigned according to the procedures in paragraph (i) of this section.

(3) Emission points for nonoperating TPPU cannot be used to generate credits. TPPU that are shutdown cannot be used to generate credits or debits.

(4) Maintenance wastewater cannot be used to generate credits. Wastewater streams treated in biological treatment units cannot be used to generate credits. These two types of wastewater cannot be used to generate credits or debits. For the purposes of this section, the terms wastewater and wastewater stream are used to mean process wastewater.

(5) Emission points controlled to comply with a State or Federal rule other than this subpart cannot be used to generate credits, unless the level of control has been increased after November 15, 1990, to a level above what is required by the other State or Federal rule. Only the control above what is required by the other State or Federal rule will be credited. However, if an emission point has been used to generate emissions averaging credit in an approved emissions average, and the emission point is subsequently made subject to a State or Federal rule other than this subpart, the emission point can continue to generate emissions averaging credit for the purpose of complying with the previously approved emissions average.

(e) For all emission points included in an emissions average, the owner or operator shall perform the following tasks:

(1) Calculate and record monthly debits for all Group 1 emission points that are controlled to a level less stringent than the reference control technology or standard for those emission points. Said Group 1 emission points are identified in paragraphs (c)(3) through (c)(5) of this section. Equations in paragraph (g) of this section shall be used to calculate debits.

(2) Calculate and record monthly credits for all Group 1 and Group 2 emission points that are over-controlled to compensate for the debits. Equations in paragraph (h) of this section shall be used to calculate credits. Emission points and controls that meet the criteria of paragraph (c) of this section may be included in the credit calculation, whereas those described in paragraph (d) of this section shall not be included.

(3) Demonstrate that annual credits calculated according to paragraph (h) of this section are greater than or equal to debits calculated for the same annual compliance period according to paragraph (g) of this section.

(i) The owner or operator may choose to include more than the required number of credit-generating emission points in an emissions average in order to increase the likelihood of being in compliance.

(ii) The initial demonstration in the Emissions Averaging Plan or operating permit application that credit-generating emission points will be capable of generating sufficient credits to offset the debits from the debit-generating emission points must be made under representative operating conditions. After the compliance date, actual operating data will be used for all debit and credit calculations.

(4) Demonstrate that debits calculated for a quarterly (3-month) period according to paragraph (g) of this section are not more than 1.30 times the credits for the same period calculated according to paragraph (h) of this section. Compliance for the quarter shall be determined based on the ratio of credits and debits from that quarter, with 30 percent more debits than credits allowed on a quarterly basis.

(5) Record and report quarterly and annual credits and debits in the Periodic Reports as specified in § 63.1335(e)(6). Every fourth Periodic Report shall include a certification of compliance with the emissions averaging provisions as required by § 63.1335(e)(6)(vi)(D)(*2*).

(f) Debits and credits shall be calculated in accordance with the methods and procedures specified in paragraphs (g) and (h) of this section, respectively, and shall not include emissions during the following periods:

(1) Emissions during periods of start-up, shutdown, and malfunction, as described in the Start-up, Shutdown, and Malfunction Plan.

(2) Emissions during periods of monitoring excursions, as defined in § 63.1334(d). For these periods, the calculation of monthly credits and debits shall be adjusted as specified in

paragraphs (f)(2)(i) through (f)(2)(iii) of this section.

(i) No credits would be assigned to the credit-generating emission point.

(ii) Maximum debits would be assigned to the debit-generating emission point.

(iii) The owner or operator may demonstrate to the Administrator that full or partial credits or debits should be assigned using the procedures in paragraph (l) of this section.

(g) Debits are generated by the difference between the actual emissions from a Group 1 emission point that is uncontrolled or is controlled to a level less stringent than the applicable reference control technology or standard and the emissions allowed for the Group 1 emission point. Said Group 1 emission points are identified in paragraphs (c)(3) through (c)(5) of this section. Debits shall be calculated as follows:

(1) Source-wide debits shall be calculated using Equation 28 of this subpart. Debits and all terms of Equation 28 of this subpart are in units of megagrams per month.

$$\begin{aligned}\text{Debits} = &\sum_{i=1}^{n}\left(\text{ECPV}_{\text{iACTUAL}} - (0.02)\text{ECPV}_{\text{iu}}\right)\\ &+\sum_{j=1}^{n}\left(\text{ECPVS}_{\text{jACTUAL}} - \text{ECPVS}_{\text{jSTD}}\right)+\sum_{i=1}^{n}\left(\text{ES}_{\text{iACTUAL}} - (b)\text{ES}_{\text{iu}}\right)\\ &+\sum_{i=1}^{n}\left(\text{EWW}_{\text{iACTUAL}} - \text{EWW}_{\text{ic}}\right)+\sum_{i=1}^{n}\left(\text{EBPV}_{\text{iACTUAL}} - (0.10)\text{EBPV}_{\text{iu}}\right) \qquad [\text{Eq. 28}]\\ &+\sum_{i=1}^{n}\left(\text{EABV}_{\text{iACTUAL}} - (0.10)\text{EABV}_{\text{iu}}\right)\end{aligned}$$

where:

$ECPV_{iACTUAL}$=Emissions from each Group 1 continuous process vent i subject to § 63.1315 that is uncontrolled or is controlled to a level less stringent than the applicable reference control technology. $ECPV_{iACTUAL}$ is calculated according to paragraph (g)(2) of this section.

$(0.02)ECPV_{iu}$=Emissions from each Group 1 continuous process vent i subject to § 63.1315 if the applicable reference control technology had been applied to the uncontrolled emissions. $ECPV_{iu}$ is calculated according to paragraph (g)(2) of this section.

$ECPVS_{jACTUAL}$=Emissions from Group 1 continuous process vents subject to § 63.1316 (b)(1)(i), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1) located in the collection of process sections j within the affected source that are uncontrolled or controlled to a level less stringent than the applicable standard. $ECPVS_{jACTUAL}$ is calculated according to paragraph (g)(3) of this section.

$ECPVS_{jSTD}$=Emissions from Group 1 continuous process vents subject to § 63.1316 (b)(1)(i), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1) located in the collection of process sections j within the affected source if the applicable standard had been applied to the uncontrolled emissions. $ECPVS_{jSTD}$ is calculated according to paragraph (g)(3) of this section.

$ES_{iACTUAL}$=Emissions from each Group 1 storage vessel i that is uncontrolled or is controlled to a level less stringent than the applicable reference control technology or standard. $ES_{iACTUAL}$ is calculated according to paragraph (g)(4) of this section.

$(BL)ES_{iu}$=Emissions from each Group 1 storage vessel i if the applicable reference control technology or standard had been applied to the uncontrolled emissions. ES_{iu} is calculated according to paragraph (g)(4) of this section. For calculating emissions, BL=0.05 for each Group 1 storage vessel i subject to § 63.1314(a); and BL=0.02 for each storage vessel i subject to § 63.1314(c).

$EWW_{iACTUAL}$=Emissions from each Group 1 wastewater stream i that is uncontrolled or is controlled to a level less stringent than the applicable reference control technology. $EWW_{iACTUAL}$ is calculated according to paragraph (g)(5) of this section.

EWW_{ic}=Emissions from each Group 1 wastewater stream i if the reference control technology had been applied to the uncontrolled emissions. EWW_{ic} is calculated according to paragraph (g)(5) of this section.

$EBPV_{iACTUAL}$=Emissions from each Group 1 batch process vent i that is uncontrolled or is controlled to a level less stringent than the applicable reference control technology. $EBPVi_{iACTUAL}$ is calculated according to paragraph (g)(6) of this section.

$(0.10)EBPV_{iu}$=Emissions from each Group 1 batch process vent i if the applicable reference control technology had been applied to the uncontrolled emissions. $EBPV_{iu}$ is calculated according to paragraph (g)(6) of this section.

$EABV_{iACTUAL}$=Emissions from each Group 1 aggregate batch vent stream i that is uncontrolled or is controlled to a level less stringent than the applicable reference control technology. $EBPVi_{iACTUAL}$ is calculated according to paragraph (g)(7) of this section.

$(0.10)EABV_{iu}$=Emissions from each Group 1 aggregate batch vent stream i if the applicable reference control technology had been applied to the uncontrolled emissions. $EBPV_{iu}$ is calculated according to paragraph (g)(7) of this section.

n=The number of emission points being included in the emissions average.

(2) Emissions from continuous process vents subject to § 63.1315 shall be calculated as follows:

(i) For purposes of determining continuous process vent stream flow rate, organic HAP concentrations, and temperature, the sampling site shall be after the final product recovery device, if any recovery devices are present; before any control device (for continuous process vents, recovery devices shall not be considered control devices); and before discharge to the atmosphere. Method 1 or 1A, 40 CFR

part 60, appendix A, shall be used for selection of the sampling site.

(ii) $ECPV_{iu}$ for each continuous process vent i shall be calculated using Equation 29 of this subpart.

$$ECPV_{iu} = \left(2.494 \times 10^{-9}\right) Qh \left(\sum_{j=1}^{n} C_j M_j\right) \qquad [\text{Eq. } 29]$$

where:

$ECPV_{iu}$=Uncontrolled continuous process vent emission rate from continuous process vent i, megagrams per month.

Q=Vent stream flow rate, dry standard cubic meters per minute, measured using Method 2, 2A, 2C, or 2D, 40 CFR part 60, appendix A, as appropriate.

h=Monthly hours of operation during which positive flow is present in the continuous process vent, hours per month.

Cj=Concentration, parts per million by volume, dry basis, of organic HAP j as measured by Method 18, 40 CFR part 60, appendix A.

Mj=Molecular weight of organic HAP j, gram per gram-mole.

n=Number of organic HAP in stream.

(A) The values of Q and Cj shall be determined during a performance test conducted under representative operating conditions. The values of Q and Cj shall be established in the Notification of Compliance Status and must be updated as provided in paragraph (g)(2)(ii)(B) of this section.

(B) If there is a change in capacity utilization other than a change in monthly operating hours, or if any other change is made to the process or product recovery equipment or operation such that the previously measured values of Q and Cj are no longer representative, a new performance test shall be conducted to determine new representative values of Q and Cj. These new values shall be used to calculate debits and credits from the time of the change forward, and the new values shall be reported in the next Periodic Report.

(iii) The following procedures and equations shall be used to calculate $ECPV_{iACTUAL}$:

(A) If the continuous process vent is not controlled by a control device or pollution prevention measure, $ECPV_{iACTUAL}$=$ECPV_{iu}$, where $ECPV_{iu}$ is calculated according to the procedures in paragraphs (g)(2)(i) and (g)(2)(ii) of this section.

(B) If the continuous process vent is controlled using a control device or a pollution prevention measure achieving less than 98 percent reduction, calculate $ECPV_{iACTUAL}$ using Equation 30 of this subpart.

$$ECPV_{iACTUAL} = ECPV_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right) \qquad [\text{Eq. } 30]$$

(*1*) The percent reduction shall be measured according to the procedures in § 63.116 if a combustion control device is used. For a flare meeting the criteria in § 63.116(a), or a boiler or process heater meeting the criteria in § 63.116(b), the percent reduction shall be 98 percent. If a noncombustion control device is used, percent reduction shall be demonstrated by a performance test at the inlet and outlet of the device, or, if testing is not feasible, by a control design evaluation and documented engineering calculations.

(*2*) For determining debits from Group 1 continuous process vents, product recovery devices shall not be considered control devices and cannot be assigned a percent reduction in calculating $ECPV_{iACTUAL}$. The sampling site for measurement of uncontrolled emissions is after the final product recovery device. However, as provided in § 63.113(a)(3), a Group 1 continuous process vent may add sufficient product recovery to raise the TRE index value above 1.0 or, for Group 1 continuous process vents at an existing affected source producing MBS, above 3.7, thereby becoming a Group 2 continuous process vent. Such a continuous process vent would not be a Group 1 continuous process vent and would, therefore, not be included in determining debits under this paragraph (g)(2)(iii)(B)(*2*).

(*3*) Procedures for calculating the percent reduction of pollution prevention measures are specified in paragraph (j) of this section.

(3) Emissions from continuous process vents located in the collection of process sections within the affected source subject to § 63.1316 (b)(1)(i), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1) shall be calculated as follows:

(i) The total organic HAP emissions from continuous process vents located in the collection of process sections j within the affected source, $ECPVS_{jACTUAL}$, shall be calculated as follows. The procedures in paragraph (g)(2)(iii) of this section shall be used to determine the organic HAP emissions for each individual continuous process vent, except that paragraph (g)(2)(iii)(B)(*2*) of this section shall not apply and the sampling site shall be after those recovery devices installed as part of normal operation; before any add-on control devices (i.e., those required by regulation); and prior to discharge to the atmosphere. Then, individual continuous process vent emissions shall be summed to determine $ECPVS_{jACTUAL}$.

(ii)(A) ECPVSjstd shall be calculated using Equation 31 of this subpart.

$$ECPVS_{jstd} = \left(EF_{std}\right)\left(PP_j\right) \qquad [\text{Eq. } 31]$$

where:

$ECPVS_{jstd}$=Emissions if the applicable standard had been applied to the uncontrolled emissions, megagrams per month.

EF_{std}=0.000018 Mg organic HAP/Mg of product, if the collection of process sections within the affected source is subject to § 63.1316(b)(1)(i).

=0.00002 Mg organic HAP/Mg of product, if the collection of process sections within the affected source is subject to § 63.1316 (b)(1)(ii) or (b)(2)(ii).

=0.00004 Mg organic HAP/Mg of product, if the collection of process sections within the affected source is subject to § 63.1316(b)(2)(i).

=0.0000036 Mg organic HAP/Mg of product, if the collection of process sections within the affected source is subject to § 63.1316(c)(1).

PPj=Polymer produced, Mg/month, for the collection of process sections j within the affected source, as calculated according to paragraph (g)(3)(ii)(B) of this section.

(B) The amount of polymer produced, Mg per month, for the collection of process sections j within the affected source shall be determined by determining the weight of polymer pulled from the process line(s) during a 30-day period. The polymer produced shall be determined by direct measurement or by an alternate methodology, such as materials balance. If an alternate methodology is used, a description of the methodology, including all procedures, data, and assumptions shall be submitted as part of the Emissions Averaging Plan required by § 63.1335(e)(4).

(C) Alternatively, $ECPVS_{jstd}$ for continuous process vents located in the collection of process sections within the affected source subject to § 63.1316(c)(1) may be calculated using the procedures in paragraph (g)(2)(i) and (g)(2)(ii) of this section to determine the organic HAP emissions for each individual continuous process vent, except that the sampling site shall be after recovery devices installed as part of normal operation; before any add-on control devices (i.e., those required by regulation); and prior to discharge to the atmosphere. Then, individual continuous process vent emissions shall be summed and multiplied by 0.02 to determine $ECPVS_{jstd}$.

(4) Emissions from storage vessels shall be calculated using the procedures specified in § 63.150(g)(3).

(5) Emissions from wastewater streams shall be calculated using the procedures in § 63.150(g)(5).

(6) Emissions from batch process vents shall be calculated as follows:

(i) $EBPV_{iu}$ for each batch process vent i shall be calculated using the procedures specified in § 63.1323(b).

(ii) The following procedures and equations shall be used to determine $EBPV_{iACTUAL}$:

(A) If the batch process vent is not controlled by a control device or pollution prevention measure, $EBPV_{iACTUAL}=EBPV_{iu}$, where $EBPV_{iu}$ is calculated using the procedures in § 63.1323(b).

(B) If the batch process vent is controlled using a control device or a pollution prevention measure achieving less than 90 percent reduction for the batch cycle, calculate $EBPV_{iACTUAL}$ using Equation 32 of this subpart, where percent reduction is for the batch cycle.

$$EBPV_{iACTUAL} = EBPV_{iu}\left(1-\frac{\text{Percent reduction}}{100\%}\right) \qquad [\text{Eq. } 32]$$

(*1*) The percent reduction for the batch cycle shall be calculated according to the procedures in § 63.1325(c)(2).

(*2*) The percent reduction for control devices shall be calculated according to the procedures in § 63.1325 (c)(2)(i) through (c)(2)(iii).

(*3*) The percent reduction of pollution prevention measures shall be calculated using the procedures specified in paragraph (j) of this section.

(7) Emissions from aggregate batch vent streams shall be calculated as follows:

(i) For purposes of determining aggregate batch vent stream flow rate, organic HAP concentrations, and temperature, the sampling site shall be before any control device and before discharge to the atmosphere. Method 1 or 1A, 40 CFR part 60, appendix A, shall be used for selection of the sampling site.

(ii) $EABV_{iu}$ for each aggregate batch vent stream i shall be calculated using Equation 33 of this subpart.

$$EABV_{iu} = \left(2.494\times10^{-9}\right)Qh\left(\sum_{j=1}^{n} C_j M_j\right) \qquad [\text{Eq. } 33]$$

where:

$EABV_{iu}$=Uncontrolled aggregate batch vent stream emission rate from aggregate batch vent stream i, megagrams per month.

Q=Vent stream flow rate, dry standard cubic meters per minute, measured using Method 2, 2A, 2C, or 2D, 40 CFR part 60, appendix A, as appropriate.

h=Monthly hours of operation during which positive flow is present from the aggregate batch vent stream, hours per month.

C_j=Concentration, parts per million by volume, dry basis, of organic HAP j as measured by Method 18, 40 CFR part 60, appendix A.

M_j=Molecular weight of organic HAP j, gram per gram-mole.

n=Number of organic HAP in the stream.

(A) The values of Q and C_j shall be determined during a performance test conducted under representative operating conditions. The values of Q and C_j shall be established in the Notification of Compliance Status and must be updated as provided in paragraph (g)(7)(ii)(B) of this section.

(B) If there is a change in capacity utilization other than a change in monthly operating hours, or if any other change is made to the process or product recovery equipment or operation such that the previously measured values of Q and C_j are no longer representative, a new performance test shall be conducted to determine new representative values of Q and C_j. These new values shall be used to calculate debits and credits from the time of the change forward, and the new values shall be reported in the next Periodic Report.

(iii) The following procedures and equations shall be used to calculate $EABV_{iACTUAL}$:

(A) If the aggregate batch vent stream is not controlled by a control device or pollution prevention measure, $EABV_{iACTUAL} = EABV_{iu}$, where $EABV_{iu}$ is calculated according to the procedures in paragraphs (g)(7)(i) and (g)(7)(ii) of this section.

(B) If the aggregate batch vent stream is controlled using a control device or a pollution prevention measure achieving less than 90 percent reduction, calculate $EABV_{iACTUAL}$ using Equation 34 of this subpart.

$$EABV_{iACTUAL} = EABV_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right) \qquad [\text{Eq. } 34]$$

(*1*) The percent reduction for control devices shall be determined according to the procedures in § 63.1325(e).

(*2*) The percent reduction for pollution prevention measures shall be calculated according to the procedures specified in paragraph (j) of this section.

(h) Credits are generated by the difference between emissions that are allowed for each Group 1 and Group 2 emission point and the actual emissions from that Group 1 or Group 2 emission point that has been controlled after November 15, 1990 to a level more stringent than what is required by this subpart or any other State or Federal rule or statute. Said Group 1 and Group 2 emission points are identified in paragraphs (c)(1) through (c)(5) of this section. Credits shall be calculated using Equation 35 of this subpart.

(1) Sourcewide credits shall be calculated using Equation 35 of this subpart.

$$\begin{aligned}
\text{Credits} = {} & D\sum_{i=1}^{n}\left((0.02)ECPV1_{iu} - ECPV1_{iACTUAL}\right) \\
& + D\sum_{j=1}^{n}\left(ECPVS1_{jSTD} - ECPVS1_{jACTUAL}\right) \\
& + D\sum_{i=1}^{m}\left(ECPV2_{iBASE} - ECPV2_{iACTUAL}\right) \\
& + D\sum_{j=1}^{m}\left(ECPVS2_{jBASE} - ECPVS2_{jACTUAL}\right) \\
& + D\sum_{i=1}^{n}\left((BL)ES1_{iu} - ES1_{iACTUAL}\right) + D\sum_{i=1}^{m}\left(ES2_{iBASE} - ES2_{iACTUAL}\right) \\
& + D\sum_{i=1}^{n}\left(EWW1_{ic} - EWW1_{iACTUAL}\right) \qquad [\text{Eq. } 35] \\
& + D\sum_{i=1}^{m}\left(EWW2_{iBASE} - EWW2_{iACTUAL}\right) \\
& + D\sum_{i=1}^{n}\left((0.10)EBPV1_{iu} - EBPV1_{iACTUAL}\right) \\
& + D\sum_{i=1}^{n}\left((0.10)EABV1_{iu} - EABV1_{iACTUAL}\right) \\
& + D\sum_{i=1}^{m}\left(EBPV2_{iBASE} - EBPV2_{iACTUAL}\right) \\
& + D\sum_{i=1}^{m}\left(EABV2_{iBASE} - EABV2_{iACTUAL}\right)
\end{aligned}$$

Credits and all terms of Equation 35 of this subpart are in units of megagrams per month, the baseline date is November 15, 1990.

where:

D=Discount factor=0.9 for all credit generating emission points except those controlled by a pollution prevention measure; discount factor=1.0 for each credit generating emission point controlled by a pollution prevention measure (i.e., no discount provided).

$ECPV1_{iACTUAL}$=Emissions for each Group 1 continuous process vent i subject to § 63.1315 that is controlled to a level more stringent than the reference control technology. $ECPV1_{iACTUAL}$ is calculated according to paragraph (h)(2) of this section.

$(0.02)ECPV1_{iu}$=Emissions from each Group 1 continuous process vent i subject to § 63.1315 if the applicable reference control technology had been applied to the uncontrolled emissions. $ECPV1_{iu}$ is calculated according to paragraph (h)(2) of this section.

$ECPVS1_{jSTD}$=Emissions from Group 1 continuous process vents subject to § 63.1316 (b)(1)(i), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1) located in the collection of process sections j within the affected source if the applicable standard had been applied to the uncontrolled emissions. $ECPVS1_{jSTD}$ is calculated according to paragraph (h)(3) of this section.

$ECPVS1_{jACTUAL}$=Emissions from Group 1 continuous process vents subject to § 63.1316 (b)(1)(i), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1) located in the collection of process sections j within the affected source that are controlled to a level more stringent than the applicable standard. $ECPVS1_{jACTUAL}$ is calculated according to paragraph (h)(3) of this section.

$ECPV2_{iACTUAL}$=Emissions from each Group 2 continuous process vent i subject to § 63.1315 that is controlled. $ECPV2_{iACTUAL}$ is calculated according to paragraph (h)(2) of this section.

$ECPV2_{iBASE}$=Emissions from each Group 2 continuous process vent i subject to § 63.1315 at the baseline date. $ECPV2_{iBASE}$ is calculated according to paragraph (h)(2) of this section.

$ECPVS2_{jBASE}$=Emissions from Group 2 continuous process vents subject to § 63.1316(b)(1)(i) located in the collection of material recovery sections j within the affected source at the baseline date. $ECPVS2_{jBASE}$ is calculated according to paragraph (h)(3) of this section.

$ECPVS2_{jACTUAL}$=Emissions from Group 2 continuous process vents subject to § 63.1316(b)(1)(i) located in the collection of material recovery sections j within the affected source that are controlled. $ECPVS2_{jACTUAL}$ is calculated according to paragraph (h)(3) of this section.

$ES1_{iACTUAL}$=Emissions from each Group 1 storage vessel i that is controlled to a level more stringent than the applicable reference control technology or standard. $ES1_{iACTUAL}$ is calculated according to paragraph (h)(4) of this section.

(BL)$ES1_{iu}$=Emissions from each Group 1 storage vessel i if the applicable reference control technology or standard had been applied to the uncontrolled emissions. $ES1_{iu}$ is calculated according to paragraph (h)(4) of this section. For calculating these emissions, BL=0.05 for each Group 1 storage vessel i subject to § 63.1314(a); and BL=0.02 for each storage vessel i subject to § 63.1314(c).

$ES2_{iACTUAL}$=Emissions from each Group 2 storage vessel i that is controlled. $ES2_{iACTUAL}$ is calculated according to paragraph (h)(4) of this section.

$ES2_{iBASE}$=Emissions from each Group 2 storage vessel i at the baseline date. $ES2_{iBASE}$ is calculated according to paragraph (h)(4) of this section.

$EWW1_{iACTUAL}$=Emissions from each Group 1 wastewater stream i that is controlled to a level more stringent than the reference control technology. $EWW1_{iACTUAL}$ is calculated according to paragraph (h)(5) of this section.

$EWW1_{ic}$=Emissions from each Group 1 wastewater stream i if the reference control technology had been applied to the uncontrolled emissions. $EWW1_{ic}$ is calculated according to paragraph (h)(5) of this section.

$EWW2_{iACTUAL}$=Emissions from each Group 2 wastewater stream i that is controlled. $EWW2_{iACTUAL}$ is calculated according to paragraph (h)(5) of this section.

$EWW2_{iBASE}$=Emissions from each Group 2 wastewater stream i at the baseline date. $EWW2_{iBASE}$ is calculated according to paragraph (h)(5) of this section.

(0.10)$EBPV1_{iu}$=Emissions from each Group 1 batch process vent i if the applicable reference control technology had been applied to the uncontrolled emissions. $EBPV1_{iu}$ is calculated according to paragraph (h)(6) of this section.

$EBPV1_{iACTUAL}$=Emissions from each Group 1 batch process vent i that is controlled to a level more stringent than the reference control technology. $EBPV1_{iACTUAL}$ is calculated according to paragraph (h)(6) of this section.

(0.10)$EABV1_{iu}$=Emissions from each Group 1 aggregate batch vent stream i if the applicable reference control technology had been applied to the uncontrolled emissions. $EABV1_{iu}$ is calculated according to paragraph (h)(7) of this section.

$EABV1_{iACTUAL}$=Emissions from each Group 1 aggregate batch vent stream i that is controlled to a level more stringent than the reference control technology. $EABV1_{iACTUAL}$ is calculated according to paragraph (h)(7) of this section.

$EBPV2_{iBASE}$=Emissions from each Group 2 batch process vent i at the baseline date. $EBPV2_{iBASE}$ is calculated according to paragraph (h)(6) of this section.

$EBPV2_{iACTUAL}$=Emissions from each Group 2 batch process vent i that is controlled. $EBPV2_{iACTUAL}$ is calculated according to paragraph (h)(6) of this section.

$EABV2_{iBASE}$=Emissions from each Group 2 aggregate batch vent stream i at the baseline date. $EABV2_{iBASE}$ is calculated according to paragraph (h)(7) of this section.

$EABV2_{iACTUAL}$=Emissions from each Group 2 aggregate batch vent stream i that is controlled. $EABV2_{iACTUAL}$ is calculated according to paragraph (h)(7) of this section.

n=Number of Group 1 emission points included in the emissions average. The value of n is not necessarily the same for continuous process vents, batch process vents, aggregate batch vent streams, storage vessels, wastewater streams, or the collection of process sections within the affected source.

m=Number of Group 2 emission points included in the emissions average. The value of m is not necessarily the same for continuous process vents, batch process vents, aggregate batch vent streams, storage vessels, wastewater streams, or the collection of process sections within the affected source.

(i) Except as specified in paragraph (h)(1)(iv) of this section, for an emission point controlled using a reference control technology, the percent reduction for calculating credits shall be no greater than the nominal efficiency associated with the reference control technology, unless a higher nominal efficiency is assigned as specified in paragraph (h)(1)(ii) of this section.

(ii) For an emission point controlled to a level more stringent than the reference control technology, the nominal efficiency for calculating credits shall be assigned as described in paragraph (i) of this section. A reference control technology may be approved for use in a different manner and assigned a higher nominal efficiency according to the procedures in paragraph (i) of this section.

(iii) For an emission point controlled using a pollution prevention measure, the nominal efficiency for calculating credits shall be as determined as described in paragraph (j) of this section.

(iv) For Group 1 and Group 2 batch process vents and Group 1 and Group 2 aggregate batch vent streams, the percent reduction for calculating credits shall be the percent reduction determined according to the procedures in paragraphs (h)(6)(ii) and (h)(6)(iii) of this section for batch process vents and paragraphs (h)(7)(ii) and (h)(7)(iii) of this section for aggregate batch vent streams.

(2) Emissions from continuous process vents subject to § 63.1315 shall be determined as follows:

(i) Uncontrolled emissions from Group 1 continuous process vents ($ECPV1_{iu}$) shall be calculated according to the procedures and equation for $ECPV_{iu}$ in paragraphs (g)(2)(i) and (g)(2)(ii) of this section.

(ii) Actual emissions from Group 1 continuous process vents controlled using a technology with an approved nominal efficiency greater than 98 percent or a pollution prevention measure achieving greater than 98 percent emission reduction ($ECPV1_{iACTUAL}$) shall be calculated using Equation 36 of this subpart.

$$ECPV1_{iACTUAL} = ECPV1_{iu}\left(1 - \frac{\text{Nominal efficiency \%}}{100\%}\right) \qquad [\text{Eq. 36}]$$

(iii) The following procedures shall be used to calculate actual emissions from Group 2 continuous process vents ($ECPV2_{iACTUAL}$):

(A) For a Group 2 continuous process vent controlled by a control device, a recovery device applied as a pollution prevention project, or a pollution prevention measure, where the control achieves a percent reduction less than or equal to 98 percent reduction, use Equation 37 of this subpart.

$$ECPV2_{iACTUAL} = ECPV2_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right) \qquad [\text{Eq. 37}]$$

(*1*) $ECPV2_{iu}$ shall be calculated according to the equations and procedures for $ECPV_{iu}$ in paragraphs (g)(2)(i) and (g)(2)(ii) of this section, except as provided in paragraph (h)(2)(iii)(A)(*3*) of this section.

(*2*) The percent reduction shall be calculated according to the procedures in paragraphs (g)(2)(iii)(B)(*1*) through (g)(2)(iii)(B)(*3*) of this section, except as provided in paragraph (h)(2)(iii)(A)(*4*) of this section.

(*3*) If a recovery device was added as part of a pollution prevention project, $ECPV2_{iu}$ shall be calculated prior to that recovery device. The equation for $ECPV_{iu}$ in paragraph (g)(2)(ii) of this section shall be used to calculate $ECPV2_{iu}$; however, the sampling site for measurement of vent stream flow rate and organic HAP concentration shall be at the inlet of the recovery device.

(*4*) If a recovery device was added as part of a pollution prevention project, the percent reduction shall be demonstrated by conducting a performance test at the inlet and outlet of that recovery device.

(B) For a Group 2 continuous process vent controlled using a technology with an approved nominal efficiency greater than 98 percent or a pollution prevention measure achieving greater than 98 percent reduction, use Equation 38 of this subpart.

$$ECPV2_{iACTUAL} = ECPV2_{iu}\left(1 - \frac{\text{Nominal efficiency \%}}{100\%}\right) \qquad [\text{Eq. 38}]$$

(iv) Emissions from Group 2 continuous process vents at baseline shall be calculated as follows:

(A) If the continuous process vent was uncontrolled on November 15, 1990, $ECPV2_{iBASE}$=$ECPV2_{iu}$ and shall be calculated according to the procedures and equation for $ECPV_{iu}$ in paragraphs (g)(2)(i) and (g)(2)(ii) of this section.

(B) If the continuous process vent was controlled on November 15, 1990, use Equation 39 of this subpart.

$$ECPV2_{iBASE} = ECPV2_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right) \qquad [\text{Eq. 39}]$$

(*1*) $ECPV2_{iu}$ is calculated according to the procedures and equation for $ECPV_{iu}$ in paragraphs (g)(2)(i) and (g)(2)(ii) of this section.

(*2*) The percent reduction shall be calculated according to the procedures specified in paragraphs (g)(2)(iii)(B)(*1*) through (g)(2)(iii)(B)(*3*) of this section.

(C) If a recovery device was added as part of a pollution prevention project initiated after November 15, 1990, $ECPV2_{iBASE}$=$ECPV2_{iu}$, where $ECPV2_{iu}$ is calculated according to paragraph (h)(2)(iii)(A)(*3*) of this section.

(3) Emissions from continuous process vents subject to § 63.1316(b)(1)(i), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1) shall be determined as follows:

(i) Emissions from Group 1 continuous process vents located in the collection of process sections j within the affected source if the applicable standard had been applied to the uncontrolled emissions ($ECPVS1_{jstd}$) shall be calculated according to paragraph (g)(3)(ii) of this section.

(ii) Actual emissions from Group 1 continuous process vents located in the collection of process sections j within the affected source controlled to a level more stringent than the applicable standard ($ECPVS1_{jACTUAL}$) shall be calculated using the procedures in paragraphs (g)(3)(ii)(A) and (g)(3)(ii)(B) of this section, except that the actual emission level, Mg organic HAP/Mg of product, shall be used as EF_{std} in Equation 31 of this subpart. Further, $ECPVS1_{jACTUAL}$ for continuous process vents subject to § 63.1316(c)(1) controlled in accordance with § 63.1316(c)(1)(iii) shall be calculated using the procedures in paragraph

(h)(2)(ii) of this section for individual continuous process vents and then summing said emissions to get $ECPVS1_{jACTUAL}$, except that the sampling site shall be after recovery devices installed as part of normal operation; before any add-on control devices (i.e., those required by regulation); and prior to discharge to the atmosphere.

(iii) Actual emissions from Group 2 continuous process vents subject to § 63.1316(b)(1)(i) located in the collection of material recovery sections j within the affected source ($ECPVS2_{jACTUAL}$) shall be calculated using the procedures in paragraphs (g)(3)(ii)(A) and (g)(3)(ii)(B) of this section, except that the actual emission level, Mg organic HAP/Mg of product, shall be used as EF_{std} in Equation 31 of this subpart.

(iv) Emissions from Group 2 continuous process vents subject to § 63.1316(b)(1)(i) located in the collection of material recovery sections j within the affected source at baseline ($ECPVS2_{jBASE}$) shall be calculated using the procedures in paragraphs (g)(3)(ii)(A) and (g)(3)(ii)(B) of this section, except that the actual emission level, Mg organic HAP/Mg of product, at baseline shall be used as EF_{std} in Equation 31 of this subpart.

(4)(i) Emissions from storage vessels shall be calculated using the procedures specified in § 63.150(h)(3).

(ii) Actual emissions from Group 1 storage vessels at an existing affected source producing ASA/AMSAN subject to § 63.1314(c) using a technology with an approved nominal efficiency greater than 98 percent or a pollution prevention measure achieving greater than 98 percent emission reduction shall be calculated using the procedures specified in § 63.150(h)(3)(ii).

(5) Emissions from wastewater streams shall be calculated using the procedures specified in § 63.150(h)(5).

(6) Emissions from batch process vents shall be determined as follows:

(i) Uncontrolled emissions from Group 1 batch process vents ($EBPV1_{iu}$) shall be calculated using the procedures § 63.1323(b).

(ii) Actual emissions from Group 1 batch process vents controlled to a level more stringent than the reference control technology ($EBPV1_{iACTUAL}$) shall be calculated using Equation 40 of this subpart, where percent reduction is for the batch cycle.

$$EBPV1_{iACTUAL} = EBPV1_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right) \quad \text{[Eq. 40]}$$

(A) The percent reduction for the batch cycle shall be calculated according to the procedures in § 63.1325(c)(2).

(B) The percent reduction for control devices shall be determined according to the procedures in § 63.1325(c)(2)(i) through (c)(2)(iii).

(C) The percent reduction of pollution prevention measures shall be calculated using the procedures specified in paragraph (j) of this section.

(iii) Actual emissions from Group 2 batch process vents ($EBPV2_{iACTUAL}$) shall be calculated using Equation 41 of this subpart and the procedures in paragraphs (h)(6)(ii)(A) through (h)(6)(ii)(C) of this section. $EBPV2_{iu}$ shall be calculated using the procedures specified in § 63.1323(b).

$$EBPV2_{iACTUAL} = EBPV2_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right) \quad \text{[Eq. 41]}$$

(iv) Emissions from Group 2 batch process vents at baseline ($EBPV2_{iBASE}$) shall be calculated as follows:

(A) If the batch process vent was uncontrolled on November 15, 1990, $EBPV2_{iBASE}$=$EBPV2_{iu}$ and shall be calculated using the procedures specified in § 63.1323(b).

(B) If the batch process vent was controlled on November 15, 1990, use Equation 42 of this subpart and the procedures in paragraphs (h)(6)(ii)(A) through (h)(6)(ii)(C) of this section. $EBPV2_{iu}$ shall be calculated using the procedures specified in § 63.1323(b).

$$EBPV2_{iBASE} = EBPV2_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right) \quad \text{[Eq. 42]}$$

(7) Emissions from aggregate batch vent streams shall be determined as follows:

(i) Uncontrolled emissions from Group 1 aggregate batch vent streams ($EABV1_{iu}$) shall be calculated according to the procedures and equation for $EABV_{iu}$ in paragraphs (g)(7)(i) and (g)(7)(ii) of this section.

(ii) Actual emissions from Group 1 aggregate batch vent streams controlled to a level more stringent than the reference control technology ($EABV1_{iACTUAL}$) shall be calculated using Equation 43 of this subpart.

$$EABV1_{iACTUAL} = EABV1_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right) \quad \text{[Eq. 43]}$$

(A) The percent reduction for control devices shall be determined according to the procedures in § 63.1325(e).

(B) The percent reduction of pollution prevention measures shall be calculated using the procedures specified in paragraph (j) of this section.

(iii) Actual emissions from Group 2 aggregate batch vent streams ($EABV2_{iACTUAL}$) shall be calculated using Equation 44 of this subpart and the procedures in paragraphs (h)(7)(ii)(A) through (h)(7)(ii)(B) of this section. $EABV2_{iu}$ shall be calculated according to the equations and procedures for $EABV_{iu}$ in paragraphs (g)(7)(i) and (g)(7)(ii) of this section.

$$EABV2_{iACTUAL} = EABV2_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right) \quad \text{[Eq. 44]}$$

(iv) Emissions from Group 2 aggregate batch vent streams at baseline shall be calculated as follows:

(A) If the aggregate batch vent stream was uncontrolled on November 15, 1990, $EABV2_{iBASE}$=$EABV2_{iu}$ and shall be calculated according to the procedures and equation for $EABV_{iu}$ in paragraphs (g)(7)(i) and (g)(7)(ii) of this section.

(B) If the aggregate batch vent stream was controlled on November 15, 1990, use Equation 45 of this subpart and the procedures in paragraphs (h)(7)(ii)(A) through (h)(7)(ii)(B) of this section. $EABV2_{iu}$ shall be calculated according to the equations and procedures for $EABV_{iu}$ in paragraphs (g)(7)(i) and (g)(7)(ii) of this section.

$$EABV2_{iBASE} = EABV2_{iu}\left(1 - \frac{\text{Percent reduction}}{100\%}\right) \quad \text{[Eq. 45]}$$

(i) The following procedures shall be followed to establish nominal efficiencies for emission controls for storage vessels, continuous process vents, and process wastewater streams. The procedures in paragraphs (i)(1) through (i)(6) of this section shall be followed for control technologies that are different in use or design from the reference control technologies and achieve greater percent reductions than the percent efficiencies assigned to the reference control technologies in § 63.111.

(1) In those cases where the owner or operator is seeking permission to take credit for use of a control technology that is different in use or design from the reference control technology, and the different control technology will be used in more than three applications at a single plant-site, the owner or operator shall submit the information specified in paragraphs (i)(1)(i) through (i)(1)(iv) of this section to the Director of the EPA Office of Air Quality Planning and Standards in writing:

(i) Emission stream characteristics of each emission point to which the control technology is or will be applied including the kind of emission point, flow, organic HAP concentration, and all other stream characteristics necessary to design the control technology or determine its performance.

(ii) Description of the control technology including design specifications.

(iii) Documentation demonstrating to the Administrator's satisfaction the control efficiency of the control technology. This may include performance test data collected using an appropriate EPA Method or any other method validated according to Method 301 of appendix A of this part. If it is infeasible to obtain test data, documentation may include a design evaluation and calculations. The engineering basis of the calculation procedures and all inputs and assumptions made in the calculations shall be documented.

(iv) A description of the parameter or parameters to be monitored to ensure that the control technology will be operated in conformance with its design and an explanation of the criteria used for selection of that parameter (or parameters).

(2) The Administrator shall determine within 120 operating days whether an application presents sufficient information to determine nominal efficiency. The Administrator reserves the right to request specific data in addition to the items listed in paragraph (i)(1) of this section.

(3) The Administrator shall determine within 120 operating days of the submittal of sufficient data whether a control technology shall have a nominal efficiency and the level of that nominal efficiency. If, in the Administrator's judgment, the control technology achieves a level of emission reduction greater than the reference control technology for a particular kind of emission point, the Administrator will publish a Federal Register notice establishing a nominal efficiency for the control technology.

(4) The Administrator may grant permission to take emission credits for use of the control technology. The Administrator may also impose requirements that may be necessary to ensure operation and maintenance to achieve the specified nominal efficiency.

(5) In those cases where the owner or operator is seeking permission to take credit for use of a control technology that is different in use or design from the reference control technology and the different control technology will be used in no more than three applications at a single plant site, the information listed in paragraphs (i)(1)(i) through (i)(1)(iv) of this section can be submitted to the permitting authority for the affected source for approval instead of the Administrator.

(i) In these instances, use and conditions for use of the control technology can be approved by the permitting authority as part of an operating permit application or modification. The permitting authority shall follow the procedures specified in paragraphs (i)(2) through (i)(4) of this section except that, in these instances, a Federal Register notice is not required to establish the nominal efficiency for the different technology.

(ii) If, in reviewing the application, the permitting authority believes the control technology has broad applicability for use by other affected sources, the permitting authority shall submit the information provided in the application to the Director of the EPA Office of Air Quality Planning and Standards. The Administrator shall

review the technology for broad applicability and may publish a Federal Register notice; however, this review shall not affect the permitting authority's approval of the nominal efficiency of the control technology for the specific application.

(6) If, in reviewing an application for a control technology for an emission point, the Administrator or permitting authority determines the control technology is not different in use or design from the reference control technology, the Administrator or permitting authority shall deny the application.

(j) The following procedures shall be used for calculating the efficiency (percent reduction) of pollution prevention measures for storage vessels, continuous process vents, batch process vents, aggregate batch vent streams, and wastewater streams:

(1) A pollution prevention measure is any practice that meets the criteria of paragraphs (j)(1)(i) and (j)(1)(ii) of this section.

(i) A pollution prevention measure is any practice that results in a lesser quantity of organic HAP emissions per unit of product released to the atmosphere prior to out-of-process recycling, treatment, or control of emissions, while the same product is produced.

(ii) Pollution prevention measures may include: substitution of feedstocks that reduce organic HAP emissions; alterations to the production process to reduce the volume of materials released to the environment; equipment modifications; housekeeping measures; and in-process recycling that returns waste materials directly to production as raw materials. Production cutbacks do not qualify as pollution prevention.

(2) The emission reduction efficiency of pollution prevention measures implemented after November 15, 1990, can be used in calculating the actual emissions from an emission point in the debit and credit equations in paragraphs (g) and (h) of this section.

(i) For pollution prevention measures, the percent reduction used in the equations in paragraphs (g)(2) through (g)(7) of this section and paragraphs (h)(2) through (h)(7) of this section is the percent difference between the monthly organic HAP emissions for each emission point after the pollution prevention measure for the most recent month versus monthly emissions from the same emission point before the pollution prevention measure, adjusted by the volume of product produced during the two monthly periods.

(ii) Equation 46 of this subpart shall be used to calculate the percent reduction of a pollution prevention measure for each emission point.

$$\text{Percent reduction} = \frac{E_B - \frac{(E_{pp})(P_B)}{P_{pp}}}{E_B} 100\% \qquad \text{[Eq. 46]}$$

where:

Percent reduction=Efficiency of pollution prevention measure (percent organic HAP reduction).

E_B=Monthly emissions before the pollution prevention measure, megagrams per month, determined as specified in paragraphs (j)(2)(ii)(A), (j)(2)(ii)(B), and (j)(2)(ii)(C) of this section.

E_{pp}=Monthly emissions after the pollution prevention measure, megagrams per month, as determined for the most recent month, determined as specified in either paragraphs (j)(2)(ii)(D) or (j)(2)(ii)(E) of this section.

P_B=Monthly production before the pollution prevention measure, megagrams per month, during the same period over which E_B is calculated.

P_{pp}=Monthly production after the pollution prevention measure, megagrams per month, as determined for the most recent month.

(A) The monthly emissions before the pollution prevention measure, E_B, shall be determined in a manner consistent with the equations and procedures in paragraphs (g)(2) and (g)(3) of this section for continuous process vents, paragraph (g)(4) of this section for storage vessels, paragraph (g)(6) of this section for batch process vents, and paragraph (g)(7) of this section for aggregate batch vent streams.

(B) For wastewater, E_B shall be calculated using Equation 47 of this subpart.

$$E_B = \sum_{i=1}^{n} \left[\left(6.0 * 10^{-8}\right) Q_{Bi}\ H_{Bi} \sum_{m=1}^{s} Fe_m\ HAP_{Bim} \right] \qquad \text{[Eq. 47]}$$

where:

n=Number of wastewater streams.

Q_{Bi}=Average flow rate for wastewater stream i before the pollution prevention measure, defined and determined according to § 63.144(c)(3), liters per minute, before implementation of the pollution prevention measure.

H_{Bi}=Number of hours per month that wastewater stream i was discharged before the pollution prevention measure, hours per month.

s=Total number of organic HAP in wastewater stream i.

Fe_m=Fraction emitted of organic HAP m in wastewater from Table 9 of subpart G of this part, dimensionless.

HAP_{Bim}=Average concentration of organic HAP m in wastewater stream i, defined and determined according to paragraph (g)(5)(i) of this section, before the pollution prevention measure, parts per million by weight, as measured before the implementation of the pollution measure.

(C) If the pollution prevention measure was implemented prior to September 12, 1996 records may be used to determine E_B.

(D) The monthly emissions after the pollution prevention measure, E_{pp}, may be determined during a performance test or by a design evaluation and documented engineering calculations. Once an emissions-to-production ratio has been established, the ratio can be

used to estimate monthly emissions from monthly production records.

(E) For wastewater, E_{pp} shall be calculated using Equation 48 of this subpart and n, Q_{ppi}, H_{ppi}, s, Fe_m, and HAP_{ppim} are defined and determined as described in paragraph (j)(2)(ii)(B) of this section, except that Q_{ppi}, H_{ppi}, and HAP_{ppim} shall be determined after the pollution prevention measure has been implemented.

$$E_{pp} = \sum_{i=1}^{n}\left[\left(6.0*10^{-8}\right)Q_{ppi}\ H_{ppi}\sum_{m=1}^{s}Fe_m\ HAP_{ppim}\right] \qquad \text{[Eq. 48]}$$

(iii) All equations, calculations, test procedures, test results, and other information used to determine the percent reduction achieved by a pollution prevention measure for each emission point shall be fully documented.

(iv) The same pollution prevention measure may reduce emissions from multiple emission points. In such cases, the percent reduction in emissions for each emission point must be calculated.

(v) For the purposes of the equations in paragraphs (h)(2) through (h)(7) of this section used to calculate credits for emission points controlled more stringently than the reference control technology, the nominal efficiency of a pollution prevention measure is equivalent to the percent reduction of the pollution prevention measure. When a pollution prevention measure is used, the owner or operator of an affected source is not required to apply to the Administrator for a nominal efficiency and is not subject to paragraph (i) of this section.

(k) The owner or operator must demonstrate that the emissions from the emission points proposed to be included in the emissions average will not result in greater hazard or, at the option of the Administrator, greater risk to human health or the environment than if the emission points were controlled according to the provisions in §§ 63.1314, 63.1315, 63.1316 through 63.1320, 63.1321, and 63.1330.

(1) This demonstration of hazard or risk equivalency shall be made to the satisfaction of the Administrator.

(i) The Administrator may require owners and operators to use specific methodologies and procedures for making a hazard or risk determination.

(ii) The demonstration and approval of hazard or risk equivalency shall be made according to any guidance that the Administrator makes available for use.

(2) Owners and operators shall provide documentation demonstrating the hazard or risk equivalency of their proposed emissions average in their operating permit application or in their Emissions Averaging Plan if an operating permit application has not yet been submitted.

(3) An Emissions Averaging Plan that does not demonstrate hazard or risk equivalency to the satisfaction of the Administrator shall not be approved. The Administrator may require such adjustments to the Emissions Averaging Plan as are necessary in order to ensure that the emissions average will not result in greater hazard or risk to human health or the environment than would result if the emission points were controlled according to §§ 63.1314, 63.1315, 63.1316 through 63.1320, 63.1321, and 63.1330.

(4) A hazard or risk equivalency demonstration must:

(i) Be a quantitative, bona fide chemical hazard or risk assessment;

(ii) Account for differences in chemical hazard or risk to human health or the environment; and

(iii) Meet any requirements set by the Administrator for such demonstrations.

(l) For periods of parameter monitoring excursions, an owner or operator may request that the provisions of paragraphs (l)(1) through (l)(4) of this section be followed instead of the procedures in paragraphs (f)(3)(i) and (f)(3)(ii) of this section.

(1) The owner or operator shall notify the Administrator of monitoring excursions in the Periodic Reports as required in § 63.1335(e)(6).

(2) The owner or operator shall demonstrate that other types of monitoring data or engineering calculations are appropriate to establish that the control device for the emission point was operating in such a fashion to warrant assigning full or partial credits and debits. This demonstration shall be made to the Administrator's satisfaction, and the Administrator may establish procedures of demonstrating compliance that are acceptable.

(3) The owner or operator shall provide documentation of the excursion and the other type of monitoring data or engineering calculations to be used to demonstrate that the control device for the emission point was operating in such a fashion to warrant assigning full or partial credits and debits.

(4) The Administrator may assign full or partial credit and debits upon review of the information provided.

(m) For each emission point included in an emissions average, the owner or operator shall perform testing, monitoring, recordkeeping, and reporting equivalent to that required for Group 1 emission points complying with §§ 63.1314, 63.1315, 63.1316 through 63.1320, 63.1321, and 63.1330, as applicable. The specific requirements for continuous process vents, batch process vents, aggregate batch vent streams, storage vessels, and wastewater operations that are included in an emissions average for an affected source are identified in paragraphs (m)(1) through (m)(7) of this section.

(1) For each continuous process vent subject to § 63.1315 equipped with a flare, incinerator, boiler, or process heater, as appropriate to the control technique:

(i) Determine whether the continuous process vent is Group 1 or Group 2 according to the procedures specified in § 63.1315;

(ii) Conduct initial performance tests to determine percent reduction according to the procedures specified in § 63.1315; and

(iii) Monitor the operating parameters, keep records, and submit reports according to the procedures specified in § 63.1315.

(2) For each continuous process vent subject to § 63.1315 equipped with a carbon adsorber, absorber, or condenser but not equipped with a control device, as appropriate to the control technique:

(i) Determine the flow rate, organic HAP concentration, and TRE index value according to the procedures specified in § 63.1315; and

(ii) Monitor the operating parameters, keep records, and submit reports according to the procedures specified in § 63.1315.

(3) For continuous process vents subject to § 63.1316(b)(1)(i), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1):

(i) Determine whether the emissions from the continuous process vents subject to § 63.1316(b)(1)(i) located in the collection of material recovery sections within the affected source are greater than, equal to, or less than 0.12 kg organic HAP per Mg of product according to the procedures specified in § 63.1318(b);

(ii) Determine the emission rate, ER_{HAP}, for each collection of process sections within the affected source according to the procedures specified in § 63.1318(b); and

(iv) Monitor the operating parameters, keep records, and submit reports according to the procedures specified in § 63.1317, § 63.1319, § 63.1320.

(4) For each storage vessel controlled with an internal floating roof, external roof, or a closed vent system with a control device, as appropriate to the control technique:

(i) Perform the monitoring or inspection procedures according to the procedures specified in § 63.1314;

(ii) Perform the reporting and recordkeeping procedures according to the procedures specified in § 63.1314; and

(iii) For closed vent systems with control devices, conduct an initial design evaluation and submit an operating plan according to the procedures specified in § 63.1314.

(5) For wastewater emission points, as appropriate to the control technique:

(i) For wastewater treatment processes, conduct tests according to the procedures specified in § 63.1330;

(ii) Conduct inspections and monitoring according to the procedures specified in § 63.1330;

(iii) Implement a recordkeeping program according to the procedures specified in § 63.1330; and

(iv) Implement a reporting program according to the procedures specified in § 63.1330.

(6) For each batch process vent and aggregate batch vent stream equipped with a control device, as appropriate to the control technique:

(i) Determine whether the batch process vent or aggregate batch vent stream is Group 1 or Group 2 according to the procedures in § 63.1323;

(ii) Conduct performance tests according to the procedures specified in § 63.1325;

(iii) Conduct monitoring according to the procedures specified in § 63.1324; and

(iv) Perform the recordkeeping and reporting procedures according to the procedures specified in §§ 63.1326 and 63.1327.

(7) If an emission point in an emissions average is controlled using a pollution prevention measure or a device or technique for which no monitoring parameters or inspection procedures are required by §§ 63.1314, 63.1315, 63.1316 through 63.1320, 63.1321, or 63.1330, the owner or operator shall submit the information specified in § 63.1335(f) for alternate monitoring parameters or inspection procedures in the Emissions Averaging Plan or operating permit application.

(n) Records of all information required to calculate emission debits and credits shall be retained for 5 years.

(o) Precompliance Reports, Emission Averaging Plans, Notifications of Compliance Status, Periodic Reports, and other reports shall be submitted as required by § 63.1335.

§ 63.1333 Additional test methods and procedures.

(a) Performance testing shall be conducted in accordance with § 63.7(a)(3), (d), (e), (g), and (h), with the exceptions specified in paragraphs (a)(1) through (a)(4) of this section and the additions specified in paragraphs (b) through (d) of this section. Sections 63.1314 through 63.1330 also contain specific testing requirements.

(1) Performance tests shall be conducted according to the provisions of § 63.7(e), except that performance tests shall be conducted at maximum representative operating conditions for the process.

(2) References in § 63.7(g) to the Notification of Compliance Status requirements in § 63.7(h) shall refer to the requirements in § 63.1335(e)(5).

(3) Because the site-specific test plans in § 63.7(c)(3) are not required, § 63.7(h)(4)(ii) is not applicable.

(4) The owner or operator shall notify the Administrator of the intention to conduct a performance test at least 30 calendar days before the performance test is scheduled to allow the Administrator the opportunity to have an observer present during the test.

(b) Each owner or operator of an existing affected source producing MBS complying with § 63.1315(b)(2) shall determine compliance with the mass emission per mass product standard by using Equation 49 of this subpart.

$$ER_{MBS} = \frac{\sum_{i=1}^{n} E_i}{PP_M} \qquad \text{[Eq. 49]}$$

where:

ER_{MBS}=Emission rate of organic HAP or TOC from continuous process vents, kg/Mg product.

E_i=Emission rate of organic HAP or TOC from continuous process vent i as calculated using the procedures specified in § 63.116(c)(4), kg/month.

PP_M=Amount of polymer produced in one month as determined by the procedures specified in § 63.1318(b)(1)(ii), Mg/month.

n=Number of continuous process vents.

When determining E_i, when the provisions of § 63.116(c)(4) specify that Method 18, 40 CFR part 60, appendix A, shall be used, Method 18 or Method 25A, 40 CFR part 60, appendix A, may be used for the purposes of this subpart. The use of Method 25A, 40 CFR part 60, appendix A, shall comply with paragraphs (b)(1) and (b)(2) of this section.

(1) The organic HAP used as the calibration gas for Method 25A, 40 CFR part 60, appendix A, shall be the single organic HAP representing the largest percent by volume.

(2) The use of Method 25A, 40 CFR part 60, appendix A, is acceptable if the response from the high-level calibration gas is at least 20 times the standard deviation of the response from the zero calibration gas when the instrument is zeroed on the most sensitive scale.

(c) The owner or operator of an affected source, complying with § 63.1322(a)(3) shall determine compliance with the percent reduction requirement using Equation 50 of this subpart.

$$PR = \frac{\left[H_j \sum_{j=1}^{n} (E_i - E_o) j\right] + \sum_{k=1}^{n} H_k E_{ku} + \sum_{l=1}^{n} AE_{unc}}{\left(H_j \sum_{j=1}^{n} E_i\right) + \sum_{k=1}^{n} H_k E_{ku} + \sum_{l=1}^{n} AE_{unc}} (100) \qquad \text{[Eq. 50]}$$

where:

PR=Percent reduction

H_j=Number of operating hours in a year for control device j.

E_i=Mass rate of TOC or total organic HAP at the inlet of control device

j, calculated as specified in § 63.1325(f), kg/hr. This value includes all continuous process vents, batch process vents, and aggregate batch vent streams routed to control device j.

E_o=Mass rate of TOC or total organic HAP at the outlet of control device j, calculated as specified in § 63.1325(f), kg/hr.

H_k=Number of hours of operation during which positive flow is present in uncontrolled continuous process vent or aggregate batch vent stream k, hr/yr.

E_{ku}=Mass rate of TOC or total organic HAP of uncontrolled continuous process vent or aggregate batch vent stream k, calculated as specified in § 63.1325(f)(4), kg/hr.

AE_{unc}=Mass rate of TOC or total organic HAP of uncontrolled batch process vent l, calculated as specified in § 63.1325(f)(4), kg/yr.

n=Number of control devices, uncontrolled continuous process vents and aggregate batch vent streams, and uncontrolled batch process vents. The value of n is not necessarily the same for these three items.

(d) Data shall be reduced in accordance with the EPA approved methods specified in the applicable subpart or, if other test methods are used, the data and methods shall be validated according to the protocol in Method 301 of appendix A of this part.

§ 63.1334 Parameter monitoring levels and excursions.

(a) *Establishment of parameter monitoring levels.* The owner or operator of a control or recovery device that has one or more parameter monitoring level requirements specified under this subpart shall establish a maximum or minimum level for each measured parameter using the procedures specified in paragraph (b), (c), or (d) of this section. The procedures specified in paragraph (b) of this section have been approved by the Administrator. The procedures in paragraphs (c) and (d) of this section have not been approved by the Administrator and determination of the parameter monitoring level using the procedures in paragraph (c) or (d) of this section is subject to review and approval by the Administrator. Said determination and supporting documentation shall be included in the Precompliance Report, specified in § 63.1335(e)(3).

(1) The owner or operator shall operate control and recovery devices such that monitored parameters remain above the minimum established level or below the maximum established level.

(2) As specified in § 63.1335(e)(5) and § 63.1335(e)(8), all established levels, along with their supporting documentation and the definition of an operating day, shall be approved as part of and incorporated into the Notification of Compliance Status or operating permit, respectively.

(3) Nothing in this section shall be construed to allow a monitoring parameter excursion caused by an activity that violates other applicable provisions of subpart A, F, or G of this part.

(b) *Establishment of parameter monitoring levels based on performance tests.* The procedures specified in paragraphs (b)(1) through (b)(3) of this section shall be used, as applicable, in establishing parameter monitoring levels. Level(s) established under this paragraph (b) shall be based on the parameter values measured during the performance test.

(1) *Storage tanks and wastewater.* The maximum and/or minimum monitoring levels shall be based on the parameter values measured during the performance test, supplemented, if desired, by engineering assessments and/or manufacturer's recommendations.

(2) *Continuous process vents.* During initial compliance testing, the appropriate parameter shall be continuously monitored during the required 1-hour runs. The monitoring level(s) shall then be established as the average of the maximum (or minimum) point values from the three test runs. The average of the maximum values shall be used when establishing a maximum level, and the average of the minimum values shall be used when establishing a minimum level.

(3) *Batch process vents.* The monitoring level(s) shall be established using the procedures specified in paragraphs (b)(3)(i) through (b)(3)(ii) of this section, as appropriate. The procedures specified in this paragraph (b)(3) may only be used if the batch emission episodes, or portions thereof, selected to be controlled were tested, and monitoring data were collected, during the entire period in which emissions were vented to the control device, as specified in § 63.1325(c)(1)(i). If the owner or operator chose to test only a portion of the batch emission episode, or portion thereof, selected to be controlled, as specified in § 63.1325(c)(1)(i)(A), the procedures in paragraph (c) of this section must be used.

(i) If more than one batch emission episode or more than one portion of a batch emission episode has been selected to be controlled, a single level for the batch cycle shall be calculated as follows:

(A) During initial compliance testing, the appropriate parameter shall be monitored continuously at all times when batch emission episodes, or portions thereof, selected to be controlled are vented to the control device.

(B) The average monitored parameter value shall be calculated for each batch emission episode, or portion thereof, in the batch cycle selected to be controlled. The average shall be based on all values measured during the required performance test.

(C) If the level to be established is a maximum operating parameter, the level shall be defined as the minimum of the average parameter values of the batch emission episodes, or portions thereof, in the batch cycle selected to be controlled.

(D) If the level to be established is a minimum operating parameter, the level shall be defined as the maximum of the average parameter values of the batch emission episodes, or portions thereof, in the batch cycle selected to be controlled.

(E) Alternatively, an average monitored parameter value shall be calculated for the entire batch cycle based on all values measured during each batch emission episode, or portion thereof, selected to be controlled.

(ii) Instead of establishing a single level for the batch cycle, as described in paragraph (b)(3)(i) of this section, an owner or operator may establish separate levels for each batch emission episode, or portion thereof, selected to be controlled. Each level shall be determined as specified in paragraphs (b)(3)(i)(A) and (b)(3)(i)(B) of this section.

(iii) The batch cycle shall be defined in the Notification of Compliance Status, as specified in § 63.1335(e)(5). Said definition shall include an identification of each batch emission episode and the information required to determine parameter monitoring compliance for partial batch cycles (i.e., when part of a batch cycle is accomplished during two different operating days).

(4) *Aggregate batch vent streams.* For aggregate batch vent streams, the monitoring level shall be established in accordance with paragraph (b)(2) of this section.

(c) *Establishment of parameter monitoring levels based on performance tests, engineering assessments, and/or manufacturer's recommendations.* As required in paragraph (a) of this section,

the information specified in paragraphs (c)(2) and (c)(3) of this section shall be provided in the Precompliance Report.

(1) Parameter monitoring levels established under this paragraph (c) shall be based on the parameter values measured during the performance test supplemented by engineering assessments and manufacturer's recommendations. Performance testing is not required to be conducted over the entire range of expected parameter values.

(2) The specific level of the monitored parameter(s) for each emission point.

(3) The rationale for the specific level for each parameter for each emission point, including any data and calculations used to develop the level and a description of why the level indicates proper operation of the control or recovery device.

(d) *Establishment of parameter monitoring based on engineering assessments and/or manufacturer's recommendations.* If a performance test is not required by this subpart for a control or recovery device, the maximum or minimum level may be based solely on engineering assessments and/or manufacturer's recommendations. As required in paragraph (a) of this section, the determined level and all supporting documentation shall be provided in the Precompliance Report.

(e) *Compliance determinations.* The provisions of this paragraph (e) apply only to emission points and control or recovery devices for which continuous monitoring is required under this subpart.

(1) The parameter monitoring data for storage vessels, process vents, process wastewater streams, and emission points included in emissions averages that are required to perform continuous monitoring shall be used to determine compliance for the monitored control or recovery devices.

(2) Except as provided in paragraphs (e)(3) and (g) of this section, for each excursion, as defined in paragraph (f) of this section, the owner or operator shall be deemed out of compliance with the provisions of this subpart.

(3) If the daily average value of a monitored parameter is above the maximum level or below the minimum level established, or if monitoring data cannot be collected during monitoring device calibration check or monitoring device malfunction, but the affected source is operated during the periods of start-up, shutdown, or malfunction in accordance with the affected source's Start-up, Shutdown, and Malfunction Plan, then the event shall not be considered a monitoring parameter excursion.

(f) *Parameter monitoring excursion definitions.*

(1) For storage vessels, continuous process vents, aggregate batch vent streams, and wastewater streams, an excursion means any of the three cases listed in paragraphs (f)(1)(i) through (f)(1)(iii) of this section. For a control or recovery device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria in paragraphs (f)(1)(i) through (f)(1)(iii) of this section, this is considered a single excursion for the control or recovery device.

(i) When the daily average value of one or more monitored parameters is above the maximum level or below the minimum level established for the given parameters.

(ii) When the period of control or recovery device operation is 4 hours or greater in an operating day and monitoring data are insufficient, as defined in paragraph (f)(1)(iv) of this section, to constitute a valid hour of data for at least 75 percent of the operating hours.

(iii) When the period of control or recovery device operation is less than 4 hours in an operating day and more than two of the hours during the period of operation do not constitute a valid hour of data due to insufficient monitoring data, as defined in paragraph (f)(1)(iv) of this section.

(iv) Monitoring data are insufficient to constitute a valid hour of data, as used in paragraphs (f)(1)(ii) and (f)(1)(iii) of this section, if measured values are unavailable for any of the 15-minute periods within the hour. For data compression systems approved under § 63.1335(g)(3), monitoring data are insufficient to calculate a valid hour of data if there are less than four data measurements made during the hour.

(2) For batch process vents, an excursion means one of the two cases listed in paragraphs (f)(2)(i) and (f)(2)(ii) of this section. For a control device where multiple parameters are monitored, if one or more of the parameters meets the excursion criteria in either paragraph (f)(2)(i) or (f)(2)(ii) of this section, this is considered a single excursion for the control device.

(i) When the batch cycle daily average value of one or more monitored parameters is above the maximum or below the minimum established level for the given parameters.

(ii) When monitoring data are insufficient. Monitoring data shall be considered insufficient when measured values are not available for at least 75 percent of the 15-minute periods when batch emission episodes, or portions thereof, selected to be controlled are being vented to the control device during the operating day.

(g) *Excused excursions.* A number of excused excursions shall be allowed for each control or recovery device for each semiannual period. The number of excused excursions for each semiannual period is specified in paragraphs (g)(1) through (g)(6) of this section. This paragraph (g) applies to affected sources required to submit Periodic Reports semiannually or quarterly. The first semiannual period is the 6-month period starting the date the Notification of Compliance Status is due.

(1) For the first semiannual period—six excused excursions.

(2) For the second semiannual period—five excused excursions.

(3) For the third semiannual period—four excused excursions.

(4) For the fourth semiannual period—three excused excursions.

(5) For the fifth semiannual period—two excused excursions.

(6) For the sixth and all subsequent semiannual periods—one excused excursion.

§ 63.1335 General recordkeeping and reporting provisions.

(a) *Data retention.* Each owner or operator of an affected source shall keep copies of all applicable records and reports required by this subpart for at least 5 years, unless otherwise specified in this subpart.

(b) *Requirements of subpart A of this part.* The owner or operator of an affected source shall comply with the applicable recordkeeping and reporting requirements in subpart A of this part as specified in Table 1 of this subpart. These requirements include, but are not limited to, the requirements specified in paragraphs (b)(1) and (b)(2) of this section.

(1) *Start-up, shutdown, and malfunction plan.* The owner or operator of an affected source shall develop and implement a written start-up, shutdown, and malfunction plan as specified in § 63.6(e)(3). This plan shall describe, in detail, procedures for operating and maintaining the affected source during periods of start-up, shutdown, and malfunction and a program for corrective action for malfunctioning process and air pollution control equipment used to comply with this subpart. The affected source shall keep this plan onsite and shall incorporate it by reference into their operating permit. Records associated with the plan shall be kept as specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(D) of this section.

Reports related to the plan shall be submitted as specified in paragraph (b)(1)(ii) of this section.

(i) *Records of start-up, shutdown, and malfunction.* The owner or operator shall keep the records specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(D) of this section.

(A) Records of the occurrence and duration of each malfunction of air pollution control equipment or continuous monitoring systems used to comply with this subpart.

(B) For each start-up, shutdown, or malfunction, a statement that the procedures specified in the affected source's start-up, shutdown, and malfunction plan were followed; alternatively, documentation of any actions taken that are not consistent with the plan.

(C) For continuous monitoring systems used to comply with this subpart, records documenting the completion of calibration checks and maintenance of continuous monitoring systems that are specified in the manufacturer's instructions.

(D) Records specified in paragraphs (b)(1)(i)(B) and (b)(1)(i)(C) of this section are not required if they pertain solely to Group 2 emission points that are not included in an emissions average or to Group 2 continuous process vents subject to § 63.1315(a) with a total resource effectiveness value greater than 4.0 or, for Group 2 continuous process vents subject to § 63.1315(b), with a total resource effectiveness value greater than 6.7.

(ii) *Reports of start-up, shutdown, and malfunction.* For the purposes of this subpart, the semiannual start-up, shutdown, and malfunction reports shall be submitted on the same schedule as the Periodic Reports required under paragraph (e)(6) of this section instead of the schedule specified in § 63.10(d)(5)(i). Said reports shall include the information specified in paragraphs (b)(1)(i)(A) through (b)(1)(i)(C) of this section and shall contain the name, title, and signature of the owner or operator or other responsible official who is certifying its accuracy.

(2) *Application for approval of construction or reconstruction.* For new affected sources, each owner or operator shall comply with the provisions in § 63.5 regarding construction and reconstruction, excluding the provisions specified in § 63.5 (d)(1)(ii)(H), (d)(2), and (d)(3)(ii).

(c) *Requirements of subpart H of this part.* Owners or operators of affected sources shall comply with the reporting and recordkeeping requirements in subpart H of this part, except as specified in § 63.1331.

(d) *Recordkeeping and documentation.* Owners or operators required to keep continuous records shall keep records as specified in paragraphs (d)(1) through (d)(8) of this section, unless an alternative recordkeeping system has been requested and approved as specified in paragraph (g) or (h) of this section. Documentation requirements are specified in paragraphs (d)(9) and (d)(10) of this section.

(1) The monitoring system shall measure data values at least once every 15 minutes.

(2) The owner or operator shall record either each measured data value or block average values for 1 hour or shorter periods calculated from all measured data values during each period. If values are measured more frequently than once per minute, a single value for each minute may be used to calculate the hourly (or shorter period) block average instead of all measured values. Owners or operators of batch process vents must record each measured data value.

(3) Daily average (or batch cycle daily average) values of each continuously monitored parameter shall be calculated for each operating day as specified in paragraphs (d)(3)(i) through (d)(3)(ii) of this section, except as specified in paragraph (d)(6) of this section.

(i) The daily average value or batch cycle daily average shall be calculated as the average of all parameter values recorded during the operating day. As specified in § 63.1326(e)(2)(i), only parameter values measured during those batch emission episodes, or portions thereof, in the batch cycle that the owner or operator has chosen to control shall be used to calculate the average. The calculated average shall cover a 24-hour period if operation is continuous, or the number of hours of operation per operating day if operation is not continuous.

(ii) The operating day shall be the period the owner or operator specifies in the operating permit or the Notification of Compliance Status. It may be from midnight to midnight or another 24-hour period.

(4) *Records required when out of compliance.* If the daily average (or batch cycle daily average) value of a monitored parameter for a given operating day is below the minimum level or above the maximum level established in the Notification of Compliance Status or operating permit, the owner or operator shall retain the data recorded that operating day under paragraph (d)(2) of this section.

(5) *Records required when in compliance for daily average value or batch cycle daily average value.* If the daily average (or batch cycle daily average) value of a monitored parameter for a given operating day is above the minimum level or below the maximum level established in the Notification of Compliance Status or operating permit, the owner or operator shall either:

(i) Retain block average values for 1 hour or shorter periods for that operating day; or

(ii) Retain the data recorded in paragraph (d)(2) of this section.

(6) *Records required when all recorded values are in compliance.* If all recorded values for a monitored parameter during an operating day are above the minimum level or below the maximum level established in the Notification of Compliance Status or operating permit, the owner or operator may record that all values were above the minimum level or below the maximum level rather than calculating and recording a daily average (or batch cycle daily average) for that operating day. For these operating days, the records required in paragraph (d)(5) of this section shall also be retained for 5 years.

(7) Monitoring data recorded during periods of monitoring system breakdowns, repairs, calibration checks, and zero (low-level) and high-level adjustments shall not be included in any average computed under this subpart. Records shall be kept of the times and durations of all such periods.

(8) In addition to the periods specified in paragraph (d)(7) of this section, records shall be kept of the times and durations of any other periods during process operation or control device operation when monitors are not operating. For batch process vents, this paragraph (d)(8) only applies during batch emission episodes, or portions thereof, that the owner or operator has selected to control.

(9) For each TPPU that is not part of the affected source because it does not use as a reactant or process solvent, or produce as a by-product or co-product any organic HAP, the owner or operator shall maintain the documentation specified in § 63.1310(b)(1).

(10) For each flexible operation unit in which the primary product is determined to be something other than a thermoplastic product, the owner or operator shall maintain the documentation specified in § 63.1310(f)(6).

(e) *Reporting and notification.*

(1) In addition to the reports and notifications required by subparts A and H of this part, as specified in this

subpart, the owner or operator of an affected source shall prepare and submit the reports listed in paragraphs (e)(3) through (e)(8) of this section, as applicable.

(2) All reports required under this subpart shall be sent to the Administrator at the addresses listed in § 63.13. If acceptable to both the Administrator and the owner or operator of an affected source, reports may be submitted on electronic media.

(3) *Precompliance Report.* Affected sources requesting an extension for compliance, or requesting approval to use alternative monitoring parameters, alternative continuous monitoring and recordkeeping, or alternative controls, shall submit a Precompliance Report according to the schedule described in paragraph (e)(3)(i) of this section. The Precompliance Report shall contain the information specified in paragraphs (e)(3)(ii) through (e)(3)(vi) of this section, as appropriate.

(i) *Submittal dates.* The Precompliance Report shall be submitted to the Administrator no later than 12 months prior to the compliance date. For new affected sources, the Precompliance Report shall be submitted to the Administrator with the application for approval of construction or reconstruction required in paragraph (b)(2) of this section.

(ii) A request for an extension for compliance must be submitted in the Precompliance Report, if it has not been submitted to the operating permit authority as part of the operating permit application. The request for a compliance extension will include the data outlined in § 63.6(i)(6)(i) (A), (B), and (D), as required in § 63.1311(e)(1).

(iii) The alternative monitoring parameter information required in paragraph (f) of this section shall be submitted if, for any emission point, the owner or operator of an affected source seeks to comply through the use of a control technique other than those for which monitoring parameters are specified in this subpart or in subpart G of this part or seeks to comply by monitoring a different parameter than those specified in this subpart or in subpart G of this part.

(iv) If the affected source seeks to comply using alternative continuous monitoring and recordkeeping as specified in paragraph (g) of this section, the information requested in paragraph (e)(3)(iv)(A) or (e)(3)(iv)(B) of this section must be submitted in the Precompliance Report.

(A) The owner or operator must submit notification of the intent to use the provisions specified in paragraph (g) of this section; or

(B) The owner or operator must submit a request for approval to use alternative continuous monitoring and recordkeeping provisions as specified in paragraph (g) of this section.

(v) The owner or operator shall report the intent to use alternative controls to comply with the provisions of this subpart. Alternative controls must be deemed by the Administrator to be equivalent to the controls required by the standard, under the procedures outlined in § 63.6(g).

(vi) If an owner or operator demonstrates that the emissions estimation equations contained in § 63.1323(b) are inappropriate as specified in § 63.1323(b)(6)(ii)(B), the information required by § 63.1323(b)(6)(ii)(D) shall be submitted.

(vii) If an owner or operator establishes parameter monitoring levels according to the procedures contained in § 63.1334 (c) or (d), the information specified by § 63.1334 (c) or (d), as appropriate.

(4) *Emissions Averaging Plan.* For all existing affected sources using emissions averaging, an Emissions Averaging Plan shall be submitted for approval according to the schedule and procedures described in paragraph (e)(4)(i) of this section. The Emissions Averaging Plan shall contain the information specified in paragraph (e)(4)(ii) of this section, unless the information required in paragraph (e)(4)(ii) of this section is submitted with an operating permit application. An owner or operator of an affected source who submits an operating permit application instead of an Emissions Averaging Plan shall submit the information specified in paragraph (e)(8) of this section. In addition, a supplement to the Emissions Averaging Plan, as required under paragraph (e)(4)(iii) of this section, is to be submitted whenever alternative controls or operating scenarios may be used to comply with this subpart. Updates to the Emissions Averaging Plan shall be submitted in accordance with paragraph (e)(4)(iv) of this section.

(i) *Submittal and approval.* The Emissions Averaging Plan shall be submitted no later than 18 months prior to the compliance date, and it is subject to Administrator approval. The Administrator shall determine within 120 operating days whether the Emissions Averaging Plan submitted presents sufficient information. The Administrator shall either approve the Emissions Averaging Plan, request changes, or request that the owner or operator submit additional information. Once the Administrator receives sufficient information, the Administrator shall approve, disapprove, or request changes to the plan within 120 operating days.

(ii) *Information required.* The Emissions Averaging Plan shall contain the information listed in paragraphs (e)(4)(ii)(A) through (e)(4)(ii)(K) of this section for all emission points included in an emissions average.

(A) The required information shall include the identification of all emission points in the planned emissions average and, where applicable, notation of whether each storage vessel, continuous process vent, batch process vent, aggregate batch vent stream, and process wastewater stream is a Group 1 or Group 2 emission point, as defined in § 63.1312 or as designated under § 63.1332 (c)(3) through (c)(5).

(B) The required information shall include the projected emission debits and credits for each emission point and the sum for the emission points involved in the average calculated according to § 63.1332. The projected credits must be greater than or equal to the projected debits, as required under § 63.1332(e)(3).

(C) The required information shall include the specific control technology or pollution prevention measure that will be used for each emission point included in the average and date of application or expected date of application.

(D) The required information shall include the specific identification of each emission point affected by a pollution prevention measure. To be considered a pollution prevention measure, the criteria in § 63.1332(j)(1) must be met. If the same pollution prevention measure reduces or eliminates emissions from multiple emission points in the average, the owner or operator must identify each of these emission points.

(E) The required information shall include a statement that the compliance demonstration, monitoring, inspection, recordkeeping, and reporting provisions in § 63.1332 (m), (n), and (o) that are applicable to each emission point in the emissions average will be implemented beginning on or before the date of compliance.

(F) The required information shall include documentation of the data listed in paragraphs (e)(4)(ii)(F)(*1*) through (e)(4)(ii)(F)(*5*) of this section for each storage vessel and continuous process vent subject to § 63.1315 included in the average.

(*1*) The required documentation shall include the values of the parameters used to determine whether the emission point is Group 1 or Group 2. Where TRE index value is used for continuous

process vent group determination, the estimated or measured values of the parameters used in the TRE equation in § 63.115(d) and the resulting TRE index value shall be submitted.

(*2*) The required documentation shall include the estimated values of all parameters needed for input to the emission debit and credit calculations in § 63.1332 (g) and (h). These parameter values shall be specified in the affected source's Emissions Averaging Plan (or operating permit) as enforceable operating conditions. Changes to these parameters must be reported as required by paragraph (e)(4)(iv) of this section.

(*3*) The required documentation shall include the estimated percent reduction if a control technology achieving a lower percent reduction than the efficiency of the applicable reference control technology or standard is or will be applied to the emission point.

(*4*) The required documentation shall include the anticipated nominal efficiency if a control technology achieving a greater percent emission reduction than the efficiency of the reference control technology is or will be applied to the emission point. The procedures in § 63.1332(i) shall be followed to apply for a nominal efficiency.

(*5*) The required documentation shall include the operating plan required by § 63.1314, as specified in § 63.122 (a)(2) and (b) for each storage vessel controlled with a closed-vent system with a control device other than a flare.

(G) The information specified in paragraph (f) of this section shall be included in the Emissions Averaging Plan for:

(*1*) Each continuous process vent subject to § 63.1315 controlled by a pollution prevention measure or control technique for which monitoring parameters or inspection procedures are not specified in § 63.114; and

(*2*) Each storage vessel controlled by pollution prevention or a control technique other than an internal or external floating roof or a closed vent system with a control device.

(H) The required information shall include documentation of the data listed in paragraphs (e)(4)(ii)(H)(*1*) through (e)(4)(ii)(H)(*5*) of this section for each collection of continuous process vents located in a process section within the affected source subject to § 63.1316 (b)(1)(i), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1) included in the average.

(*1*) For continuous process vents subject to § 63.1316(b)(1)(i), the required documentation shall include the values of the parameters used to determine whether the emission point is Group 1 or Group 2. Continuous process vents subject to § 63.1316 (b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1) are considered Group 1 emission points for purposes of emissions averaging, as specified in § 63.1332(c)(5).

(*2*) The required documentation shall include the estimated values of all parameters needed for input to the emission debit and credit calculations in § 63.1332 (g) and (h). These parameter values shall be specified in the affected source's Emissions Averaging Plan (or operating permit) as enforceable operating conditions. Changes to these parameters must be reported as required by paragraph (e)(4)(iv) of this section.

(*3*) For process sections generating debits or credits by comparing actual emissions expressed as kg HAP emissions per Mg of product to the applicable standard, the required documentation shall include the actual emission level expressed as kg HAP emissions per Mg of product.

(*4*) For process sections using combustion control devices, the required documentation shall include the estimated percent reduction if a control technology achieving a lower percent reduction than the efficiency of the applicable reference control technology or standard is or will be applied to the emission point.

(*5*) For process sections using combustion control devices, the required documentation shall include the anticipated nominal efficiency if a control technology achieving a greater percent emission reduction than the efficiency of the reference control technology is or will be applied to the emission point. The procedures in § 63.1332(i) shall be followed to apply for a nominal efficiency.

(I) For each pollution prevention measure or control device used to reduce air emissions of organic HAP from each collection of continuous process vents located in a process section within the affected source subject to § 63.1316 (b)(1)(i), (b)(1)(ii), (b)(2)(i), (b)(2)(ii), or (c)(1) and for which no monitoring parameters or inspection procedures are specified in § 63.114, the information specified in paragraph (f) of this section, Alternative Monitoring Parameters, shall be included in the Emissions Averaging Plan.

(J) The required information shall include documentation of the data listed in paragraphs (e)(4)(ii)(J)(*1*) through (e)(4)(ii)(J)(*3*) of this section for each batch process vent and aggregate batch vent stream included in the average.

(*1*) The required documentation shall include the values of the parameters used to determine whether the emission point is Group 1 or Group 2.

(*2*) The required documentation shall include the estimated values of all parameters needed for input to the emission debit and credit calculations in § 63.1332 (g) and (h). These parameter values shall be specified in the affected source's Emissions Averaging Plan (or operating permit) as enforceable operating conditions. Changes to these parameters must be reported as required by paragraph (e)(4)(iv) of this section.

(*3*) For batch process vents, the required documentation shall include the estimated percent reduction for the batch cycle. For aggregate batch vent streams, the required documentation shall include the estimated percent reduction achieved on a continuous basis.

(K) For each pollution prevention measure or control device used to reduce air emissions of organic HAP from batch process vents or aggregate batch vent streams and for which no monitoring parameters or inspection procedures are specified in § 63.1324, the information specified in paragraph (f) of this section, Alternative Monitoring Parameters, shall be included in the Emissions Averaging Plan.

(L) The required information shall include documentation of the data listed in paragraphs (e)(4)(ii)(L)(*1*) through (e)(4)(ii)(L)(*4*) of this section for each process wastewater stream included in the average.

(*1*) The required documentation shall include the data used to determine whether the wastewater stream is a Group 1 or Group 2 wastewater stream and the information specified in Table 14b of subpart G of this part for wastewater streams at new and existing affected sources.

(*2*) The required documentation shall include the estimated values of all parameters needed for input to the wastewater emission credit and debit calculations in § 63.1332 (g) and (h). These parameter values shall be specified in the affected source's Emissions Averaging Plan (or operating permit) as enforceable operating conditions. Changes to these parameters must be reported as required by paragraph (e)(4)(iv) of this section.

(*3*) The required documentation shall include the estimated percent reduction if:

(*i*) A control technology that achieves an emission reduction less than or equal to the emission reduction that would otherwise have been achieved by a steam stripper designed to the specifications found in § 63.138(g) is or

will be applied to the wastewater stream;

(*ii*) A control technology achieving less than or equal to 95 percent emission reduction is or will be applied to the vapor stream(s) vented and collected from the treatment processes; or

(*iii*) A pollution prevention measure is or will be applied.

(*4*) The required documentation shall include the anticipated nominal efficiency if the owner or operator plans to apply for a nominal efficiency under § 63.1332(i). A nominal efficiency shall be applied for if:

(*i*) A control technology that achieves an emission reduction greater than the emission reduction that would have been achieved by a steam stripper designed to the specifications found in § 63.138(g), is or will be applied to the wastewater stream; or

(*ii*) A control technology achieving greater than 95 percent emission reduction is or will be applied to the vapor stream(s) vented and collected from the treatment processes.

(M) For each pollution prevention measure, treatment process, or control device used to reduce air emissions of organic HAP from wastewater and for which no monitoring parameters or inspection procedures are specified in § 63.143, the information specified in paragraph (f) of this section, Alternative Monitoring Parameters, shall be included in the Emissions Averaging Plan.

(N) The required information shall include documentation of the data required by § 63.1332(k). The documentation must demonstrate that the emissions from the emission points proposed to be included in the average will not result in greater hazard or, at the option of the Administrator, greater risk to human health or the environment than if the emission points were not included in an emissions average.

(iii) *Supplement to Emissions Averaging Plan.* The owner or operator required to prepare an Emissions Averaging Plan under paragraph (e)(4) of this section shall also prepare a supplement to the Emissions Averaging Plan for any alternative controls or operating scenarios that may be used to achieve compliance.

(iv) *Updates to Emissions Averaging Plan.* The owner or operator of an affected source required to submit an Emissions Averaging Plan under paragraph (e)(4) of this section shall also submit written updates of the Emissions Averaging Plan to the Administrator for approval under the circumstances described in paragraphs (e)(4)(iv)(A) and (e)(4)(iv)(B) of this section unless the relevant information has been included and submitted in an operating permit application or amendment.

(A) The owner or operator who plans to make a change listed in either paragraph (e)(4)(iv)(A)(*1*) or (e)(4)(iv)(A)(*2*) of this section shall submit an Emissions Averaging Plan update at least 120 operating days prior to making the change.

(*1*) An Emissions Averaging Plan update shall be submitted whenever an owner or operator elects to achieve compliance with the emissions averaging provisions in § 63.1332 by using a control technique other than that specified in the Emissions Averaging Plan or plans to monitor a different parameter or operate a control device in a manner other than that specified in the Emissions Averaging Plan.

(*2*) An Emissions Averaging Plan update shall be submitted whenever an emission point or a TPPU is added to an existing affected source and is planned to be included in an emissions average, or whenever an emission point not included in the emissions average described in the Emissions Averaging Plan is to be added to an emissions average. The information in paragraph (e)(4) of this section shall be updated to include the additional emission point.

(B) The owner or operator who has made a change as defined in paragraph (e)(4)(iv)(B)(*1*) or (e)(4)(iv)(B)(*2*) of this section shall submit an Emissions Averaging Plan update within 90 operating days after the information regarding the change is known to the affected source. The update may be submitted in the next quarterly periodic report if the change is made after the date the Notification of Compliance Status is due.

(*1*) An Emissions Averaging Plan update shall be submitted whenever a process change is made such that the group status of any emission point in an emissions average changes.

(*2*) An Emissions Averaging Plan update shall be submitted whenever a value of a parameter in the emission credit or debit equations in § 63.1332 (g) or (h) changes such that it is below the minimum or above the maximum established level specified in the Emissions Averaging Plan and causes a decrease in the projected credits or an increase in the projected debits.

(C) The Administrator shall approve or request changes to the Emissions Averaging Plan update within 120 operating days of receipt of sufficient information regarding the change for emission points included in emissions averages.

(5) *Notification of Compliance Status.* For existing and new affected sources, a Notification of Compliance Status shall be submitted within 150 operating days after the compliance dates specified in § 63.1311. The notification shall contain the information listed in paragraphs (e)(5)(i) through (e)(5)(viii) of this section.

(i) The results of any emission point group determinations, process section applicability determinations, performance tests, inspections, continuous monitoring system performance evaluations, any other information used to demonstrate compliance, and any other information required to be included in the Notification of Compliance Status under § 63.122 for storage vessels, § 63.117 for continuous process vents, § 63.146 for process wastewater, § 63.1316 through § 63.1320 for continuous process vents subject to § 63.1316, § 63.1327 for batch process vents, § 63.1329 for process contact cooling towers, and § 63.1332 for emission points included in an emissions average. In addition, each owner or operator shall comply with paragraph (e)(5)(i)(A) and (e)(5)(i)(B) of this section.

(A) For performance tests, group determinations, and process section applicability determinations that are based on measurements, the Notification of Compliance Status shall include one complete test report, as described in paragraph (e)(5)(i)(B) of this section, for each test method used for a particular kind of emission point. For additional tests performed for the same kind of emission point using the same method, the results and any other required information shall be submitted, but a complete test report is not required.

(B) A complete test report shall include a brief process description, sampling site description, description of sampling and analysis procedures and any modifications to standard procedures, quality assurance procedures, record of operating conditions during the test, record of preparation of standards, record of calibrations, raw data sheets for field sampling, raw data sheets for field and laboratory analyses, documentation of calculations, and any other information required by the test method.

(ii) For each monitored parameter for which a maximum or minimum level is required to be established under § 63.120(d)(3) for storage vessels, § 63.114(e) for continuous process vents, § 63.1324 for batch process vents and aggregate batch vent streams, § 63.143(f) for process wastewater, § 63.1332(m) for emission points in emissions averages,

paragraph (e)(8) or (f) of this section, the Notification of Compliance Status shall contain the information specified in paragraphs (e)(5)(ii)(A) through (e)(5)(ii)(D) of this section, unless this information has been established and provided in the operating permit.

(A) The required information shall include the specific maximum or minimum level of the monitored parameter(s) for each emission point.

(B) The required information shall include the rationale for the specific maximum or minimum level for each parameter for each emission point, including any data and calculations used to develop the level and a description of why the level indicates proper operation of the control device.

(C) The required information shall include a definition of the affected source's operating day, as specified in paragraph (d)(3)(ii) of this section, for purposes of determining daily average values or batch cycle daily average values of monitored parameters.

(D) For batch process vents, the required information shall include a definition of each batch cycle that requires the control of one or more batch emission episodes during the cycle, as specified in § 63.1325(c)(2) and § 63.1334(b)(3)(iii).

(iii) For emission points included in an emissions average, the Notification of Compliance Status shall contain the values of all parameters needed for input to the emission credit and debit equations in § 63.1332 (g) and (h), calculated or measured according to the procedures in § 63.1332 (g) and (h), and the resulting calculation of credits and debits for the first quarter of the year. The first quarter begins on the compliance date specified.

(iv) The determination of applicability for flexible operation units as specified in § 63.1310(f)(6).

(v) The parameter monitoring levels for flexible operation units, and the basis on which these levels were selected, or a demonstration that these levels are appropriate at all times, as specified in § 63.1310(f)(7).

(vi) The results for each predominant use determination for storage vessels belonging to an affected source subject to this subpart that is made under § 63.1310(g)(6).

(vii) The results for each predominant use determination for recovery operation equipment belonging to an affected source subject to this subpart that is made under § 63.1310(h)(6).

(viii) For owners or operators of Group 2 batch process vents establishing a batch cycle limitation as specified in § 63.1325(g), the affected source's operating year for purposes of determining compliance with the batch cycle limitation.

(6) *Periodic Reports.* For existing and new affected sources, each owner or operator shall submit Periodic Reports as specified in paragraphs (e)(6)(i) through (e)(6)(xi) of this section.

(i) Except as specified in paragraphs (e)(6)(x) and (e)(6)(xi) of this section, a report containing the information in paragraph (e)(6)(ii) of this section or containing the information in paragraphs (e)(6)(iii) through (e)(6)(ix) of this section, as appropriate, shall be submitted semiannually no later than 60 operating days after the end of each 180 day period. The first report shall be submitted no later than 240 days after the date the Notification of Compliance Status is due and shall cover the 6-month period beginning on the date the Notification of Compliance Status is due. Subsequent reports shall cover each preceding 6-month period.

(ii) If none of the compliance exceptions specified in paragraphs (e)(6)(iii) through (e)(6)(ix) of this section occurred during the 6-month period, the Periodic Report required by paragraph (e)(6)(i) of this section shall be a statement that the affected source was in compliance for the preceding 6-month period and no activities specified in paragraphs (e)(6)(iii) through (e)(6)(ix) of this section occurred during the preceding 6-month period.

(iii) For an owner or operator of an affected source complying with the provisions of §§ 63.1314 through 63.1330 for any emission point or process section, Periodic Reports shall include:

(A) All information specified in § 63.122 for storage vessels; §§ 63.117 and 63.118 and § 63.1320 for continuous process vents, as applicable; § 63.1327 for batch process vents and aggregate batch vent streams; § 63.104 for heat exchange systems; and § 63.146 for process wastewater;

(B) The daily average values or batch cycle daily average values of monitored parameters for both excused excursions, as defined in § 63.1334(g), and unexcused excursions, as defined in § 63.1334(f). For excursions caused by lack of monitoring data, the duration of periods when monitoring data were not collected shall be specified;

(C) The periods when monitoring data were not collected shall be specified;

(D) The information in paragraphs (e)(6)(iii)(D)(*1*) through (e)(6)(iii)(D)(*3*) of this section, as applicable:

(*1*) Any supplements to the Emissions Averaging Plan, as required in paragraph (e)(4)(iii) of this section;

(*2*) Notification if a process change is made such that the group status of any emission point changes. The information submitted shall include a compliance schedule, as specified in paragraphs (e)(6)(iii)(D)(*2*)(*i*) and (e)(6)(iii)(D)(*2*)(*ii*) of this section, for emission points that are added or that change from Group 2 to Group 1 as specified in § 63.1310(i)(2)(ii); for continuous process vents under the conditions listed in § 63.1315(a)(12) or § 63.1320(b)(3), as applicable; or for batch process vents under the conditions listed in § 63.1327(b) or § 63.1327(d). This information may be submitted in a separate report, as specified in § 63.1315(a)(12), § 63.1320(b)(3), § 63.1327(b), or § 63.1327(d); and

(*i*) The owner or operator shall submit to the Administrator for approval a compliance schedule and a justification for the schedule.

(*ii*) The Administrator shall approve the compliance schedule or request changes within 120 operating days of receipt of the compliance schedule and justification.

(*3*) Notification if one or more emission point(s) or one or more TPPU is added to an affected source. The owner or operator shall submit the information contained in paragraphs (e)(6)(iii)(D)(*3*)(*i*) through (e)(6)(iii)(D)(*3*)(*iii*) of this section:

(*i*) A description of the addition to the affected source;

(*ii*) Notification of the group status of the additional emission point or all emission points in the TPPU; and

(*iii*) A compliance schedule, as required under paragraph (e)(6)(iii)(D)(*2*) of this section.

(E) The information in paragraph (b)(1)(ii) of this section for reports of start-up, shutdown, and malfunction.

(iv) For each batch process vent with a batch cycle limitation, every second Periodic Report shall include the type and number of batch cycles accomplished during the preceding 12-month period and a statement that the batch process vent is either in or out of compliance with the batch cycle limitation.

(v) If any performance tests are reported in a Periodic Report, the following information shall be included:

(A) One complete test report shall be submitted for each test method used for a particular kind of emission point tested. A complete test report shall contain the information specified in paragraph (e)(5)(i)(B) of this section.

(B) For additional tests performed for the same kind of emission point using the same method, results and any other information required shall be submitted, but a complete test report is not required.

(vi) The Periodic Report shall include the results for each change made to a primary product determination for a thermoplastic product made under § 63.1310(f)(6).

(vii) The Periodic Report shall include the results for each change made to a predominant use determination for a storage vessel belonging to an affected source subject to this subpart that is made under § 63.1310(g)(6).

(viii) The Periodic Report shall include the results for each change made to a predominant use determination for recovery operation equipment belonging to an affected source subject to this subpart that is made under § 63.1310(h)(6).

(ix) The Periodic Report required by § 63.1331(a)(5) may be submitted as part of the Periodic Report required by paragraph (e)(6) of this section.

(x) The owner or operator of an affected source shall submit quarterly reports for all emission points included in an emissions average.

(A) The quarterly reports shall be submitted no later than 60 operating days after the end of each quarter. The first report shall be submitted with the Notification of Compliance Status no later than 150 days after the compliance date.

(B) The quarterly reports shall include the information specified in paragraphs (e)(6)(x)(B)(*1*) through (e)(6)(x)(B)(*7*) of this section for all emission points included in an emissions average.

(*1*) The credits and debits calculated each month during the quarter;

(*2*) A demonstration that debits calculated for the quarter are not more than 1.30 times the credits calculated for the quarter, as required under § 63.1332(e)(4);

(*3*) The values of any inputs to the debit and credit equations in § 63.1332(g) and (h) that change from month to month during the quarter or that have changed since the previous quarter;

(*4*) Results of any performance tests conducted during the reporting period including one complete report for each test method used for a particular kind of emission point as described in paragraph (e)(6)(v) of this section;

(*5*) Reports of daily average (or batch cycle daily average) values of monitored parameters for excursions as defined in § 63.1334(f);

(*6*) For excursions caused by lack of monitoring data, the duration of periods when monitoring data were not collected shall be specified; and

(*7*) Any other information the affected source is required to report under the operating permit or Emissions Averaging Plan for the affected source.

(C) § 63.1334 shall govern the use of monitoring data to determine compliance for Group 1 and Group 2 emission points included in emissions averages.

(D) Every fourth quarterly report shall include the following:

(*1*) A demonstration that annual credits are greater than or equal to annual debits as required by § 63.1332(e)(3); and

(*2*) A certification of compliance with all the emissions averaging provisions in § 63.1332.

(xi) The owner or operator of an affected source shall submit quarterly reports for particular emission points and process sections not included in an emissions average as specified in paragraphs (e)(6)(xi)(A) through (e)(6)(xi)(E) of this section.

(A) If requested by the Administrator, the owner or operator of an affected source shall submit quarterly reports for a period of 1 year for an emission point or process section that is not included in an emissions average if either condition in paragraph (e)(6)(xi)(A)(*1*) or (e)(6)(xi)(A)(*2*) of this section is met.

(*1*) An emission point has any excursions, as defined in § 63.1334(f), for a semiannual reporting period.

(*2*) A process section subject to § 63.1316 is out of compliance with its applicable standard.

(B) The quarterly reports shall include all information specified in paragraphs (e)(6)(iii) through (e)(6)(ix) of this section applicable to the emission point or process section for which quarterly reporting is required under paragraph (e)(6)(xi)(A) of this section. Information applicable to other emission points within the affected source shall be submitted in the semiannual reports required under paragraph (e)(6)(i) of this section.

(C) Quarterly reports shall be submitted no later than 60 operating days after the end of each quarter.

(D) After quarterly reports have been submitted for an emission point for 1 year, the owner or operator may return to semiannual reporting for the emission point or process section unless the Administrator requests the owner or operator to continue to submit quarterly reports.

(E) § 63.1334 shall govern the use of monitoring data to determine compliance for Group 1 emission points.

(7) *Other reports*. Other reports shall be submitted as specified in paragraphs (e)(7)(i) through (e)(7)(ii) of this section.

(i) For storage vessels, the notifications of inspections required by § 63.1314 shall be submitted as specified in § 63.122 (h)(1) and (h)(2).

(ii) For owners or operators of affected sources required to request approval for a nominal control efficiency for use in calculating credits for an emissions average, the information specified in § 63.1332(i) shall be submitted.

(8) *Operating permit*. An owner or operator who submits an operating permit application instead of an Emissions Averaging Plan or a Precompliance Report shall submit the following information with the operating permit application:

(i) The information specified in paragraph (e)(4) of this section for points included in an emissions average;

(ii) The information specified in paragraph (e)(5) of this section, Notification of Compliance Status, as applicable; and

(iii) The information specified in paragraph (e)(3) of this section, Precompliance Report, as applicable.

(f) *Alternative monitoring parameters*. The owner or operator who has been directed by any section of this subpart to set unique monitoring parameters, or who requests approval to monitor a different parameter than those specified in § 63.1314 for storage vessels, § 63.1315 or 63.1317, as appropriate, for continuous process vents, § 63.1321 for batch process vents and aggregate batch vent streams, or § 63.1330 for wastewater shall submit the information specified in paragraphs (f)(1) through (f)(3) of this section in the Precompliance Report, as required by paragraph (e)(3) of this section. The owner or operator shall retain for a period of 5 years each record required by paragraphs (f)(1) through (f)(3) of this section.

(1) The required information shall include a description of the parameter(s) to be monitored to ensure the recovery device, control device, or pollution prevention measure is operated in conformance with its design and achieves the specified emission limit, percent reduction, or nominal efficiency, and an explanation of the criteria used to select the parameter(s).

(2) The required information shall include a description of the methods and procedures that will be used to demonstrate that the parameter indicates proper operation, the schedule for this demonstration, and a statement that the owner or operator will establish a level for the monitored parameter as part of the Notification of Compliance Status report required in paragraph (e)(5) of this section, unless this information has already been included in the operating permit application.

(3) The required information shall include a description of the proposed

monitoring, recordkeeping, and reporting system, to include the frequency and content of monitoring, recordkeeping, and reporting. Further, the rationale for the proposed monitoring, recordkeeping, and reporting system shall be included if either condition in paragraph (f)(3)(i) or (f)(3)(ii) of this section is met:

(i) If monitoring and recordkeeping is not continuous; or

(ii) If reports of daily average values will not be included in Periodic Reports when the monitored parameter value is above the maximum level or below the minimum level as established in the operating permit or the Notification of Compliance Status.

(g) *Alternative continuous monitoring and recordkeeping.* An owner or operator choosing not to implement the provisions listed in § 63.1315 or 63.1317, as appropriate, for continuous process vents, § 63.1321 for batch process vents and aggregate batch vent streams, § 63.1314 for storage vessels, or § 63.1330 for wastewater, may instead request approval to use alternative continuous monitoring and recordkeeping provisions according to the procedures specified in paragraphs (g)(1) through (g)(4) of this section. Requests shall be submitted in the Precompliance Report as specified in paragraph (e)(3) of this section, if not already included in the operating permit application, and shall contain the information specified in paragraphs (g)(2)(ii) and (g)(3)(ii) of this section, as applicable.

(1) The provisions in § 63.8(f)(5)(i) shall govern the review and approval of requests.

(2) An owner or operator of an affected source that does not have an automated monitoring and recording system capable of measuring parameter values at least once every 15 minutes and that does not generate continuous records may request approval to use a nonautomated system with less frequent monitoring, in accordance with paragraphs (g)(2)(i) and (g)(2)(ii) of this section.

(i) The requested system shall include manual reading and recording of the value of the relevant operating parameter no less frequently than once per hour. Daily average (or batch cycle daily average) values shall be calculated from these hourly values and recorded.

(ii) The request shall contain:

(A) A description of the planned monitoring and recordkeeping system;

(B) Documentation that the affected source does not have an automated monitoring and recording system;

(C) Justification for requesting an alternative monitoring and recordkeeping system; and

(D) Demonstration to the Administrator's satisfaction that the proposed monitoring frequency is sufficient to represent control or recovery device operating conditions, considering typical variability of the specific process and control or recovery device operating parameter being monitored.

(3) An owner or operator may request approval to use an automated data compression recording system that does not record monitored operating parameter values at a set frequency (for example, once every 15 minutes) but records all values that meet set criteria for variation from previously recorded values, in accordance with paragraphs (g)(3)(i) and (g)(3)(ii) of this section.

(i) The requested system shall be designed to:

(A) Measure the operating parameter value at least once every 15 minutes;

(B) Except for the monitoring of batch process vents, calculate hourly average values each hour during periods of operation;

(C) Record the date and time when monitors are turned off or on;

(D) Recognize unchanging data that may indicate the monitor is not functioning properly, alert the operator, and record the incident;

(E) Calculate daily average (or batch cycle daily average) values of the monitored operating parameter based on all measured data; and

(F) If the daily average is not an excursion, as defined in § 63.1334(f), the data for that operating day may be converted to hourly average values and the four or more individual records for each hour in the operating day may be discarded.

(ii) The request shall contain:

(A) A description of the monitoring system and data compression recording system, including the criteria used to determine which monitored values are recorded and retained;

(B) The method for calculating daily averages and batch cycle daily averages; and

(C) A demonstration that the system meets all criteria in paragraph (g)(3)(i) of this section.

(4) An owner or operator may request approval to use other alternative monitoring systems according to the procedures specified in § 63.8(f).

(h) *Reduced recordkeeping program.* For any parameter with respect to any item of equipment, the owner or operator may implement the recordkeeping requirements specified in paragraph (h)(1) or (h)(2) of this section as alternatives to the provisions specified in § 63.1314 for storage vessels, § 63.1315 or 63.1317, as appropriate, for continuous process vents, § 63.1321 for batch process vents and aggregate batch vent streams, or § 63.1330 for wastewater. The owner or operator shall retain for a period of 5 years each record required by paragraph (h)(1) or (h)(2) of this section.

(1) The owner or operator may retain only the daily average (or batch cycle daily average) value, and is not required to retain more frequent monitored operating parameter values, for a monitored parameter with respect to an item of equipment, if the requirements of paragraphs (h)(1)(i) through (h)(1)(vi) of this section are met. An owner or operator electing to comply with the requirements of paragraph (h)(1) of this section shall notify the Administrator in the Notification of Compliance Status or, if the Notification of Compliance Status has already been submitted, in the Periodic Report immediately preceding implementation of the requirements of paragraph (h)(1) of this section.

(i) The monitoring system is capable of detecting unrealistic or impossible data during periods of operation other than start-ups, shutdowns, or malfunctions (e.g., a temperature reading of −200 °C on a boiler), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(ii) The monitoring system generates, updated at least hourly throughout each operating day, a running average of the monitoring values that have been obtained during that operating day, and the capability to observe this running average is readily available to the Administrator on-site during the operating day. The owner or operator shall record the occurrence of any period meeting the criteria in paragraphs (h)(1)(ii)(A) through (h)(1)(ii)(C) of this section. All instances in an operating day constitute a single occurrence.

(A) The running average is above the maximum or below the minimum established limits;

(B) The running average is based on at least six 1-hour periods; and

(C) The running average reflects a period of operation other than a start-up, shutdown, or malfunction.

(iii) The monitoring system is capable of detecting unchanging data during periods of operation other than start-ups, shutdowns, or malfunctions, except in circumstances where the presence of unchanging data is the expected

operating condition based on past experience (e.g., pH in some scrubbers), and will alert the operator by alarm or other means. The owner or operator shall record the occurrence. All instances of the alarm or other alert in an operating day constitute a single occurrence.

(iv) The monitoring system will alert the owner or operator by an alarm, if the running average parameter value calculated under paragraph (h)(1)(ii) of this section reaches a set point that is appropriately related to the established limit for the parameter that is being monitored.

(v) The owner or operator shall verify the proper functioning of the monitoring system, including its ability to comply with the requirements of paragraph (h)(1) of this section, at the times specified in paragraphs (h)(1)(v)(A) through (h)(1)(v)(C). The owner or operator shall document that the required verifications occurred.

(A) Upon initial installation.

(B) Annually after initial installation.

(C) After any change to the programming or equipment constituting the monitoring system, which might reasonably be expected to alter the monitoring system's ability to comply with the requirements of this section.

(vi) The owner or operator shall retain the records identified in paragraphs (h)(1)(vi)(A) through (h)(1)(vi)(C) of this section.

(A) Identification of each parameter, for each item of equipment, for which the owner or operator has elected to comply with the requirements of paragraph (h) of this section.

(B) A description of the applicable monitoring system(s), and of how compliance will be achieved with each requirement of paragraphs (h)(1)(i) through (h)(1)(v) of this section. The description shall identify the location and format (e.g., on-line storage, log entries) for each required record. If the description changes, the owner or operator shall retain both the current and the most recent superseded description.

(C) A description, and the date, of any change to the monitoring system that would reasonably be expected to affect its ability to comply with the requirements of paragraph (h)(1) of this section.

(2) If an owner or operator has elected to implement the requirements of paragraph (h)(1) of this section for a monitored parameter with respect to an item of equipment and a period of 6 consecutive months has passed without an excursion as defined in paragraph (h)(2)(iv) of this section, the owner or operator is no longer required to record the daily average (or batch cycle daily average) value for any operating day when the daily average (or batch cycle daily average) value is less than the maximum or greater than the minimum established limit. With approval by the Administrator, monitoring data generated prior to the compliance date of this subpart shall be credited toward the period of 6 consecutive months, if the parameter limit and the monitoring accomplished during the period prior to the compliance date was required and/or approved by the Administrator.

(i) If the owner or operator elects not to retain the daily average (or batch cycle daily average) values, the owner or operator shall notify the Administrator in the next Periodic Report. The notification shall identify the parameter and unit of equipment.

(ii) If, on any operating day after the owner or operator has ceased recording daily average (or batch cycle daily average) values as provided in paragraph (h)(2) of this section, there is an excursion as defined in paragraph (h)(2)(iv) of this section, the owner or operator shall immediately resume retaining the daily average (or batch cycle daily average) value for each operating day and shall notify the Administrator in the next Periodic Report. The owner or operator shall continue to retain each daily average (or batch cycle daily average) value until another period of 6 consecutive months has passed without an excursion as defined in paragraph (h)(2)(iv) of this section.

(iii) The owner or operator shall retain the records specified in paragraphs (h)(1)(i), (h)(1)(ii), and (h)(1)(vi) of this section, for the duration specified in paragraph (h) of this section. For any calendar week, if compliance with paragraphs (h)(1)(i) through (h)(1)(iv) of this section does not result in retention of a record of at least one occurrence or measured parameter value, the owner or operator shall record and retain at least one parameter value during a period of operation other than a start-up, shutdown, or malfunction.

(iv) For purposes of paragraph (h) of this section, an excursion means that the daily average (or batch cycle daily average) value of monitoring data for a parameter is greater than the maximum, or less than the minimum established value, except as provided in paragraphs (h)(2)(iv)(A) and (h)(2)(iv)(B) of this section.

(A) The daily average (or batch cycle daily average) value during any start-up, shutdown, or malfunction shall not be considered an excursion for purposes of paragraph (h)(2) of this section, if the owner or operator follows the applicable provisions of the start-up, shutdown, and malfunction plan required by § 63.6(e)(3).

(B) An excused excursion, as described in § 63.1334(g), shall not be considered an excursion for purposes of paragraph (h)(2) of this section.

Tables to Subpart JJJ of Part 63

TABLE 1.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJ AFFECTED SOURCES

Reference	Applies to subpart JJJ	Comment
63.1(a)(1)	Yes	§ 63.1312 specifies definitions in addition to or that supersede definitions in § 63.2.
63.1(a)(2)–63.1(a)(3)	Yes.	
63.1(a)(4)	Yes	Subpart JJJ (this table) specifies the applicability of each paragraph in subpart A to subpart JJJ.
63.1(a)(5)	No	Reserved.
63.1(a)(6)–63.1(a)(8)	Yes.	
63.1(a)(9)	No	Reserved.
63.1(a)(10)	No	Subpart JJJ and other cross-referenced subparts specify calendar or operating day.
63.1(a)(11)	Yes.	
63.1(a)(12)–63.1(a)(14)	Yes.	
63.1(b)(1)	Yes	Subpart JJJ (this table) specifies the applicability of each paragraph in subpart A to subpart JJJ.
63.1(b)(2)	Yes.	

TABLE 1.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJ AFFECTED SOURCES—Continued

Reference	Applies to subpart JJJ	Comment
63.1(b)(3)	No	§ 63.1310(b) provides documentation requirements for TPPUs not considered affected sources.
63.1(c)(1)	Yes	Subpart JJJ (this table) specifies the applicability of each paragraph in subpart A to subpart JJJ.
63.1(c)(2)	No	Area sources are not subject to subpart JJJ.
63.1(c)(3)	No	Reserved.
63.1(c)(4)	Yes.	
63.1(c)(5)	Yes	Except that affected sources are not required to submit notifications overridden by this table.
63.1(d)	No	Reserved.
63.1(e)	Yes.	
63.2	Yes	§ 63.1312 specifies those subpart A definitions that apply to subpart JJJ.
63.3	Yes	Subpart JJJ specifies those units of measure that apply to subpart JJJ.
63.4(a)(1)–63.4(a)(3)	Yes.	
63.4(a)(4)	No	Reserved.
63.4(a)(5)	Yes.	
63.4(b)	Yes.	
63.4(c)	Yes.	
63.5(a)	Yes.	
63.5(b)(1)	Yes.	
63.5(b)(2)	No	Reserved.
63.5(b)(3)	Yes.	
63.5(b)(4)	No	Area sources are not subject to subpart JJJ.
63.5(b)(5)	Yes.	
63.5(b)(6)	No	§ 63.1310(i) specifies requirements.
63.5(c)	No	Reserved.
63.5(d)(1)(i)	No.	
63.5(d)(1)(ii)	Yes	Except that for affected sources subject to subpart JJJ, emission estimates specified in § 63.5(d)(1)(ii)(H) are not required.
63.5(d)(1)(iii)	Yes	Except that § 63.1335(e)(5) specifies Notification of Compliance Status requirements.
63.5(d)(2)	No.	
63.5(d)(3)	Yes	Except § 63.5(d)(3)(ii) does not apply.
63.5(d)(4)	Yes.	
63.5(e)	Yes.	
63.5(f)(1)	Yes.	
63.5(f)(2)	Yes	Except that where § 63.5(d)(1) is referred to, § 63.5(d)(1)(i) does not apply.
63.6(a)	Yes.	
63.6(b)(1)	Yes.	
63.6(b)(2)	Yes.	
63.6(b)(3)	Yes.	
63.6(b)(4)	Yes.	
63.6(b)(5)	Yes.	
63.6(b)(6)	No	Reserved.
63.6(b)(7)	Yes.	
63.6(c)(1)	Yes	§ 63.1311 specifies the compliance date.
63.6(c)(2)	Yes.	
63.6(c)(3)	No	Reserved.
63.6(c)(4)	No	Reserved.
63.6(c)(5)	Yes.	
63.6(d)	No	Reserved.
63.6(e)	Yes	Except the plan, and any records or reports of start-up, shutdown and malfunction do not apply to Group 2 emission points, unless they are included in an emissions average.
63.6(f)(1)	Yes.	
63.6(f)(2)	Yes	Except § 63.7(c), as referred to in § 63.6(f)(2)(iii)(D), does not apply.
63.6(f)(3)	Yes.	
63.6(g)	Yes.	
63.6(h)	No	Subpart JJJ does not require opacity and visible emission standards.
63.6(i)	Yes	Except for § 63.6(i)(15), which is reserved.
63.6(j)	Yes.	
63.7(a)(1)	Yes.	
63.7(a)(2)	No	§ 63.1335(e)(5) specifies submittal dates.
63.7(a)(3)	Yes.	
63.7(b)	No	§ 63.1333(a)(4) specifies notification requirements.
63.7(c)	No.	
63.7(d)	Yes.	
63.7(e)	Yes	Except that performance tests must be conducted at maximum representative operating conditions. In addition, some of the testing requirements specified in subpart JJJ are not consistent with § 63.7(e)(3).
63.7(f)	Yes.	
63.7(g)	Yes	Except that references to the Notification of Compliance Status report in § 63.9(h) are replaced with the requirements in § 63.1335(e)(5).

TABLE 1.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART JJJ AFFECTED SOURCES—Continued

Reference	Applies to subpart JJJ	Comment
63.7(h)	Yes	Except § 63.7(h)(4)(ii) is not applicable, since the site-specific test plans in § 63.7(c)(3) are not required.
63.8(a)(1)	Yes.	
63.8(a)(2)	No.	
63.8(a)(3)	No	Reserved.
63.8(a)(4)	Yes.	
63.8(b)(1)	Yes.	
63.8(b)(2)	No	Subpart JJJ specifies locations to conduct monitoring.
63.8(b)(3).		
63.8(c)(1)(i)	Yes.	
63.8(c)(1)(ii)	No.	
63.8(c)(1)(iii)	Yes.	
63.8(c)(2)	Yes.	
63.8(c)(3)	Yes.	
63.8(c)(4)	No	§ 63.1334 specifies monitoring frequency.
63.8(c)(5)–63.8(c)(8)	No.	
63.8(d)	No.	
63.8(e)	No.	
63.8(f)(1)–63.8(f)(3)	Yes.	
63.8(f)(4)(i)	No	Timeframe for submitting request is specified in § 63.1335(e).
63.8(f)(4)(ii)	No.	
63.8(f)(4)(iii)	No.	
63.8(f)(5)(i)	Yes.	
63.8(f)(5)(ii)	No.	
63.8(f)(5)(iii)	Yes.	
63.8(f)(6)	No	Subpart JJJ does not require continuous emission monitors.
63.8(g)	No	Data reduction procedures specified in § 63.1335(d).
63.9(a)	Yes.	
63.9(b)	No	Subpart JJJ does not require an initial notification.
63.9(c)	Yes.	
63.9(d)	Yes.	
63.9(e)	No.	
63.9(f)	No	Subpart JJJ does not require opacity and visible emission standards.
63.9(g)	No.	
63.9(h)	No	§ 63.1335(e)(5) specifies Notification of Compliance Status requirements.
63.9(i)	Yes.	
63.9(j)	No.	
63.10(a)	Yes.	
63.10(b)(1)	Yes.	
63.10(b)(2)	Yes.	
63.10(b)(3)	No	§ 63.1310(b) requires documentation of sources that are not affected sources.
63.10(c)	No	§ 63.1335 specifies recordkeeping requirements.
63.10(d)(1)	Yes.	
63.10(d)(2)	No.	
63.10(d)(3)	No	Subpart JJJ does not require opacity and visible emission standards.
63.10(d)(4)	Yes.	
63.10(d)(5)	Yes	Except that reports required by § 63.10(d)(5)(i) may be submitted at the same time as Periodic Reports specified in § 63.1335(e)(6). The start-up, shutdown, and malfunction plan, and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points unless they are included in an emissions average.
63.10(e)	No.	
63.10(f)	Yes.	
63.10(d)(4)	Yes.	
63.12	Yes.	
63.13	Yes.	
63.14	Yes.	
63.15	Yes.	

TABLE 2.—GROUP 1 STORAGE VESSELS AT EXISTING AFFECTED SOURCES

Vessel capacity (cubic meters)	Vapor pressure [a] (kilopascals)
75 ≤ capacity < 151	≥13.1
151 ≥ capacity	≥5.2

[a] Maximum true vapor pressure of total organic HAP at storage temperature.

TABLE 3.—GROUP 1 STORAGE VESSELS AT EXISTING AFFECTED SOURCES PRODUCING THE LISTED THERMOPLASTICS

Thermoplastic	Chemical [a]	Vessel capacity (cubic meters)	Vapor pressure [b] (kilopascals)
ASA/AMSAN [c]	Styrene/acrylonitrile mixture	≥3.78	≥0.47
	Acrylonitrile	≥75.7	≥1.62
Polystyrene, continuous processes		≥38 and <75.7	≥14.2
		≥75.7	≥1.9
Nitrile [c]	Acrylonitrile	≥ 13.25	≥ 1.8

[a] Vessel capacity and vapor pressure criteria are specific to the listed chemical. When chemical not listed (i.e., —), vessel capacity and vapor pressure criteria apply to all chemicals regulated by this rule for a given subcategory.
[b] Maximum true vapor pressure of total organic HAP at storage temperature.
[c] The applicability criteria in Table 2 of this subpart shall be used for chemicals not specifically listed in this table (i.e., Table 3).

TABLE 4.—GROUP 1 STORAGE VESSELS AT NEW AFFECTED SOURCES

Vessel capacity (cubic meters)	Vapor pressure [a] (kilopascals)
38 ≤ capacity < 151	≥13.1
151 ≤ capacity	≥0.7

[a] Maximum true vapor pressure of total organic HAP at storage temperature.

TABLE 5.—GROUP 1 STORAGE VESSELS AT NEW AFFECTED SOURCES PRODUCING THE LISTED THERMOPLASTICS

Thermoplastic	Chemical [a]	Vessel capacity (cubic meters)	Vapor pressure [b] (kilopascals)
ASA/AMSAN [c]	Styrene/acrylonitrile mixture	≥3.78	≥0.47.
	Acrylonitrile	≥75.7	≥1.62.
SAN, continuous		≥2,271	0.5≤vp<0.7.
		≥151	0.7≤vp≥10.
		≥30 and <151	vp≥10.
		≥151	vp≥10.
Nitrile [c]	Acrylonitrile	≥13.25	≥1.8.
Polystyrene, continuous processes		≥19.6 and <45.4	vp≥7.48.
		≥45.4 and <109.8	vp≥0.61.
		≥109.8	vp≥0.53.
ABS, continuous mass	Styrene	≥45.43	≥0.078.
		≥38 and <45.43	vp≥13.1.
		≥45.43	vp≥0.53.

[a] Vessel capacity and vapor pressure criteria are specific to the listed chemical. When chemical not listed (i.e., —), vessel capacity and vapor pressure criteria apply to all chemicals regulated by this rule for a given subcategory.
[b] Maximum true vapor pressure of total organic HAP at storage temperature.
[c] The applicability criteria in Table 4 of this subpart shall be used for chemicals not specifically listed in this table (i.e., Table 5).

TABLE 6.—KNOWN ORGANIC HAZARDOUS AIR POLLUTANTS FROM THERMOPLASTIC PRODUCTS

Thermoplastic product/subcategory	Organic HAP/chemical name (CAS No.)						
	Acetaldehyde (75–07–0)	Acrylonitrile (107–13–1)	1,3 Butadiene (106–99–0)	1,4–Dioxane (123–91–1)	Ethylene Glycol (107–21–1)	Methanol (67–56–1)	Styrene (100–42–5)
ABS latex		✔	✔				✔
ABS using a batch emulsion process		✔	✔				✔
ABS using a batch suspension process		✔	✔				✔
ABS using a continuous emulsion process		✔	✔				✔
ABS using a continuous mass process		✔	✔				✔
ASA/AMSAN		✔	✔				✔
EPS							✔
MABS		✔	✔				✔
MBS			✔				✔
Nitrile resin		✔					
PET using a batch dimethyl terephthalate process	✔			✔	✔	✔	
PET using a batch terephthalic acid process	✔			✔	✔		
PET using a continuous dimethyl terephthalate process	✔			✔	✔	✔	
PET using a continuous terephthalic acid process	✔			✔	✔		

TABLE 6.—KNOWN ORGANIC HAZARDOUS AIR POLLUTANTS FROM THERMOPLASTIC PRODUCTS—Continued

Thermoplastic product/subcategory	Organic HAP/chemical name (CAS No.)						
	Acetaldehyde (75–07–0)	Acrylonitrile (107–13–1)	1,3 Butadiene (106–99–0)	1,4–Dioxane (123–91–1)	Ethylene Glycol (107–21–1)	Methanol (67–56–1)	Styrene (100–42–5)
PET using a continuous terephthalic acid high viscosity multiple end finisher process	✔	.....	.....	✔	✔	.....	.....
Polystyrene resin using a batch process	.....	.....	.....	.....	.....	.....	✔
Polystyrene resin using a continuous process	.....	.....	.....	.....	.....	.....	✔
SAN using a batch process	.....	✔	.....	.....	.....	.....	✔
SAN using a continuous process	.....	✔	.....	.....	.....	.....	✔

AACAS No.=Chemical Abstract Service Number.
AAABS=Acrylonitrile butadiene styrene resin.
AAASA/AMSAN=Acrylonitrile styrene resin/alpha methyl styrene acrylonitrile resin.
AAEPS=expandable polystyrene resin.
AAMABS=methyl methacrylate acrylonitrile butadiene styrene resin.
AAPET=poly(ethylene terephthalate) resin.
AAAAN=styrene acrylonitrile resin.
AAMBS=methyl methacrylate butadiene styrene resin.

TABLE 7.—GROUP 1 BATCH PROCESS VENTS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS

Control device	Parameters to be monitored	Recordkeeping and reporting requirements for monitored parameters
Thermal Incinerator	Firebox temperature [a]	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average firebox temperature measured during the performance test—NCS.[c] 3. Record the batch cycle daily average firebox temperature as specified in § 63.1326(e)(2). 4. Report all batch cycle daily average temperatures that are below the minimum operating temperature established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Catalytic Incinerator	Temperature upstream and downstream of the catalyst bed.	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average upstream and downstream temperatures and the average temperature difference across the catalyst bed measured during the performance test—NCS.[c] 3. Record the batch cycle daily average upstream temperature and temperature difference across catalyst bed as specified in § 63.1326(e)(2). 4. Report all batch cycle daily average upstream temperatures that are below the minimum upstream temperature established in the NCS or operating permit—PR.[d e] 5. Report all batch cycle daily average temperature differences across the catalyst bed that are below the minimum difference established in the NCS or operating permit—PR.[d e] 6. Report all instances when monitoring data are not collected.[e]
Boiler or Process Heater with a design heat input capacity less than 44 megawatts and where the batch process vents or aggregate batch vent streams are *not* introduced with or used as the primary fuel.	Firebox temperature [a]	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average firebox temperature measured during the performance test—NCS.[c] 3. Record the batch cycle daily average firebox temperature as specified in § 63.1326(e)(2).[d] 4. Report all batch cycle daily average temperatures that are below the minimum operating temperature established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Flare	Presence of a flame at the pilot light.	1. Hourly records of whether the monitor was continuously operating during batch emission episodes, or portions thereof, selected for control and whether the pilot flame was continuously present during said periods. 2. Record and report the presence of a flame at the pilot light over the full period of the compliance determination—NCS.[c] 3. Record the times and durations of all periods during batch emission episodes, or portions thereof, selected for control when a pilot flame is absent or the monitor is not operating. 4. Report the times and durations of all periods during batch emission episodes, or portions thereof, selected for control when all pilot flames of a flare are absent—PR.[d]

TABLE 7.—GROUP 1 BATCH PROCESS VENTS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS—Continued

Control device	Parameters to be monitored	Recordkeeping and reporting requirements for monitored parameters
Scrubber for halogenated batch process vents or aggregate batch vent streams (Note: Controlled by a combustion device other than a flare).	pH of scrubber effluent, and.	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average pH of the scrubber effluent measured during the performance test—NCS.[c] 3. Record the batch cycle daily average pH of the scrubber effluent as specified in § 63.1326(e)(2). 4. Report all batch cycle daily average pH values of the scrubber effluent that are below the minimum operating pH established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Do	Scrubber liquid flow rate.	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the scrubber liquid flow rate measured during the performance test—NCS.[c] 3. Record the batch cycle daily average scrubber liquid flow rate as specified in § 63.1326(e)(2). 4. Report all batch cycle daily average scrubber liquid flow rates that are below the minimum flow rate established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Absorber[f]	Exit temperature of the absorbing liquid, and.	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average exit temperature of the absorbing liquid measured during the performance test—NCS.[c] 3. Record the batch cycle daily average exit temperature of the absorbing liquid as specified in § 63.1326(e)(2) for each batch cycle. 4. Report all the batch cycle daily average exit temperatures of the absorbing liquid that are below the minimum operating temperature established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Do	Exit specific gravity for the absorbing liquid.	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average exit specific gravity measured during the performance test—NCS.[c] 3. Record the batch cycle daily average exit specific gravity as specified in § 63.1326(e)(2). 4. Report all batch cycle daily average exit specific gravity values that are below the minimum operating temperature established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Condenser[f]	Exit (product side) temperature.	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average exit temperature measured during the performance test—NCS.[c] 3. Record the batch cycle daily average exit temperature as specified in § 63.1326(e)(2). 4. Report all batch cycle daily average exit temperatures that are above the maximum operating temperature established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]
Carbon Adsorber[f]	Total regeneration stream mass flow during carbon bed regeneration cycle(s), and.	1. Record the total regeneration stream mass flow for each carbon bed regeneration cycle. 2. Record and report the total regeneration stream mass flow during each carbon bed regeneration cycle measured during the performance test—NCS.[c] 3. Report all carbon bed regeneration cycles when the total regeneration stream mass flow is above the maximum mass flow rate established in the NCS or operating permit—PR.[d e]
Do	Temperature of the carbon bed after regeneration and within 15 minutes of completing any cooling cycle(s).	1. Record the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycle(s). 2. Record and report the temperature of the carbon bed after each regeneration and within 15 minutes of completing any cooling cycles(s) measured during the performance test—NCS.[c] 3. Report all carbon bed regeneration cycles when the temperature of the carbon bed after regeneration, or within 15 minutes of completing any cooling cycle(s), is above the maximum temperature established in the NCS or operating permit—PR.[d e]
All Control Devices	Presence of flow diverted to the atmosphere from the control device *or*.	1. Hourly records of whether the flow indicator was operating during batch emission episodes, or portions thereof, selected for control and whether flow was detected at any time during said periods as specified in § 63.1326(e)(3). 2. Record and report the times and durations of all periods during batch emission episodes, or portions thereof, selected for control when emissions are diverted through a bypass line or the flow indicator is not operating—PR.[d]
Do	Monthly inspections of sealed valves.	1. Records that monthly inspections were performed as specified in § 63.1326(e)(4)(i). 2. Record and report all monthly inspections that show the valves are not closed or the seal has been changed—PR.[d]

TABLE 7.—GROUP 1 BATCH PROCESS VENTS—MONITORING, RECORDKEEPING, AND REPORTING REQUIREMENTS—Continued

Control device	Parameters to be monitored	Recordkeeping and reporting requirements for monitored parameters
Absorber, Condenser, and Carbon Adsorber (as an alternative to the requirements previously presented in this table).	Concentration level or reading indicated by an organic monitoring device at the outlet of the control device.	1. Continuous records as specified in § 63.1326(e)(1).[b] 2. Record and report the average concentration level or reading measured during the performance test—NCS.[c] 3. Record the batch cycle daily average concentration level or reading as specified in § 63.1326(e)(2). 4. Report all batch cycle daily average concentration levels or readings that are above the maximum concentration or reading established in the NCS or operating permit and all instances when monitoring data are not collected—PR.[d e]

[a] Monitor may be installed in the firebox or in the ductwork immediately downstream of the firebox before any substantial heat exchange is encountered.
[b] "Continuous records" is defined in § 63.111.
[c] NCS = Notification of Compliance Status described in § 63.1335(e)(5).
[d] PR = Periodic Reports described in § 63.1335(e)(6).
[e] The periodic reports shall include the duration of periods when monitoring data are not collected as specified in § 63.1335(e)(6)(iii)(C).
[f] Alternatively, these devices may comply with the organic monitoring device provisions listed at the end of this table.

TABLE 8.—OPERATING PARAMETERS FOR WHICH LEVELS ARE REQUIRED TO BE ESTABLISHED FOR CONTINUOUS AND BATCH PROCESS VENTS AND AGGREGATE BATCH VENT STREAMS

Device	Parameters to be monitored	Established operating parameter(s)
Thermal incinerator	Firebox temperature	Minimum temperature.
Catalytic incinerator	Temperature upstream and downstream of the catalyst bed	Minimum upstream temperature; and minimum temperature difference across the catalyst bed.
Boiler or process heater	Firebox temperature	Minimum temperature.
Scrubber for halogenated vents	pH of scrubber effluent; and scrubber liquid flow rate	Minimum pH; and minimum flow rate.
Absorber	Exit temperature of the absorbing liquid; and exit specific gravity of the absorbing liquid.	Minimum temperature; and minimum specific gravity.
Condenser	Exit temperature	Maximum temperature.
Carbon absorber	Total regeneration stream mass flow during carbon bed regeneration cycle; and temperature of the carbon bed after regeneration (and within 15 minutes of completing any cooling cycle(s)).	Maximum mass flow; and maximum temperature.
Other devices (or as an alternate to the requirements previously presented in this table)[a].	HAP concentration level or reading at outlet of device	Maximum HAP concentration or reading.

[a] Concentration is measured instead of an operating parameter.

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Part III

Securities and Exchange Commission

17 CFR Part 240

Order Execution Obligations; Final Rule; Proposed Quote Rule Amendment

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–37619A; File No. S7–30–95]

RIN 3235–AG66

Order Execution Obligations

AGENCY: Securities and Exchange Commission.

ACTION: Final Rules.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting a new rule requiring the display of customer limit orders and amending a current rule governing publication of quotations to enhance the quality of published quotations for securities and to enhance competition and pricing efficiency in our markets. These rules have been designed to address growing concerns about the handling of customer orders for securities.

Specifically, the Commission is adopting new Rule 11Ac1–4 (''Display Rule'') under the Securities Exchange Act of 1934 (''Exchange Act'') to require the display of customer limit orders priced better than a specialist's or over-the-counter (''OTC'') market maker's quote or that add to the size associated with such quote. The Commission also is adopting amendments to Rule 11Ac1–1 (''Quote Rule'') under the Exchange Act to require a market maker to publish quotations for any listed security when it is responsible for more than 1% of the aggregate trading volume for that security and to make publicly available any superior prices that a market maker privately quotes through certain electronic communications networks (''ECNs'') (''ECN amendment''). Finally, the Commission is deferring action on proposed Rule 11Ac1–5 (''Price Improvement Rule'').

EFFECTIVE DATE: January 10, 1997. For specific phase-in dates for the Display Rule, see section III.A.3.d of this Release.

FOR FURTHER INFORMATION CONTACT: Elizabeth Prout Lefler or Gail A. Marshall regarding amendments to the Quote Rule and David Oestreicher regarding the Display Rule at (202) 942–0158, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 5–1, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction and Summary

On September 29, 1995, the Commission issued a release [1] proposing for comment new Rules 11Ac1–4 and 11Ac1–5 and amendments to Rule 11Ac1–1 [2] under the Exchange Act.[3] As proposed, new Rule 11Ac1–4 would require the display of customer limit orders that improve certain OTC market makers' and specialists' quotes or add to the size associated with such quotes. The proposed amendments to the Quote Rule would require OTC market makers and specialists who place priced orders with ECNs to reflect those orders in their published quotes. The proposed Quote Rule amendments also would require OTC market makers and specialists that account for more than 1% of the volume in any listed security to publish their quotations for that security (''Mandatory Quote Rule''). The Price Improvement Rule would have required OTC market makers and specialists to provide their customer market orders an opportunity for price improvement; it also would have included a non-exclusive safe harbor to satisfy the price improvement obligation.

The Commission received 152 comment letters (from 145 commenters) in response to the Proposing Release.[4] Commenters generally supported the Display Rule and the Mandatory Quote Rule, with some commenters suggesting specific modifications or alternatives to the proposed rules. Commenters also supported the objectives of the ECN amendment, but many expressed concerns that diminishing the anonymity of such systems would threaten their viability. Most commenters believed the Price Improvement Rule would be costly to implement and would not be necessary if the other proposals were adopted.

After considering the comments and relevant economic research, and based on the Commission's experience with the development of the national market system (''NMS'') and its knowledge of current market practices, the Commission is adopting the Display Rule and the proposed amendments to the Quote Rule, with certain modifications. The Commission believes that these modifications are consistent with the proposals and responsive to many of the concerns voiced by the commenters.

The Display Rule adopted today requires OTC market makers and specialists to display the price and full size of customer limit orders when these orders represent buying and selling interest that is at a better price than a specialist's or OTC market maker's public quote. OTC market makers and specialists also must increase the size of the quote for a particular security to reflect a limit order of greater than *de minimis* size when the limit order is priced equal to the specialist's or OTC market maker's disseminated quote and that quote is equal to the national best bid or offer.

The Commission has modified the proposed Display Rule in some respects in response to comments. The proposal included an exception to permit a specialist or OTC market maker to deliver a limit order to an exchange or registered national securities association (''association'') sponsored system that complies with the Display Rule. This exception has been expanded to permit delivery to ECNs that display and provide access to these orders. Additionally, with regard to implementation of the rule, the Commission has provided for a phase-in over a one year period for non-exchange-traded securities covered by the Display Rule.

Today, the Commission also is adopting two significant amendments to the Quote Rule. These amendments are designed to ensure that more comprehensive quotation information is made available to the public. The first amendment requires a specialist or OTC market maker to make publicly available the price of any order it places in an ECN if the ECN price is better than the specialist's or OTC market maker's public quotation. The Commission has adopted this amendment as proposed, with an alternative (''ECN display alternative'') that deems OTC market makers and specialists in compliance with the Quote Rule if prices these OTC market makers and specialists enter into an ECN are publicly disseminated and the ECN provides access to other broker-

[1] Securities Exchange Act Release No. 36310 (September 29, 1995), 60 FR 52792 (October 10, 1995) (''Proposing Release'').

[2] 17 CFR 240.11Ac1–1.

[3] 15 U.S.C. 78a to 78ll (1988).

[4] The comment letters and a summary of comments have been placed in Public File No. S7–30–95, which is available for inspection in the Commission's Public Reference Room. The Commission received comments on the proposals from 77 individual investors, ten industry associations, seven exchanges and the National Association of Securities Dealers (''NASD''), eight academics, 41 market participants and the United States Department of Justice. In addition, the Commission met with representatives of broker-dealers, self-regulatory organizations (''SROs''), industry associations, and the U.S. Department of Justice to discuss the proposals. The Commission has conducted its own economic analysis of the likely economic effects of the various proposals.

dealers to trade at those prices.[5] Thus, OTC market makers and specialists may comply directly with the ECN amendment by changing their public quote to reflect their ECN order, or by using an ECN that facilitates their compliance with the rule as described above.

Implementation of the ECN display alternative requires the cooperation of the SROs in order to include the ECN prices in the public quotation system and to provide equivalent access to these quotations. The Commission expects the SROs to work expeditiously with ECNs that wish to avail themselves of this alternative to develop rules or understandings of general applicability. The Commission is prepared to act if necessary to ensure implementation of the ECN display alternative prior to the effective date of the Quote Rule.

The second amendment to the Quote Rule expands the categories of securities covered by the Mandatory Quote Rule. As amended, the Quote Rule will require that OTC market makers and specialists publish quotes in any listed security if their volume in that security exceeds 1% of the aggregate volume during the most recent calendar quarter. Previously, these requirements applied only to certain listed securities.[6]

The Commission is deferring final action on the Price Improvement Rule at this time. The Commission will consider the effect of the new Display Rule and the amendments to the Quote Rule adopted today before determining the appropriate course of action on that proposal.

In a parallel action, the Commission today is proposing for comment an additional amendment to the Quote Rule. The proposed amendment would require OTC market makers and specialists that account for more than 1% of the volume in any Nasdaq security to publish their quotations for that security.[7]

II. Basis and Purpose of the Display Rule and Quote Rule Amendments

Twenty years ago, Congress directed the Commission—having due regard for the public interest, the protection of investors, and the maintenance of fair and orderly markets—to use the Commission's authority granted under the Exchange Act to facilitate the establishment of a national market system for securities.[8] Congress further determined that the public interest, investor protection and the maintenance of fair and orderly markets required the NMS to feature:

(i) Economically efficient executions;

(ii) Fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets;

(iii) Public availability of quotation and transaction information;

(iv) An opportunity to obtain best execution; and

(v) An opportunity to obtain execution without dealer intervention to the extent consistent with economically efficient executions and the opportunity to obtain best execution.[9]

The years since the 1975 Amendments have witnessed dramatic developments in the U.S. securities markets. Last sale reporting, which enables investors to determine the current market for a security, has been extended to OTC-traded securities. The Consolidated Quotation System (''CQS''), which allows investors to view in a single source quotes disseminated from dispersed market centers, did not exist in 1975. The Intermarket Trading System (''ITS''), which permits investors' orders in certain exchange-listed securities to be routed to the market center displaying the best quotation, has greatly facilitated quote competition. Moreover, technological developments not envisioned twenty years ago have enabled market centers to handle volume levels many times greater than those that led to the ''back office'' crisis of the late 1960s and early 1970s. Taken together, these and other developments have made it possible for investors' orders to be executed much more rapidly and at far lower cost.

The Commission recognized that U.S. equity markets had undergone significant changes since passage of the 1975 Amendments and were likely to undergo further changes of equal magnitude.[10] Accordingly, the Commission announced in July 1992 that its Division of Market Regulation (''Division'') would undertake a study of the structure of the U.S. equity markets and of the regulatory environment in which those markets operate.[11]

In January 1994, the Division published a study,[12] which reviewed, among other things, market practices and structures that could affect the ability of customers to obtain opportunities for better prices. The Market 2000 Study noted that U.S. equity markets had evolved since 1975 to provide a much wider array of trading venues to meet the diverse needs of investors and made a series of recommendations intended to facilitate the further development of a national market system. As expected, U.S. equity markets have continued to evolve since the Market 2000 Study was published.

This evolution of the markets is reflected in part by comparing trading volumes and the venues in which orders are executed. In 1976, the New York Stock Exchange (''NYSE'') average daily trading volume was approximately 21.2 million shares.[13] By 1995, average daily trading volume exceeded 346 million shares.[14] Third market trading, *i.e.*, OTC trading of listed securities, in NYSE-listed issues accounted for 4.57% of consolidated volume in 1976.[15] By 1995, third market trading increased to 7.94% of consolidated volume.[16] In 1987, the NYSE handled almost 74% of trades of NYSE-listed issues reported on the consolidated tape; in 1995, it handled 70.22% of such trades.[17]

Comparable figures for The Nasdaq Stock Market (''Nasdaq'') are even more

[5] This alternative means of compliance with the ECN amendment is referred to hereinafter as the ''ECN display alternative''.

[6] Additional amendments to the Quote Rule adopted today provide that certain Quote Rule provisions that previously applied to market makers that elected to quote a Nasdaq National Market security now also will apply to market makers electing to quote a Nasdaq SmallCap security. See section III.B.d.iii.

[7] See Securities Exchange Act Release No. 37620 (August 28, 1996) (''Companion Release'').

[8] Pub. L. No. 94–29, 89 Stat. 97 (1975) (''1975 Amendments'').

[9] Exchange Act section 11A(a)(1), 15 U.S.C. 78k–1(a)(1). This Section also recites the Congressional findings that: The securities markets are an important national asset which must be preserved and strengthened; and new data processing and communications techniques create the opportunity for more efficient and effective market operations.

[10] *See* Securities Exchange Act Release No. 30920 (July 14, 1992), 57 FR 32587 (July 22, 1992) (''Market 2000 Concept Release'').

[11] *Id.*

[12] Division of Market Regulation, Market 2000: An Examination of Current Equity Market Developments (January 1994) (''Market 2000 Study'' or ''Study'').

[13] 1982 NYSE Fact Book.

[14] 1995 NYSE Annual Report.

[15] 1982 NYSE Fact Book.

[16] 1995 NYSE Fact Book.

[17] Regional exchanges, namely, the Boston Stock Exchange (''BSE''), the Philadelphia Stock Exchange (''Phlx''), the Cincinnati Stock Exchange (''CSE''), the Chicago Stock Exchange (''CHX''), and the Pacific Stock Exchange (''PSE''), have captured a significant share of volume in NYSE-listed issues, particularly with respect to smaller investor orders. In 1995, the regional exchanges accounted for 9.96% of consolidated volume in NYSE-listed issues but accounted for 19.01% of trades of NYSE-listed issues reported on the consolidated tape. *Id.* They also accounted for approximately 35% of share volume in trades of 100 to 2,099 shares. Shapiro, *U.S. Equity Markets: Recent Equity Developments*, in Global Equity Markets: Technological, Competitive, and Regulatory Challenges 21 (R. Schwartz ed. 1995). In January 1996, trades of 100–499 shares represented between 65–72% of all trades in NYSE-listed issues on regional exchanges; such trades represented only 37% of all trades on the NYSE. Ross, Shapiro and Smith, *Price Improvement of SuperDOT Market Orders on the NYSE* (NYSE Working Paper 96–01) (March 11, 1996 draft) (prepared for the NYSE Conference for the Search for Best Price) (''Ross, Shapiro and Smith'').

dramatic. In 1975, Nasdaq annual volume was approximately 1.39 billion shares.[18] By 1995, Nasdaq annual volume increased to 101.2 billion shares,[19] which means that more shares traded hands on three average trading days in 1995 than in all of 1975. In 1993, volume in all proprietary trading systems combined represented 13% of the total volume in Nasdaq/National Market securities;[20] by January 1996, volume on Instinet alone represented approximately 15% of total Nasdaq volume and 20% of total volume for the 250 Nasdaq stocks with the highest median dollar volume.[21]

The Study addressed the development of certain practices, such as internalization,[22] payment for order flow[23] and the non-disclosure of certain customer trading interest to all market participants, that raise a variety of market structure and customer order handling concerns. For example, brokers today may quote one price publicly to retail customers, while showing a better price privately to other investors and dealers on an ECN. In addition, the quotes displayed to public investors may not accurately reflect the best price for a security because limit orders, which specify the price at which customers will buy or sell a security, are not uniformly required to be included in the quote.

The Study recommended that the exchanges and the NASD consider taking action to respond appropriately to certain of these developments. Since that time, Nasdaq market makers holding customer limit orders have been prohibited from trading ahead of those orders,[24] and some market makers have begun to offer price improvement opportunities in OTC transactions to their retail customers.[25] In addition, the NYSE now requires almost all limit orders transmitted through SuperDOT to be displayed to the market.[26] Further, Commission rules require enhanced disclosure of payment for order flow practices on customer confirmations and account statements, as well as upon opening new accounts.[27]

Notwithstanding the progress achieved in this period, the Commission believes that further regulatory initiatives are warranted at this time. These changes, as indicated in the Proposing Release, are intended to address current market practices that inhibit opportunities for order interaction and that are inconsistent with Congress's vision of the national market system. These changes also address certain problems in Nasdaq. The Commission recently reported that, among other things: (i) Nasdaq market makers widely followed a pricing convention concerning the increments they used to adjust their displayed quotes; (ii) adherence to the pricing convention was not the result of natural economic forces, often impacted the fairness and accuracy of public quotation information and interfered with the economically efficient execution of customer transactions; (iii) the pricing convention impaired the ability of investors to ascertain the best market for their trades, increased the costs of transactions, and resulted in unfair discrimination among classes of market participants; (iv) numerous market makers collaborated in ways that misled and disadvantaged their customers and other market participants and frequently failed to honor their price quotations; and (v) many market makers have not consistently reported their trades on time or appropriately designated them as late as required by NASD rules.[28]

The Commission has taken specific regulatory and enforcement actions to address these problems.[29] The Display Rule and Quote Rule amendments adopted today should bring about other, significant changes in the operation of Nasdaq, by ensuring the disclosure of customer and market maker buying and selling interest that heretofore has been hidden from many market participants. At the same time, the new rules will benefit investors in the exchange markets by increasing transparency in those markets and improving opportunities for the best execution of customer orders.

The Commission firmly believes that the actions it is taking today are consistent with the regulatory framework for a national market system established by Congress in the 1975 Amendments. Congress envisioned a national market system supported by accurate and reliable public quotation and transaction information, and fair competition among market centers. Congress also believed that linking all markets for qualified securities through communication and data processing facilities would foster efficiency, enhance competition, increase information available to market participants and contribute to the best execution of customer orders.[30]

The Commission recognizes that investors will lose confidence in the fairness of the markets unless market structures and practices treat all investors fairly. The regulatory initiatives adopted today address current market practices that hinder competition among markets and affect the prices at which customer orders are executed. The Display Rule and Quote Rule amendments enhance transparency and facilitate best execution of customer orders in a manner that preserves maximum flexibility for the markets to design and implement trading and communication systems that are consistent with the objectives of the national market system. These rules contribute to the achievement of the full potential of the national market system as envisioned by Congress. They represent one more step to facilitate the development of an efficient, competitive and transparent national market system in which all market participants can achieve best execution of their orders.

III. Discussion

A. Display of Customer Limit Orders

1. Introduction

As discussed above, the 1975 Amendments contain an explicit statutory mandate for the establishment of a national market system. Congress considered mandating certain minimum

[18] 1992 Nasdaq Fact Book.

[19] 1995 NASD Annual Report.

[20] Market 2000 Study at Appendix IV–2.

[21] The Introduction of NAqcess into the Nasdaq Stock Market: Intent and Expectation, NASD Economic Research Staff, June 6, 1996 (''NASD Study''), Exhibit D to Securities Exchange Act Release No. 37302 (June 11, 1996), 61 FR 31574 (June 20, 1996) (Notice of Filing of Amendment No. 2 to Proposed Rule Change by National Association of Securities Dealers Relating to the NAqcess System and Accompanying Rules of Fair Practice)(''NAqcess Release 2'').

[22] Internalized orders are customer orders routed by a broker-dealer to an affiliated specialist or executed by that broker-dealer as a market maker.

[23] The Commission now requires enhanced disclosure of payment for order flow practices on customer confirmations and account statements, as well as upon opening new accounts. Securities Exchange Act Release No. 34902 (October 27, 1994), 59 FR 55006 (November 2, 1994) (adopting rules requiring enhanced disclosure of payment for order flow practices on customer confirmations, and account statements, as well as upon opening new accounts) (''Payment for Order Flow Release''). *See also* Securities Exchange Act Release No. 35473 (March 10, 1995), 60 FR 14366 (March 17, 1995).

[24] Securities Exchange Act Release No. 34279 (June 29, 1994), 59 FR 34883 (July 7, 1994) (''Manning I''); Securities Exchange Act Release No. 35751 (May 22, 1995), 60 FR 27997 (May 26, 1995) (''Manning II'').

[25] *See, e.g.,* Louis, *Schwab Debuts New Trading System,* San Francisco Chronicle, October 17, 1995, at D1.

[26] Securities Exchange Act Release No. 36231 (September 14, 1995), 60 FR 48736 (September 20, 1995).

[27] *See* Payment for Order Flow Release *supra* note 23.

[28] Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD, the Nasdaq Market, and Nasdaq Market Makers, Securities Exchange Act Release No. 37542 (August 8, 1996) (''21(a) Report'').

[29] *See id.*

[30] *See* Exchange Act section 11A(a)(1)(D), 15 U.S.C. 78k–1(a)(1)(D).

components of the national market system, but instead created a statutory scheme granting the Commission broad authority to oversee the implementation, operation and regulation of the national market system.[31] At the same time, Congress charged the Commission with the responsibility to assure that the national market system develop and operate in accordance with specific goals and objectives.[32] The Commission believes that the adoption of a limit order display rule furthers these goals and objectives determined by Congress.

Specifically, the display of customer limit orders advances the national market system goal of the public availability of quotation information, as well as fair competition, market efficiency, best execution and disintermediation. The enhanced transparency of such orders increases the likelihood that limit orders will be executed because contra-side market participants will have a more accurate picture of trading interest in a given security. Further, this increased visibility will enable market participants to interact directly with limit orders, rather than rely on the participation of a dealer for execution.

Moreover, as noted in the Proposing Release, the display of limit orders that are priced better than current quotes addresses at least three regulatory concerns. First, displaying customer limit orders in the quotation can increase quote competition. If the quotes from a market or market maker represent only market maker buying and selling interest in a given security, the market or market maker faces less price competition than if customer buying and selling interest is made public. As a result, the price discovery process may be constrained. Second, the display of limit orders can narrow quotation spreads. Third, because many markets and market makers offer automatic executions of small orders at the best displayed quotes, the display of limit orders that improve the best displayed quotes can result in improved executions for these orders.

Limit orders currently are handled differently in the various auction and dealer markets. Generally, the rules of most exchanges require that a limit order be displayed in the quotation for a security when it improves the best bid or offer. NYSE specialists, for example, must reflect a customer limit order in their quotations at the limit price when requested to do so.[33] In addition, the NYSE's order handling procedures assume that all limit orders routed to a specialist through SuperDOT contain a display request.[34] Therefore, except in the unusual and infrequent circumstance where a specialist believes market conditions suggest the likelihood of imminent price improvement, a limit order received by a specialist through SuperDOT should be reflected in the specialist's quote as soon as practicable following receipt of the order.[35] According to the NYSE, 93% of all SuperDOT limit orders that improve the best bid or offer displayed are reflected in the specialist's quote within two minutes of receipt, while 98% of such limit orders are reflected within five minutes of receipt.[36]

A recent NYSE policy statement requires specialists to display the full size of all orders received through SuperDOT as well as orders received by specialists manually that are subsequently entered into the electronic book.[37] When a member requests that less than the full size of the order be shown, the specialist is obligated to show the size requested. Specialists must display as soon as practicable any order that, in relation to current market conditions in a particular security, represents a material change in the supply or demand for that security. This requirement includes increasing the size of a quotation for orders at the same price as the current bid or offer. If the quotation already reflects significant supply or demand, and the specialist receives an order that is *de minimis* in relation to such supply or demand, the specialist may take a reasonable time (generally not more than two minutes) before updating the size of the quotation.[38]

Currently in the OTC market, the quote for any security typically represents a dealer's own bid and offer. The rules of the NASD do not require market makers to display customer limit orders, whether or not they better the best bid or offer for the security.[39] Generally, customer limit orders in OTC securities either will be routed to a broker-dealer's market making desk or to another market maker for execution if the customer's firm does not make a market in the security. In the past, market makers typically did not execute limit orders until the best bid (for sell orders) or offer (for buy orders) displayed on Nasdaq reached the limit price. This practice has changed, however, in recent years. In June 1994, the Commission approved a rule change filed by the NASD that prohibits broker-dealers from trading ahead of their customers' limit orders.[40] This rule was expanded in May 1995, to prohibit broker-dealers from trading ahead of customer limit orders they accept from other brokers.[41] The NASD also has filed a proposed rule change that would require, in certain circumstances, the display of customer limit orders for exchange-listed securities traded OTC.[42]

[31] S. Rep. No. 75, 94th Cong., 1st Sess. 8–9 (1975) (''Senate Report'').

[32] *Id.* at 9. Among other things, Congress found it in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure an opportunity for investors' orders, in both dealer and auction markets, to be executed without the participation of a dealer, to the extent that this was consistent with economically efficient executions of such orders in the best market. Exchange Act Section 11A(a)(1(c), 15 U.S.C. 78k-1(a)(1)(C).

[33] *See* NYSE Rule 79A.10 (when a limit order is presented to the specialist by a floor broker, the floor broker must affirmatively request that the specialist display the limit order; failure to so request leaves the decision whether to display the limit order to the discretion of the specialist); *see also* NYSE Rule 60 (requiring specialists to promptly report, inter alia, the best bid and offer in the trading crowd in each reported security in which the specialist is registered).

[34] NYSE Information Memo 93–12 (Mar. 30, 1993).

[35] *Id.*

[36] Telephone Conference between Edward A. Kwalwasser, Executive Vice President, NYSE, and Holly H. Smith, Associate Director, Division of Market Regulation, SEC, January 9, 1995.

Other exchanges also have rules regarding dissemination of bids and offers. However, no uniform standard has been adopted among the exchanges. Generally, the rules either cite, in whole or in part, language from the Quote Rule, or are drafted in such a manner as to allow for broad interpretation with respect to the display of limit orders. *See, e.g.,* BSE Guide, Rules of the Board of Governors, Chapter II, Sec. 7, (CCH) ¶ 2020; PSE Guide, Rules of the Board of Governors, Rule 5.6(f), (CCH) ¶ 3979; American Stock Exchange Guide, General and Floor Rules, Rule 115, (CCH) ¶ 9265; CHX Guide, Article XX, Rule 7, (CCH) ¶ 1688; Phlx Guide, Rules 105 and 229 (CCH) ¶ 2105 and 2229; Cincinnati Stock Exchange Rules, Rule 11.9.

[37] *See supra* note 26.

[38] The NYSE provides the following example of when a specialist may take a reasonable time to update the size of the quotation: If the market in XYZ security is 20 (5,000)—20¼ (50,000), and the specialist receives an order to sell 200 shares at 20¼, such order would be considered *de minimis* and the specialist would be permitted to wait a reasonable period of time (but not more than two minutes) before changing the size of the offer to 50,200.

[39] *See NASD Manual,* Rule 4613.

[40] *See* Manning I, *supra* note 24.

[41] *See* Manning II, *supra* note 24.

[42] *See* Securities Exchange Act Release No. 35471 (March 10, 1995), 60 FR 14310 (March 16, 1995). The NASD proposal, applicable to exchange-listed securities traded OTC, generally would require a market maker either to execute immediately a limit order of less than the minimum quotation size priced better than the market maker's quotation, or display the order in its quotation for an amount equal to the minimum quotation size. Market makers would have to display a limit order greater than the minimum quotation size for that security but would not have to display the full size of the order. Any portion of the order not displayed, however, would have to be executed at a price at least as favorable as the displayed price if the displayed portion is executed in its entirety. At the NASD's request, the Commission has postponed

Continued

The exchanges and the NASD use automated trading systems to route and, in some instances, execute orders up to a predetermined size. Some of these systems accept limit orders. Each system, however, may differ in its handling of limit orders that are not executed immediately upon receipt. For example, the NYSE's SuperDOT system routes limit orders to the specialists' posts where they are handled in accordance with NYSE rules governing specialist representation of such orders. The American Stock Exchange's (''Amex'') PER system routes limit orders in the same manner as SuperDOT and the orders are handled in accordance with Amex rules. The NASD's Small Order Execution System (''SOES'') treats limit orders priced at the current inside market as market orders that are immediately executed.[43] All other limit orders reside in a limit order file that can be viewed only by market makers.[44] SOES does not provide an opportunity for limit orders to interact with incoming market orders. The Commission has published for comment an NASD proposal to replace SOES with ''NAqcess,'' a system that would include a limit order file designed to display certain customer limit orders.[45]

The disparate treatment of limit orders across markets was raised as an issue in the Market 2000 Study. The Commission received numerous comments concerning whether the optimal degree of pre-trade disclosure of limit orders was being achieved within the U.S. equity markets. Some commentators alleged that specialists and third market dealers sometimes fail to display limit orders priced better than the displayed quotation.[46] Questions also were raised about the lack of limit order exposure on Nasdaq. After considering these comments, the Division recommended in the Study that the securities exchanges consider whether to encourage the display of all limit orders in listed stocks priced better than the best intermarket quotes, unless the ultimate customer requests that the order not be displayed. The Market 2000 Study also recommended the display of limit orders in Nasdaq stocks when the orders are at prices better than the best Nasdaq quotes, unless the customer requests that the order not be displayed.[47]

2. Discussion

a. Basis for Adoption of the Rule

After carefully considering all of the comments as well as economic research regarding the Display Rule, and based on the Commission's experience and knowledge of current market practices and conditions, the Commission believes that adoption of the Display Rule will promote transparency and enhance execution opportunities for customer orders, and encourage liquidity.[48]

The Commission stresses, however, that the rule is not meant to displace any SRO rules that provide additional order handling protections to customer limit orders. Instead, the Commission rule represents only a minimum display standard.

The Commission believes that limit orders are a valuable component of price discovery. The uniform display of such orders will encourage tighter, deeper, and more efficient markets. Limit orders convey buying and selling interest at a given price. The display of limit orders can be expected to narrow the bid-ask spread when this buying and selling interest is priced better than publicly disclosed prices.[49] Both large and small orders stand to benefit from the Display Rule's effect on price discovery.[50] In fact, the importance of

final action on the NASD's proposal in order to permit the NASD to evaluate its proposal in light of the Commission's actions on the proposals it is adopting today.

[43] Preferenced orders (*i.e.*, orders routed to a specific market maker pursuant to a pre-existing agreement) are executed immediately at the inside quote. Unpreferenced orders are executed against market makers in a security in rotation. SOES, however, does not execute an unpreferenced order against a single market maker more than once every 15 seconds.

[44] The current SOES rules have been extended, with certain changes that do not affect the handling of limit orders, through January 31, 1997. Securities Exchange Act Release No. 37502 (July 30, 1996), 61 FR 40869 (August 6, 1996).

[45] *See* Securities Exchange Act Release No. 36548 (December 1, 1995), 60 FR 60392 (December 8, 1995) (''NAqcess Release 1''); NAqcess Release 2, *supra* note 21. As proposed, NAqcess would act as an order delivery system with a limited public limit order file.

Limit orders up to 9,900 shares would be permitted in NAqcess for the top 250 Nasdaq National Market securities, defined by median daily dollar volume, and for 1,000 shares for all other Nasdaq securities. Market makers would be allowed to query the entire limit order file. All other market participants would be limited to viewing the top of the NAqcess limit order file (*i.e.*, the best priced buy and sell limit orders, and the size associated with those orders—the NAqcess inside market). This inside market would be factored into the calculation for the inside quote for each Nasdaq security. Although use of NAqcess would be voluntary, limit orders not entered in NAqcess would be provided with market-wide price protection under the proposal.

[46] *See generally* Thomas H. McInish & Robert A. Wood, *Hidden Limit Orders on the NYSE*, 21 J. Portfolio Mgmt. 19 (No. 3, Spring 1995) (''McInish & Wood Study''). The authors asserted that NYSE specialists only display about 50% of limit orders that better existing quotes. In their opinion, this practice represents a serious policy issue because it places both public investors and regional exchanges at a disadvantage. They asserted that hiding limit orders impedes strategic decisions on order placement; results in publicly submitted market orders receiving inferior prices; hampers the monitoring of order executions; reduces the probability of a limit order being executed; results in a delay in reporting limit order executions; interferes with the ability of the regional exchanges to execute public orders; and artificially improves NYSE performance relative to the regional exchanges using a common benchmark. The authors also claimed that NYSE Rule 60 is ambiguous in that the specialists may have some leeway in choosing what to disclose in their quotes.

In its comment letter to the Market 2000 Study, however, the NYSE asserted that its publicly disseminated best bid or offer includes all firm trading interest announced on the floor as required by the exchange's rules. *See* Letter from William H. Donaldson, Chairman and Chief Executive Officer, NYSE, to Jonathan G. Katz, Secretary, SEC at 25–26 (November 24, 1992). In addition, the NYSE issued a policy statement that reiterates that specialists have an obligation to reflect in their quotes certain limit orders received manually or via SuperDOT that are not executed on receipt. *See supra* note 26.

[47] Market 2000 Study, at IV–6.

[48] *See, e.g.*, Letter from Thomas F. Ryan, Jr., President and Chief Operating Officer, Amex, to Jonathan G. Katz, Secretary, SEC, dated February 1, 1996 (''Amex Letter''); Letter from David E. Shaw, Ph.D., Chairman, D.E. Shaw & Co., to Jonathan G. Katz, Secretary, SEC, dated January 9, 1996 (''D.E. Shaw Letter'') (rule will promote transparency); Letter from Paul A. Merolla, Vice President, Associate General Counsel, Goldman, Sachs & Co., to Jonathan G. Katz, Secretary, SEC, dated January 26, 1996 (''Goldman Sachs Letter'') (rule would benefit marketplace); Letter from Craig S. Tyle, Vice President and Senior Counsel, Securities and Financial Regulation, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC, dated January 16, 1996 (''ICI Letter'') (increased transparency of customer limit orders in all markets could produce benefits to the markets and investors); Letter from Donald L. Crooks, Managing Director, Lehman Brothers, Inc., to Jonathan G. Katz, Secretary, SEC, dated February 26, 1996 (''Lehman Letter'') (rule promotes transparency and results in improved opportunities for execution of customer orders); Letter from Bernard L. Madoff and Peter B. Madoff, Bernard L. Madoff Investment Securities, to Jonathan G. Katz, Secretary, SEC, dated January 12, 1996 (''Madoff Letter'') (rule will help achieve true price discovery and fairness to investors); Letter from Andrew E. Feldman, Director and Associate General Counsel, Smith Barney Inc., to Jonathan G. Katz, Secretary, SEC, dated January 29, 1996 (''Smith Barney Letter'') (rule will promote transparency and assist in achieving best execution of orders). *But see* Letter from Charles R. Hood, Senior Vice President and General Counsel, Instinet, to Jonathan G. Katz, Secretary, SEC, dated January 16, 1996 (''Instinet Letter'') (exceptions to rule eliminate potential positive impact on transparency).

[49] For example, limit order trading allows investors the opportunity to trade at prices superior to those represented by the prevailing inside bid and offer. See NASD Study, *supra* note 21.

[50] According to SuperDOT trade data analyzed by the Commission's Office of Economic Analysis (''OEA''), customer limit orders account for 50% of all NYSE customer trades originating from orders routed through SuperDOT (''customer trades'') of 100–500 shares; 66% of all customer trades of 600–1,000 shares; 71% of all customer trades of 1,100–3,000 shares; and 74% of all customer trades of 3,100–9,900 shares. The Commission believes that these high percentages are based, at least in part, on the fact that limit orders routed through SuperDOT are required to be displayed in the

limit orders in the trading process was documented in recent studies.[51] The author quantified the impact of exposing limit orders on quoted spreads and effective transaction costs. Using NYSE data, he determined that the quote spreads resulting from participation of the limit order book were approximately 4 to 6 cents smaller than the spreads not set by the limit order book. Further, trading costs on the NYSE were approximately 3–4 cents less per share on a ''round trip'' transaction when both the purchase and the sale were executed against the limit order book.[52]

The uniform display of limit orders also will lead to increased quote-based competition. Market makers will not only be competing amongst themselves, but also against customer limit orders represented in the quote. The Commission believes that this result will reduce the possibility of certain trading behavior on Nasdaq that was recently the subject of a Commission investigation.[53] As reported in the 21(a) Report, Nasdaq market makers widely adhered to a ''pricing convention,'' whereby Nasdaq market makers maintained artificially inflexible quotations and as a result often traded with the public at prices unduly favorable to such market makers.[54] In addition, the Commission determined that Nasdaq market makers adhered to a ''size convention'' that deterred Nasdaq market makers from narrowing their quotes to create a new inside market unless the market makers were willing to trade at least 2,000 to 5,000 shares at that price, rather than the minimum quotation size as determined by NASD rules.[55] This practice prevented the dissemination of improved quotes when a trader sought to trade stock only at a size equal to the minimum quotation size. Thus, the true buying and selling interest in a given security was not reflected in the published quotes.

In addition to the Commission's actions, and those of the Department of Justice in connection with its investigation of the Nasdaq market, the Commission believes the requirement to display customer limit orders in market maker quotes would inhibit market makers from engaging in the conduct described above. Moreover, the display of limit orders reduces the potential for certain other conduct described in the 21(a) Report, including market maker collaboration and coordination of trade and quote activities. Market makers will be less able to improperly coordinate such behavior due to the display of competing customer order flow and the resulting transparency of ultimate buying and selling interest. The Commission believes that the display requirement will both foster renewed quote-based competition among market makers and introduce new competition from customer limit orders.

The Commission also believes that overall market liquidity should be enhanced due to the increased trading volume that is expected to result from the display of limit orders.[56] As noted previously, customer limit orders account for a significant percentage of total customer orders on the NYSE, where customer limit orders generally are required to be displayed when they represent a better price.[57] Moreover, previous Commission initiatives designed to enhance transparency have resulted in increased competition and liquidity for the markets.[58]

Customers also will be better able to monitor the quality of their executions. Currently, the failure to display limit orders often results in inferior or missed executions for these orders. The Commission has received frequent complaints from customers whose limit orders have not been filled while other executions are reported at prices inferior to their limit order prices. Requiring the display of customer limit orders in specialist and market maker quotes, although not guaranteeing that such limit orders will be executed, will help ensure that other orders are not executed at inferior prices until better priced limit orders are executed. Similarly, customers entering market orders will be able to determine whether their orders are receiving the best price available. Customers also will be in a better position to compare the execution quality provided by different broker-dealers.[59]

The absence of a uniform limit order display requirement across all markets has contributed to the controversy among market participants regarding the availability of true price improvement

specialist's quote. The Commission believes that these percentages help demonstrate the benefits associated with limit order display for both large and small order sizes. In addition, OEA data shows that NYSE customer limit orders routed through SuperDOT narrow the NYSE quote 22% of the time and match the quote 39% of the time for customer limit orders of 100–1,000 shares; narrow the quote 17% of the time and match the quote 43% of the time for customer limit orders of 1,100–3,000 shares; and narrow the quote 14% of the time and match the quote 46% of the time for customer limit orders of 3,100–9,900. OEA data also shows that, when the NYSE bid-ask spread was ¼ point or more, customer limit orders routed through SuperDOT narrow the NYSE spread between 41% and 50% of the time, depending on the size of the customer order.

[51] *See* Jason T. Greene, *The Impact of Limit Order Executions on Trading Costs in NYSE Stocks* (An Empirical Examination), December 1995 (''Greene Study''); *see also* Jason T. Greene, *Limit Order Executions and Trading Costs for NYSE Stocks*, June 1996 (''Greene Study II'').

[52] The Commission further believes that the display requirement will improve price transparency in securities with diverse trading characteristics. Based on SuperDOT trade data, the Commission's OEA has determined that for NYSE securities with an average daily trading value (''ADTV'') of under $100,000, customer limit orders account for 57% of all NYSE customer trades originating from orders routed through SuperDOT (''customer trades'') of 100–500 shares; 69% of all customer trades of 600–1,000 shares; 76% of all customer trades of 1,100–3,000 shares; and 83% of all customer trades of 3,100–9,900 shares. Limit orders also are frequently used for securities with higher ADTVs. For example, for NYSE securities with an ADTV of over $5,000,000, customer limit orders account for 48% of all NYSE customer trades of 100–500 shares; 68% of all customer trades of 600–1,000 shares; 72% of all customer trades of 1,100–3,000 shares; and 73% of all customer trades of 3,100–9,900 shares. Moreover, OEA data shows that for NYSE securities with an ADTV of under $100,000, customer limit orders routed through SuperDOT narrow the NYSE quote 30% of the time and match the quote 32% of the time. For less liquid securities, therefore, the display of customer limit orders narrows spreads, improves price discovery, and increases market depth. For NYSE securities with an ADTV of $5,000,000 or more, customer limit orders routed through SuperDOT narrow the NYSE quote 18% of the time and match the quote 41% of the time.

The NASD has suggested that the greater the size of the displayed spread, the greater the use of limit orders. *See* NASD Study, *supra* note 21.

[53] *See* 21(a) Report, *supra* note 28. The investigation identified a number of practices in the Nasdaq market that are similar to practices identified in the 1963 Special Study. *See* SEC, Report of Special Study of Securities Markets (1963). For example, the 1963 Special Study discussed cooperation and information sharing between traders, as well as other non-competitive practices. *Id.* at pt. 2, 576–577.; *See also* Competitive Impact Statement of the U.S. Department of Justice Antitrust Division, United States v. Alex. Brown & Sons, *et. al.*, (S.D.N.Y. 1996).

[54] As a result of this convention, most Nasdaq stocks were quoted only in increments of ¼. Under the convention, stocks with a dealer spread of ¾ or more would only be quoted in even-eighths (*i.e.*, ¼, ½, ¾), thereby giving rise to a minimum inside spread of ¼. Stocks with dealer spreads less than ¾ would be quoted in both even and odd-eighths, thereby allowing a minimum inside spread of ⅛. The pricing convention significantly limited the flexibility and competitiveness of price quotations in the Nasdaq market.

[55] *See* 21(a) Report, *supra* note 28.

[56] *See* Greene Study and Greene Study II, *supra* note 51 (limit orders affect the quoted spread, provide liquidity to traders that demand immediacy of execution, and may contribute to reduced trading costs); NASD Study, *supra* note 21 (the liquidity supplied by limit orders reduces trading costs of market participants); OEA Data, *supra* notes 50 and 52 (limit orders narrow spreads, improve price discovery, and increase market depth).

[57] *See* OEA Data, *supra* notes 50 and 52.

[58] *See* Market 2000 Study at Study IV. *See also* discussion at section III.A.b.iii., *infra*; Simon & Colby *The National Market System For Over-The-Counter Stocks* (''Simon and Colby''), 55 Geo. Wash. L. Rev. 17 (1986).

[59] The Commission notes that if the Display Rule leads some market makers to charge commissions for handling limit orders, Commission rules require disclosure of such charges. *See* 17 CFR 240.10b–10.

opportunities. Many claim that ''hidden'' limit orders in exchange markets contribute to distorted price improvement figures for these markets.[60] This potential distortion also hinders a customer's ability to monitor execution quality. Pursuant to the Display Rule, the vast majority of limit orders will be publicly disclosed, thus enabling a more accurate comparison of price improvement opportunities, and enabling customers and broker-dealers to make more informed order routing decisions.[61]

Moreover, the Commission believes that the display of limit orders will benefit orders routed to automated execution systems. To the extent these systems execute orders at prices based on the best displayed quotation for a particular security,[62] customers whose orders are executed through these systems will receive the benefit of prices that more accurately reflect buying and selling interest in the market.

In sum, the Commission believes the adoption of the Display Rule is an important step in furthering the goals expressed by Congress in the 1975 Amendments. The Display Rule will provide enhanced opportunities for public orders to interact with other public orders, consistent with congressional goals.[63] In addition, the display requirement will, among other things, narrow quotes, enhance market liquidity, and improve an investor's ability to monitor the quality of its executions.[64] This will create a better environment for execution of both limit and market orders without the participation of a dealer. The increased order interaction will result in quicker and more frequent executions of customer limit orders. The Display Rule, therefore, will increase the likelihood that limit orders will be executed, a result that the Commission believes is consistent with the duty of best execution.

b. Response to Comments [65]

The Commission proposed Rule 11Ac1–4 to establish minimum display requirements for customer limit orders that improve a specialist's or OTC market maker's best bid or offer for a particular security as well as the size of such orders. In addition, the rule requires the display of the size of certain limit orders priced at the national best bid or offer (''NBBO''). Although the rule generally would mandate the display of limit orders, market makers and specialists still would retain some flexibility in handling limit orders accepted for execution.

Specifically, the rule allows an OTC market maker or specialist, immediately upon receipt of a limit order, to: (1) Change its quote and the size associated with its quote to reflect the limit order; (2) execute the limit order; (3) deliver the limit order in an exchange- or association-sponsored system that complies with the requirements of the rule; or (4) send the limit order to another market maker or specialist who complies with the requirements of the rule. The rule would require a specialist or OTC market maker to display a customer limit order when the order was ''held'' by the specialist or OTC market maker. If the specialist or OTC market maker immediately sends the order to a system or to another specialist or OTC market maker that complies with the rule, the specialist or OTC market maker that routed the order would have satisfied its obligation to display the order. These alternatives are intended to allow market makers, specialists, and market centers an opportunity to continue to provide their valuable services while offering customers the best available execution opportunities.

The Display Rule as adopted maintains these alternatives as proposed. Additionally, to better achieve its aims and to respond to comments, the Commission has made some modifications to the proposed rule. For example, the Commission has decided to permit a specialist or OTC market maker to deliver a limit order to certain ECNs as an alternative to representing the limit order in its quote. This change is an extension of the proposed exception that permits a specialist or OTC market maker to deliver a limit order to an exchange- or association-sponsored system that complies with the Display Rule. Moreover, with regard to implementation of the rule, the Commission is providing for a four-stage phase-in over a one year period for non-exchange-traded securities.

Of the commenters who specifically addressed the proposed Display Rule, an overwhelming majority strongly support the inclusion of customer limit orders in the quote.[66] One commenter

[60] *See* James J. Angel, *Who Gets Price Improvement on the NYSE?*, Working Paper, December 1994. In studying the availability of price improvement on the NYSE, the author noted that over 18% of the market orders that were price improved were filled by SuperDOT limit orders. Based on this percentage, the author estimated the percentage of orders price improved by ''hidden'' limit orders and determined that if such limit orders were represented in the specialist's quote rather than ''hidden,'' spreads would have been narrower and NYSE price improvement statistics would have declined. *See also*, McInish & Wood Study, *supra* note 46; Mitchell A. Petersen & David Fialkowski, *Posted Versus Effective Spreads: Good Prices or Bad Quotes*, 35 J. Fin. Econ. 269 (1994) (the fact that so many orders execute inside the posted spreads indicates that quotes do not represent the true supply and demand of a given security, and may be based, in part, on the failure to display public limit order interest in the quote). *Cf.* Ross, Shapiro and Smith, *supra* note 17 (although the authors did not examine limit orders in detail, and discounted the effect of ''hidden'' limit orders on their statistics, the authors found that limit orders provide 27% of the price improvement afforded to SuperDOT market order volume).

[61] *See, e.g.*, Amex Letter (rule would help eliminate hidden limit orders); Letter from Frederick Moss, Chairman of the Board, CSE, to Jonathan G. Katz, Secretary, SEC, dated January 16, 1996 (''CSE Letter'') (elimination of hidden limit orders will eliminate illusion of superior price improvement); Letter from Harold S. Bradley, Vice President and Director of Trading, Investors Research Corporation, to Jonathan G. Katz, Secretary, SEC, dated January 13, 1996 (''Investors Research Letter'') (hidden limit orders are not justified).

[62] *Compare* discussion of best execution at section III.C.2.

[63] *See* 15 U.S.C. 78k–1(a)(1)(C)(v).

[64] The Commission notes that a few commenters are concerned about the potential effects of the Commission's proposals on institutional customers. *See* Goldman Sachs Letter; Letter from Howard J. Schwartz, Chairman and Chief Executive Officer, and James Hanrahan, Managing Director—Trading, Lynch, Jones & Ryan, Inc., to Jonathan G. Katz, Secretary, SEC, dated February 9, 1996 (''LJR Letter''); Letter from A.B. Krongard, Chairman, SIA Board of Directors, and Bernard L. Madoff and Robert Murphy, Co-Chairmen, Order Execution Committee, Securities Industry Association, to Jonathan G. Katz, Secretary, SEC, dated February 26, 1996 (''SIA Letter''). The Commission believes that the Display Rule will benefit both retail and institutional customers, while preserving the access to the markets that institutional customers have today. For example, an institutional customer's block size limit order would not be subject to the rule unless such customer requests that the order be displayed. Moreover, any customer, whether individual or institutional, can request that its non-block size limit order not be displayed. The Commission also notes that increased quote competition and enhanced transparency should improve the prices at which institutions and market makers begin their negotiations for the execution of institutional orders. *See also* 21(a) Report, *supra* note 28.

[65] For further discussion of the views of commenters, see the Summary of Comments, *supra* note 4.

[66] *See, e.g.*, Amex Letter; Letter from Marshall E. Blume, Director, Howard Butcher Professor of Financial Management, The Wharton School of the University of Pennsylvania, to Jonathan G. Katz, Secretary, SEC, dated January 11, 1996 (''Blume Letter''); Letter from George W. Mann, Jr., Senior Vice President and General Counsel, BSE, to Jonathan G. Katz, Secretary, SEC, dated January 26, 1996 (''BSE Letter''); Letter from Robert H. Forney, CHX, to Jonathan G. Katz, Secretary, SEC, dated January 23, 1996 (''CHX Letter''); D.E. Shaw Letter; Letter from Antitrust Division, U.S. Department of Justice, to SEC, dated January 26, 1996 (''DOJ Letter''); Letter from Preston Estep, Estep Trading Partners L.P., to Jonathan Katz, Secretary, SEC, dated December 21, 1995 (''Estep Letter''); Goldman Sachs Letter; ICI Letter; Lehman Letter; Madoff Letter; Letter from William A. Lupien, Chairman and Chief Executive Officer, Mitchum, Jones & Templeton, Inc., to Jonathan G. Katz, Secretary, SEC, dated January 8, 1996 (''MJT Letter''); Letter from Joseph R. Hardiman, President, National

notes that true price discovery and fairness for public investors can only be achieved when limit orders are reflected in the NBBO.[67] Other commenters, expressing strong support for the proposed rule, believe that market-wide limit order procedures will improve the markets by enhancing overall market transparency [68] and eliminating the advantages derived by some markets from hidden limit orders.[69] The Department of Justice states that the proposed rule encourages quote competition, which is likely to reduce spreads,[70] and allows customer orders to interact with one another.[71] In this regard, several commenters recognize that the proposed rule would assist in achieving best execution of customer orders [72] by increasing the opportunities for execution of limit orders, and improving the prices for market orders.[73] Another commenter states that the proposed rule is consistent with investor expectations and will act to protect retail customer interests.[74]

Other commenters oppose the proposal. Several commenters in this group have raised the following general concerns regarding the proposed rule.

i. Distinction Between Markets

Several commenters argue that the Display Rule does not take into account distinctions between auction and dealer markets. Some of these commenters, discussing the Proposing Release as a whole, argue that the Commission's proposals would ''auctionize'' the dealer market.[75] One commenter warns that, because auction and dealer markets are fundamentally different, a single set of rules for both auction and dealer markets would reduce quote quality and damage overall market integrity in dealer markets.[76] Although the SIA reports that the consensus view of its Ad Hoc Committee on Order Execution is to require a market maker to reflect customer limit orders in the quote, the SIA argues that the adoption of the proposed rule, without suggested modifications, could adversely affect the dealer market so as to weaken competition between dealer and auction markets.[77]

The Commission believes that the application of the principles underlying the limit order display rule to the dealer market is neither a new nor radical concept. In 1975, Congress envisioned an NMS in which public limit orders in qualified securities would have a central role.[78] Congress anticipated that the NMS would make all specialists and market makers aware of public customer limit orders held anywhere in the system, and provide enhanced protection and priority for limit orders in stocks qualified for trading in a national market system.[79] The Commission has consistently recognized since 1975 that, in order to satisfy this Congressional vision, multiple-market display of limit orders was an important component for qualified securities.[80] More recently, the Market 2000 Study recommended that the SROs, including the NASD, consider requiring the display of customer limit orders,[81] and the NASD, in a proposed rule change filed with the Commission, proposed that CQS market makers display in their quotes certain customer limit orders for exchange-listed securities traded OTC.[82] The NASD also has proposed a mechanism for the display and protection of customer limit orders in Nasdaq securities.[83]

Although some commenters claim that the Commission is attempting to ''auctionize'' the dealer market, the display requirement is based on transparency and agency concerns, including a broker-dealer's obligation to provide its customers with best execution.[84] The display of customer limit orders will act to narrow spreads, improve price discovery, and increase market depth. The enhanced transparency resulting from the Display Rule will increase the likelihood that customer limit orders will be executed, improve the execution prices of market orders, and strengthen an investor's ability to monitor the quality of executions.[85] These results further several Congressional goals.

In keeping with Congressional intent, the Commission believes the treatment of limit orders should reflect the very real changes in market structure that have taken place since the enactment of the 1975 Amendments. These changes include the development of a robust, liquid OTC dealer market that attracts significant investor trading interest, that trades at many multiples of the volume extant in 1975, and that is characterized by the inclusion of thousands of securities that meet the NMS designation.[86] In addition, the

Association of Securities Dealers, Inc., to Jonathan G. Katz, Secretary, SEC, dated January 26, 1996 (''NASD Letter''); Letter from James E. Buck, Senior Vice President and Secretary, NYSE, Inc., to Jonathan G. Katz, Secretary, SEC, dated January 15, 1996 (''NYSE Letter''); Letter from David S. Pottruck, President and Chief Operating Officer, The Charles Schwab Corporation, to Jonathan G. Katz, Secretary, SEC, dated May 7, 1996 (''Schwab Letter II''); SIA Letter; Letter from William R. Rothe, Chairman, and John L. Watson III, President, Security Traders Association, to Jonathan G. Katz, Secretary, SEC, dated January 15, 1996 (''STA Letter''); Letter from John F. Luikart, President and Chief Executive Officer, Sutro & Co., to Jonathan Katz, Secretary, SEC, dated January 16, 1996 (''Sutro Letter'').

[67] Madoff Letter.

[68] *See, e.g.*, Amex Letter; CHX Letter; CSE Letter; D.E. Shaw Letter; ICI Letter; Investors Research Letter; Lehman Letter; Smith Barney Letter.

[69] *See, e.g.*, Amex Letter (rule would help eliminate hidden limit orders); CSE Letter (elimination of hidden limit orders will eliminate illusion of superior price improvement); Investors Research Letter (hidden limit orders are not justified).

[70] DOJ Letter.

[71] *Id; see also* Amex Letter; Lehman Letter.

[72] *See, e.g.*, Lehman Letter; Smith Barney Letter.

[73] Lehman Letter.

[74] D.E. Shaw Letter.

[75] *See, e.g.*, Letter from R. Steven Wunsch, President, AZX, Inc., to Jonathan G. Katz, Secretary, SEC, dated January 15, 1996 (''AZX Letter''); Goldman Sachs Letter; Letter from David Rich, Vice President, Jefferies & Company, Inc., to Jonathan G. Katz, Secretary, SEC, dated January 25, 1996 (''Jefferies Letter''); Letter from Robert W. Murphy, President, RPM Specialist Corporation, to Jonathan G. Katz, Secretary, SEC, dated February 26, 1996 (''RPM Letter''); Letter from Robert A. Schwartz, Professor of Finance and Economics, and Yamaichi Faculty Fellow, Leonard N. Stern School of Business, New York University, and Robert A. Wood, Distinguished Professor of Finance, Fogelman College of Business and Economics, University of Memphis, to Jonathan G. Katz, Secretary, SEC, dated January 23, 1996 (''Schwartz & Wood Letter''); SIA Letter.

[76] RPM Letter.

[77] SIA Letter. *Cf.* Letter from A.B. Krongard, Chairman, SIA Board of Directors, and Bernard L. Madoff, Chairman, Trading Committee, to Jonathan G. Katz, Secretary, SEC, dated August 1, 1996 (''SIA NAqcess Letter'') (the SIA, in its letter to the Commission regarding the NASD's NAqcess proposal, states that the Commission's Order Execution Obligations proposal would narrow quotation spreads, improve transparency, and provide customers with best execution of their orders, consistent with the 1975 Amendments).

[78] Senate Report, *supra* note 31.

[79] *Id.* The Senate Report stressed the need to establish a mechanism by which specialists and market makers could be made aware of customer orders within the NMS. The Senate Report was ''satisfied that [the legislation] grant[ed] the Commission complete and effective authority to implement a system for the satisfaction of public limit orders.'' *Id.* at 18.

[80] *See* Securities Exchange Act Release No. 15671 (March 22, 1979), 44 FR 20360 (April 4, 1979) (Development of a National Market System Status Report). *See also* Securities Exchange Act Release No. 18738 (May 13, 1982), 47 FR 22376 (May 24, 1982) (proposing limit order display requirement for Rule 19c-3 securities).

[81] Market 2000 Study, at IV–6.

[82] *See supra* note 42.

[83] *See supra* note 45.

[84] *See* NASD Study, *supra* note 21 (enhancements to limit order handling, within the dealer market structure, will create significant benefits for investors). *See also* Manning II, *supra* note 24 (Commission's extension of limit order protection to Nasdaq does not suggest an intention to ''auctionize'' the dealer market).

[85] *See* Senate Report, *supra* note 31 at 16–18 (discussing desirability of incorporating certain auction market principles, such as limit order display and protection, for certain qualifying securities in dealer markets).

[86] To date, approximately 4,000 Nasdaq securities have qualified for the NMS designation. In order to qualify as an NMS security, transaction reports are required to be reported on a real-time basis pursuant to an effective transaction reporting plan

Continued

Commission believes that application of the Display Rule should also benefit investors in those securities that do not yet meet the NMS designation.[87] As noted earlier, the Commission believes that the increased use of limit orders in these securities will lead to a narrowing of spreads and ameliorate certain anti-competitive practices that have developed in the Nasdaq market.[88] The Commission has determined that certain practices on Nasdaq have contributed to artificially wide spreads for OTC securities.[89] The display of customer limit orders in all Nasdaq securities will promote accurate pricing and convey the true buying and selling interest in such securities.

A few commenters believe that the Display Rule was proposed solely to address problems in the OTC market, and accordingly there is no need for a uniform rule applicable to exchange markets.[90] As noted previously, the Commission's intention is to create a minimum standard for the handling of limit orders across all markets, consistent with market transparency, competition, and best execution principles. Currently, the national securities exchanges do not handle limit orders uniformly, and in fact the non-display of retail-size limit orders is permitted under certain circumstances. The rule will ensure that investors benefit from the display of limit orders, no matter where an order is sent for execution.[91] A minimum standard also addresses concerns regarding the prevalence of hidden limit orders.[92] The Commission believes, therefore, that a market-wide limit order display requirement is most consistent with the duty of best execution and the expectations of investors.

ii. Distinction Between Quotes and Orders

Some commenters maintain that the rule blurs the distinction between quotations and orders.[93] One commenter states that limit orders represent only a finite trading interest while quotes represent the ''actual'' market for a security; thus, displaying limit orders would not reflect the ''true'' state of the market and impair the quality of quotation information.[94] The commenter suggests that a separate limit order file would be more appropriate in light of these distinctions.[95] In this vein, several commenters mention the NASD's proposed NAqcess system,[96] suggesting that the Commission postpone implementation of the Display Rule until the Commission has an opportunity to assess the effects of NAqcess.[97] A few commenters suggest the implementation of an industry-wide consolidated limit order book as an alternative or a logical outgrowth of the Display Rule.[98]

The Commission believes that the display of limit orders is an essential component of accurate price discovery. A quote provides market participants with information regarding a market maker's or specialist's trading interest at a given price. A market maker or specialist could be willing to purchase or sell additional shares above its quoted size.[99] Entry of a customer limit order that improves the quote serves a similar purpose. A limit order accurately represents trading interest for a specific volume of a security at the limit price. There are few practical differences between customer limit orders and a market maker's quotation that is firm only for its quoted size. Nonetheless, the proposed rule was not intended to equate customer limit orders with market maker quotes. Instead, the proposed rule was designed to facilitate greater transparency of customer trading interest, with the expectation that orders would have an increased opportunity for best execution without the interaction of a dealer. In the Commission's opinion, these objectives are more difficult to achieve if customer trading interest is not routinely represented in publicly displayed quotes. The Commission notes that the Display Rule provides other means by which a market maker or specialist may comply with the requirements of the rule in the event a specialist or market maker elects not to display customer trading interest in its quote.[100]

Further, the Commission does not agree with the suggestion that the Commission postpone the adoption of the Display Rule until the Commission has had an opportunity to evaluate the NASD's NAqcess proposal.[101] Although

approved by the Commission. *See* 17 CFR 240.11Aa2–1 and 11Aa3–1.

[87] As discussed below, the Display Rule will apply only to ''covered securities.'' At the present time, the Commission does not believe the rule should be extended to securities for which market makers are not required to quote continuous firm two-sided markets, such as OTC Bulletin Board securities.

[88] *See supra* discussion at section III.A.2.a.

[89] 21(a) Report, *supra* note 28.

[90] *See, e.g.,* BSE Letter; NYSE Letter; RPM Letter; Letter from David E. Humphreville, Executive Director, The Specialist Association, to Jonathan G. Katz, Secretary, SEC, dated February 2, 1996 (''Specialist Assoc. Letter'').

[91] *See, e.g.,* Greene Study & Greene Study II, *supra* note 51.

[92] *See generally* McInish & Wood Study, *supra* note 46 (hidden limit orders result in, among other things, artificial price improvement statistics and inferior order executions); *Traders Accuse Specialists of Holding Back Limit Orders,* Investment Dealers' Digest, 8, (February 14, 1994) (some traders have continued to accuse NYSE specialists of hiding limit orders even after the NYSE issued an Information Memo reminding specialists of their duties); Greene Study and Greene Study II, *supra* note 51 (one explanation for the significantly lower bid-ask spreads in the 1994–95 sample than in the 1990 sample, and the increase in the percentage of transactions at the quoted prices from the 1990 sample to the 1994–95 sample, may be that NYSE specialists were more diligent in reflecting the limit order book in their quotes as per Information Memo 93–12); Amex Letter (rule would help eliminate hidden limit orders); CSE Letter (elimination of hidden limit orders will eliminate illusion of superior price improvement); Investors Research Letter (hidden limit orders are not justified).

[93] *See, e.g.,* Letter from Raymond L. Aronson, Senior Managing Director, Bear, Stearns & Co. Inc., to Jonathan G. Katz, Secretary, SEC, dated February 1, 1996 (''Bear Stearns Letter''); Instinet Letter; Letter from Carol L. Cunniff, Executive Vice President, Ruane, Cunniff & Co., Inc., to Jonathan G. Katz, Secretary, SEC, dated February 23, 1996 (''Ruane Letter''); Letter from Charles R. Schwab, Chairman and Chief Executive Officer, The Charles Schwab Corporation, to Jonathan G. Katz, Secretary, SEC, dated January 25, 1996 (''Schwab Letter''). *But see* Schwab II Letter (supporting the Display Rule).

[94] Ruane Letter.

[95] *Id. See also* Bear Stearns Letter (discussion of proposed central limit order file for The Nasdaq Stock Market so as to preserve distinction between dealer quotes and agency or proprietary orders).

[96] *See supra* note 45.

[97] *See, e.g.,* Letter from A.B. Krongard, Chief Executive Officer, Alex. Brown & Sons, Inc., to Jonathan G. Katz, Secretary, SEC, dated February 29, 1996 (''Alex. Brown Letter''); Letter from Albert G. Lowenthal, Chairman of the Board, Fahnestock & Co., Inc., to Jonathan G. Katz, Secretary, SEC, dated January 15, 1996 (''Fahnestock Letter''); Jefferies Letter; Letter from Gerard S. Citera, Deputy General Counsel, First Vice President, PaineWebber Incorporated, to Jonathan G. Katz, Secretary, SEC, dated February 9, 1996 (''PaineWebber Letter''); Schwab Letter; STA Letter; Letter from Charles Snow, Counsel, Securities Traders Association of New York, to Jonathan G. Katz, Secretary, SEC, dated January 30, 1996 (''STANY Letter''); *see also* Letter from C. Robert Paul, III, Associate General Counsel, Dean Witter Reynolds, Inc., to Jonathan G. Katz, Secretary, SEC, dated January 31, 1996 (''Dean Witter Letter''); Goldman Sachs Letter.

[98] *See, e.g.,* DOJ Letter; MJT Letter; Schwab Letter; Letter from Junius W. Peake, Monfort Distinguished Professor of Finance, University of Northern Colorado, to Jonathan G. Katz, Secretary, SEC, dated January 15, 1996 (''Peake Letter''); Letter from Jeffrey P. Ricker, CFA, to Jonathan G. Katz, Secretary, SEC, dated January 15, 1996 (''Ricker Letter''); Letter from Peter W. Jenkins, Chairman, and Holly A. Stark, Vice Chairman, Institutional Committee, Securities Traders Association, to Jonathan G. Katz, Secretary, SEC, dated January 19, 1996 (''STAIC Letter'').

[99] Under Commission rules, the market maker's quote is only required to be firm up to its published size. *See* 17 CFR 240.11Ac1–1(c)(2).

[100] For example, a market maker or specialist may deliver a customer limit order immediately upon receipt to another market maker or specialist, or to an ECN or an exchange or association sponsored system pursuant to the rule. Section 240.11Ac1–4(c)(5) and (6).

[101] The Commission notes that the proposed NAqcess system is a significant and controversial proposal which has generated approximately 1,100 comment letters. The Commission is in the process

the NASD has argued that limit orders entered into NAqcess, as proposed, would result in greater display of OTC limit order prices, there is no assurance that market makers will enter such orders into NAqcess rather than hold the orders internally.[102] Therefore, the Commission believes that the Display Rule is necessary to ensure display of these orders in the OTC market.[103] If approved, NAqcess can assist in compliance with the Display Rule to the extent that the system incorporates customer limit orders in the consolidated quote stream, thereby allowing market makers to enter limit orders in NAqcess rather than displaying limit orders in their quotes.[104] As noted earlier, the Commission has identified important benefits associated with limit order display. Accordingly, the Commission believes that it is not necessary to observe the effects of NAqcess in order to determine the benefits of the limit order display requirement.

iii. Liquidity

Several commenters assert that application of the Display Rule to Nasdaq securities could reduce liquidity in the Nasdaq market.[105] These commenters believe that market maker profits may decline due to narrowed spreads or increased compliance costs, with the result that many firms will decide not to make the necessary capital commitment to continue their market making operations. The commenters conclude that as the number of market makers in a security declines, liquidity will be adversely affected, leading to wider spreads. Moreover, some commenters believe that the decrease in liquidity will impair the capital formation process, especially for securities that are not mature enough for auction trading.[106]

At least one commenter states that the usefulness of limit orders could be diminished by the refusal of some market makers to accept such orders, or by the imposition of high commission costs charged to recoup lost profits on spreads.[107] Other commenters believe, however, that it will be difficult for market makers to increase their commissions for limit orders.[108] They believe commission charges would not compensate for lost trading profits or prevent the ebb of market liquidity.[109]

Other commenters believe the proposed rule will not have a negative impact on market liquidity. One commenter explicitly states that the benefits of the proposed rule would outweigh any potential adverse effects on liquidity.[110] Another commenter says that the proposed rule would not result in any significant reduction in market making activity.[111] The CSE notes that it has not noticed any negative effects on market liquidity as a result of the implementation of its own limit order display rule.[112] Yet another commenter states that although it currently does not trade OTC securities, it expects that many market participants, including the commenter, would begin trading such securities if the proposed rule was adopted, thereby increasing market liquidity.[113]

The display of limit orders is designed, among other objectives, to publicize accurate market interest and increase quote competition.[114] The Commission understands that certain costs, including a diminution in market maker profits, are associated with this increased market transparency. For example, a market maker that holds a customer limit order has, in effect, a private ''option'' to execute the order as principal. The longer this ''option'' remains open, the more time the market maker has to determine whether it can profit from executing the order as principal.[115] This private market maker ''option,'' however, is potentially detrimental to the execution opportunities for the limit order. The Display Rule will limit this ''option'' and expose the order to market-wide trading interest. Moreover, increased price competition from limit orders may reduce market maker profits through the narrowing of spreads.[116] As a result, the Display Rule may force less efficient competitors to stop making markets in some of the securities they now quote.

Although the rule could lead to a reevaluation by some market makers of the services they wish to provide, after considering the available evidence, and in light of its experience, the Commission does not believe that there will be a significant negative impact on the markets for covered securities. The Commission is not convinced that the loss of some market competitors in securities with many market makers would impair liquidity in these securities.[117] The Commission believes that customer orders are the ultimate source of liquidity to the markets, and that adoption of a rule that improves the handling of such orders will have the effect of enhancing market liquidity.[118] The Commission believes that a limit order display requirement will encourage new limit orders in securities to be entered, thus providing additional liquidity to the market from customers.[119] The potential of limit orders to narrow quotes also may encourage the entry of additional market

of reviewing the comments and has yet to decide what action to take on the proposal.

[102] *See* NAqcess Releases, *supra* note 45. As noted above, limit orders not entered in NAqcess would be provided with market-wide price protection.

[103] In any event, NAqcess will not address at all the issues of disparate limit order handling practices or hidden limit orders in the exchange markets.

[104] *See* Section 240.11Ac1–4(c)(5).

[105] *See, e.g.,* Alex. Brown Letter; Bear Stearns Letter; Dean Witter Letter; Letter from Robert F. Mercandino, Senior Vice President, Dillon, Read & Co., Inc., to Jonathan G. Katz, Secretary, SEC, dated March 15, 1996 (''Dillon Letter''); Jefferies Letter; Lehman Letter; Letter from Robert J. McCann, Managing Director, Co-Head, Global Equity Markets, Merrill Lynch, Pierce, Fenner & Smith Incorporated, to Jonathan G. Katz, Secretary, SEC, dated January 26, 1996 (''Merrill Letter''); NASD Letter; PaineWebber Letter; Letter from David P. Semak, Vice President Regulation, PSE, to Jonathan G. Katz, Secretary, SEC, dated January 15, 1996 (''PSE Letter''); SIA Letter.

[106] *See, e.g.,* NASD Letter; SIA Letter.

[107] Letter from David K. Whitcomb, Professor of Finance and Economics, Rutgers University Graduate School of Management, to Secretary, SEC, dated January 12, 1996 (''Whitcomb Letter'').

[108] *See, e.g.,* Letter from Irving M. Pollack, Alan B. Levenson, and Robert H. Rosenblum, Fulbright & Jaworski L.L.P., on behalf of Herzog, Heine and Geduld, Inc., to Jonathan Katz, Secretary, SEC, dated January 16, 1996 (''HHG Letter''); STA Letter.

[109] *Id.*

[110] Lehman Letter.

[111] Letter from Daniel G. Weaver, Ph.D., Assistant Professor of Finance, Marquette University, to Jonathan G. Katz, Secretary, SEC, dated January 10, 1996 (''Weaver Letter'').

[112] CSE Letter.

[113] The commenter noted further that it does not currently trade OTC securities because it cannot be sure that its order will be represented to the whole market. Estep Letter.

[114] *See* Market 2000 Study, at Study IV.

[115] The Commission recognizes that there is also a cost associated with holding that limit order, because a market maker is required to execute that limit order if it has engaged in a transaction for its own account that would have satisfied the limit order. *See* Manning I & II, *supra* note 24.

[116] *See supra* notes 53–55 and accompanying text (display of customer limit orders in market maker quotes will act to eliminate certain trading behavior on Nasdaq and foster quote competition).

[117] *See, e.g.,* STAIC Letter (limit orders are critical to market liquidity).

[118] The Commission does not thereby denigrate the contribution OTC market makers provide in a dealer market. The Commission notes, however, that most market makers provide primarily intra-day liquidity to customers, and generally seek to end the trading day with a limited inventory position in order to minimize inventory risk. Customer limit orders represent buying or selling interest at specified prices for their stated duration, which may be longer than intra-day. Market makers holding customer limit orders rely in part on these limit orders in quoting their own prices to buy and sell securities.

[119] *See* Greene Study & Greene Study II, *supra* note 51 (limit orders affect the quoted spread and provide liquidity); NASD Study, *supra* note 21 (limit orders, like market maker quotes, supply liquidity to the markets); OEA Data, *supra* notes 50 and 52.

orders.[120] The Commission believes that the additional liquidity due to narrower spreads and increased customer orders will outweigh any potential loss of liquidity provided by market makers.

As noted above, some commenters expressed concern regarding the effect of the Display Rule on the availability of liquidity to small issuers.[121] In response to these comments, the Commission's OEA examined market maker participation in 4,839 Nasdaq issuers over a one month period in 1996. The findings indicate that: (1) the median number of market makers in a security is not appreciably lower for initial public offering (''IPO'') issuers or for securities with the smallest market capitalization; (2) broker-dealers that participated in IPO underwriting syndicates were active participants in aftermarket trading, but were not alone in providing significant market maker liquidity; and (3) in Nasdaq securities with the smallest market capitalization ($2 million or less), the single most active market maker in an issue typically participated in one-third or fewer trades. Thus, there is no convincing evidence that Nasdaq issuers, including IPO issuers, are dependent for liquidity on any one market maker. The pattern of market making activity indicates that significant liquidity is provided by market makers who are not the ''most active'' market makers in a security. Because there does not appear to be high concentration in market making, and because of the Commission's belief that customer order flow is a critical source of market liquidity, the Commission believes that the proposals adopted today will not unduly impact liquidity for small or new issuers.

Furthermore, Commission experience has been that enhancements to transparency result in improved liquidity.[122] The Commission believes that these improvements are attributable, at least in part, to the impact of transparency on market integrity and investor confidence. In addition, while market maker profits per trade may be reduced as spreads are narrowed, increased volume over time may result in stable profit levels.[123]

It also may become feasible for market makers to charge customers commissions for handling limit orders, even if that is not the current practice today. As noted earlier, some commenters claim that the Display Rule will have a disparate impact on wholesale Nasdaq market makers in that such market makers would not be able to offset the increased costs associated with limit order display through charges or commissions.[124] The Commission believes, however, that the systems costs associated with the Display Rule should not be overly burdensome,[125] nor should systems costs or any reduced market maker profitability from declining spreads be more extensive for wholesale market makers than for integrated market makers. Although exchange specialists and integrated firms may find it easier than wholesale firms to charge commissions initially, the Commission notes that wholesale firms are not prohibited from attempting to compensate for handling limit orders, either through negotiated fee arrangements, or reducing any payment made for order flow for limit orders.[126]

iv. Discretion

Several commenters are concerned that the Display Rule would eliminate their discretion to determine the best way in which to execute a customer's order. The commenters also claim that customers rely on the judgment of a market professional in choosing whether to display a limit order.[127] For example, the NYSE believes that its current procedures allow broker-dealers to achieve the best prices for their customers.[128] Other commenters suggest that if the rule were amended to require the display of representative size, a dealer would retain some discretion on

[120] *See* NASD Study, *supra* note 21 (those investors that demand immediate execution, *e.g.* those entering market orders, will pay less for executions due to the augmented liquidity supplied by limit orders); Greene Study and Greene Study II, *supra* note 51 (limit orders provide liquidity to traders that demand immediacy of execution and may contribute to reduced trading costs); OEA Data, *supra* notes 50 and 52 (display of limit orders narrows spreads, improves price discovery, and increases market depth for a variety of securities, including those NYSE securities that are thinly traded).

[121] This concern also was raised in the context of the ECN Amendment to the Quote Rule.

[122] In several instances in the past, commenters have claimed that other Commission initiatives to increase transparency would act to reduce liquidity; others have warned that such initiatives would decrease the competitiveness of the U.S. markets in relation to foreign counterparts. These claims, however, have not been borne out. For example, many industry participants argued that the NASD's adoption of its ''Manning'' rules would severely impact market liquidity. *See* Market 2000 Study. However, there has been no evidence offered to the Commission of adverse liquidity consequences caused by these limit order protections, and the Commission is not aware of any significant diminution in liquidity. Further, as discussed in the Market 2000 Study, other transparency initiatives, such as the adoption of real-time transaction and quotation reporting, have resulted in increases in the competitiveness and liquidity of both listed and OTC equity markets despite market maker protestations to the contrary prior to adoption of these initiatives. *See Id.* at Study IV. *See also* Simon & Colby, *supra* note 58. Even the creation of Nasdaq itself was met with much opposition. The result of this major structural change was far from the predicted ''death knell'' of the OTC market. Rather, OTC market strength and liquidity have flourished since Nasdaq's inception. Based on the Commission's experience with other market structure initiatives, therefore, the Commission believes that improvements in order handling, market transparency, and efficiency will likely improve market liquidity.

[123] Although the display requirement may decrease a market maker's per trade profit due to narrowed spreads, the Commission believes that this decrease will be made up for in part by expected increases in trading volume attributable to enhanced liquidity and pricing efficiency. *See supra* note 24. The Commission believes this potential impact on market maker profits is justified in light of the benefits that will accrue to investors and the markets as a whole. Moreover, even if market makers' profits from trading do decline, market makers may be able to obtain increased revenues from commissions or other fees charged directly to customers. Because these other revenue sources are more transparent to customers than are revenues from market maker trading with customers on a proprietary basis, increased reliance on these other revenue sources will enable customers to make more informed trading decisions.

[124] *See, e.g.,* HHG Letter.

[125] *See* Memorandum from Stephen L. Williams, S.L. Williams Co. to Richard R. Lindsey, Director, Division of Market Regulation, SEC (July 29, 1996) (''Williams Study'').

[126] The level of these fees, of course, would be determined by competitive forces in the marketplace. Any fees passed on to non-broker-dealer customers would have to be disclosed in a clear fashion to the customer, and otherwise comply with applicable law. For example, NASD Rule 2440 states, in part, that if a member acts as agent for a customer in a transaction, the customer shall not be charged more than a fair commission or service charge, taking into consideration all relevant circumstances. *See also* NASD Regulatory & Compliance Alert Vol. 7, No. 4 (December 1993). At least one commenter argued that because spreads are ascertainable from public quotations and commissions are not, a rule that encourages charging commissions does not satisfy the goal of increased transparency. *See* Letter from Bruce C. Hackett, Managing Director, Salomon Brothers Inc., to Jonathan G. Katz, Secretary, SEC, dated January 25, 1996 (''Salomon Letter''). The Commission notes, however, that Rule 10b–10 under the Exchange Act requires customer confirmations to disclose commissions and, for listed and Nasdaq securities, the difference between the reported price and the price to the customer. Based on this disclosure, execution costs could actually become better known to customers if explicit fees are charged. Therefore, the Commission believes that the Display Rule will allow a customer to more easily monitor the execution quality of its limit orders, even if subject to fees for limit order executions. In addition, this situation should foster competition with respect to the amount, if any, firms will charge for the execution of a customer limit order.

[127] *See, e.g.,* NYSE Letter; RPM Letter; Specialist Assoc. Letter.

[128] *See, e.g.,* NYSE Letter; Specialist Assoc. Letter. According to the NYSE, a customer can choose to benefit from the display of its order or to benefit from relying on the specialist's discretion, depending on whether the order is sent to the post via SuperDOT, or is manually submitted. The NYSE also notes that enabling a specialist to use discretion in the handling of limit orders is important in light of the fact that the NYSE defines a limit order as an order to buy or sell at a specified price, or at a better price, if obtainable after the order is represented in the trading crowd. *See* NYSE Rule 13.

how best to execute the order.[129] To preserve discretion, at least one commenter argues that the rule should apply only when the customer requests that its order be displayed.[130]

The Commission believes that the rule appropriately establishes a presumption that limit orders should be displayed, unless such orders are of block size, the customer requests that its order not be displayed, or one of the exceptions to the rule applies. The exception allowing a customer to request that its limit order not be displayed gives the customer ultimate control in determining whether to trust the display of the limit order to the discretion of a market professional, or to display the order either in full, or in part, to other potential market interest.[131]

v. Systems Burdens

Based on their belief that compliance with the Display Rule would result in a large increase in quotation traffic, a number of commenters maintain that the rule would require major overhauls of the order handling systems used by brokers, market makers and markets. For example, one commenter believes that it would be impossible to comply with the rule without additional automated systems.[132] The commenter concludes that the costs associated with new systems and additional staff necessary to monitor a more volatile market would contribute to wider spreads and higher commissions.[133] In addition, one SRO claims that quotation traffic must be kept at manageable levels in order to allow entities to continue to manually process limit orders, thus eliminating the need for entities to bear the costs associated with automation of such orders.[134] Other commenters also note their concern over the potential operational costs associated with the rule.[135] The STA states that an in-depth review is needed to determine the costs for new equipment and technology necessary to comply with the rule.[136]

A few commenters are concerned that the increased quotation traffic that may be associated with the rule could pose a threat to the integrity of the central quotation system.[137] One commenter suggests that the rule be suspended for the first 30 minutes of trading.[138] Another commenter argues that modifying the rule to require only the display of representative size could act to alleviate some of the traffic concerns.[139]

The Commission recognizes that achieving greater transparency for limit orders depends upon the existence of systems that are capable of the smooth and efficient display of trading interest. The Commission believes that the Display Rule will not substantially increase the quotation burden for exchange markets, where systems currently exist for the display of quotes.[140] In the OTC market, the Display Rule will result in additional quotation entries for market makers that display customer limit orders in their quotes. The Commission believes, however, that current systems can handle the additional volume, or can be expanded at moderate cost to handle the additional volume.[141] Further, the Commission notes that the Display Rule contains an exception to the display requirement for limit orders of *de minimis* size priced at the NBBO when the market maker's or specialist's quote matches the NBBO.[142] The Display Rule also allows a specialist or OTC market maker several ways to comply with the rule by routing the order elsewhere without displaying the limit order in its own quote by transmitting a customer limit order to an exchange-or association-sponsored system or to a qualifying ECN.

Additionally, a few commenters believe that the Commission should give more consideration to the Display Rule's impact on automatic execution systems.[143] These commenters express concern that a market maker could be exposed to multiple transactions from its own customers in the firm's automatic execution system, which executes orders at the NBBO, even if the NBBO represents a customer limit order as opposed to the price at which a market maker is willing to trade. They claim this result is unfair, especially if the automatic system has a minimum share requirement that exceeds the customer limit order.

The Commission acknowledges the concern of some commenters regarding the rule's interaction with automated execution systems. However, because customer limit orders reflect actual trading interest, it has been the Commission's intention to enhance customer order executions throughout the markets by requiring the display of these customer limit orders.[144] Where a limit order represents the best quote, a

[129] *See, e.g.,* Madoff Letter; NASD Letter; SIA Letter.

[130] Jefferies Letter.

[131] *See* discussion of the exceptions to the Display Rule at section III.A.3.c., *infra. See also* § 240.11Ac1–4(c)(2); § 240.11Ac1–4(c)(4) (permitting a customer with a block size limit order to request that the order be displayed pursuant to the Display Rule). The Commission does not mean to imply that a specialist or OTC market maker that is not displaying a limit order pursuant to the request of its customer may not change its quotation in that security based on the specialist's or market maker's own trading interest.

[132] PaineWebber Letter.

[133] *Id.; see also* Bear Stearns Letter (noting that the display rule would increase the volatility of quotes and, as a result, market makers would have a difficult time keeping up with the rapid changes in bids, offers, and quote sizes).

[134] PSE Letter.

[135] *See, e.g.,* Alex. Brown Letter; Bear Stearns Letter; Jefferies Letter.

[136] STA Letter.

[137] *See, e.g.,* Letter from Thomas J. Jordan, Financial Information Forum, to Jonathan G. Katz, Secretary, SEC, dated January 12, 1996 (''FIF Letter''); PaineWebber Letter; PSE Letter. This concern was expressed with respect to the proposal that the Commission adopt both the Display Rule and Price Improvement Rule. The fact that the Commission has deferred action on the Price Improvement Rule, as discussed below, should substantially diminish any system capacity concerns. Moreover, the Commission's decision not to require display of *de minimis* orders also should minimize system capacity concerns.

[138] FIF Letter. According to FIF, the heaviest traffic volume usually occurs within the first 30 minutes of trading.

[139] PSE Letter. The PSE notes, however, that the rule, even if modified, still may result in an increase in staffing costs. *Id.*

[140] For example, SuperDOT data indicates that 57% of all customer trades originating from orders routed through SuperDOT are limit orders. Of these limit orders, 20% narrowed the NYSE quote. *See supra* note 52. According to the NYSE, 93% of such orders are reflected in the NYSE quote within two minutes of receipt. *See supra* note 36 and accompanying text (teleconference). *See also* CSE Letter (costs associated with implementing such a system are minimal, especially in light of the benefits to the public); Paperwork Reduction Act discussion at section VII, *infra.*

[141] The Commission notes that many small to medium broker-dealers utilize shared trading systems that enable such broker-dealers to streamline their OTC market making and back office responsibilities. Subscribers to such systems benefit by sharing costs associated with the application of improved technologies, rather than creating and updating systems of their own. Therefore, it is assumed that any changes deemed necessary to these shared systems to facilitate efficient compliance with the Display Rule also would be shared by all subscribers.

In addition, the Commission specifically evaluated the costs associated with implementation of the Display Rule. Based on this evaluation, the Commission concluded that most market makers will not be required to invest substantial amounts of money in systems development in order to comply with the Display Rule as adopted. *See* Williams Study, *supra* note 125. *See also* CSE Letter (costs of implementing a system for display of limit orders are minimal).

[142] *See,* § 240.11Ac1–4(b)(1)(ii). *See also* § 240.11Ac1–4(b)(2)(ii).

[143] *See, e.g.,* Dillon Letter; HHG Letter; Merrill Letter; PaineWebber Letter; Schwab Letter.

[144] The Commission recognizes that SROs may have rules regarding the minimum quotation sizes associated with a specialist's or market maker's quote. The Commission believes that SROs should consider amending such rules and modifying certain systems to allow a specialist or market maker to quote in sizes smaller than the minimum quotation size when such quote represents a customer limit order. With these changes, a specialist or market maker that displays a customer limit order in its quote pursuant to the Display Rule would not be responsible for executing as principal any additional shares at the limit price where the size of the customer limit order is less than the minimum quotation size set by the SRO.

market maker can respond by sending its customer order to the market maker displaying the limit order at the NBBO, thereby attempting to execute the limit order setting that price and removing it as the NBBO.[145] Moreover, where the size of a limit order represented in the best quote is smaller than the size eligible for execution in an automated execution system, the Commission believes that it is not inconsistent with best execution principles for market makers and specialists using automated execution systems to take into account the size of the limit order quote in determining the price at which an order, or portions thereof, should be automatically executed. The Commission believes, however, that in such a case the market maker or specialist should provide the customer order an execution at the displayed price at least up to the displayed size of the limit order.[146] For example, if customer limit orders compose the NBBO of 10 ¼–10 ½ (100 × 300), and a market maker receives a market order to sell 1,000 shares via an automatic execution system, the market maker may automatically execute 100 shares of the order at 10 ¼, and the remaining portion of the order at the next best bid.

3. The Operation of the Rule as Adopted [147]

The rule as adopted applies to: (i) every member of an exchange that is registered by that exchange as a specialist or has been authorized by an exchange to perform functions substantially similar to that of a specialist (''specialist''); and (ii) OTC market makers.[148] The rule as adopted applies to specialists that trade on the floor of an exchange; [149] third market makers; [150] members of a national securities association that are OTC market makers; [151] and specialists that trade an OTC security pursuant to unlisted trading privileges (''UTP'').[152] These market makers are required to reflect immediately in their bid or offer the price and the full size of each customer limit order they hold at a price that would improve their bid or offer in the security.[153] In addition, all market makers covered by the rule are obligated to reflect in their quotes the full size of a customer limit order that: (1) is priced equal to their bid or offer; (2) is priced equal to the national best bid or offer for the security; and (3) represents more than a *de minimis* change in relation to the size associated with their bid or offer.[154]

a. ''Covered Securities'' and ''Customer Limit Orders''

Rule 11Ac1–4 applies to ''customer limit orders'' in ''covered securities.'' A covered security is defined as any reported security and any other security for which transaction reports, last sale data or quotation information is disseminated through an automated quotation system that is sponsored by a registered securities association. This definition is designed to encompass all exchange-listed securities, Nasdaq National Market securities and Nasdaq SmallCap securities.[155]

The Commission received several comments regarding the application of the rule to Nasdaq securities. Some commenters believe that the rule should not extend to all Nasdaq securities, and that some measure of liquidity should be used to determine which Nasdaq securities should be subject to the rule.[156] For example, one commenter suggests limiting the rule's application to the top 250 Nasdaq National Market securities with the highest average daily trading volume over the previous calendar quarter.[157] In contrast, another commenter favors the inclusion of Nasdaq SmallCap securities within the definition of ''covered security.'' [158] Further, at least one commenter suggests that the rule apply not only to all Nasdaq securities, but also to OTCBB securities.[159]

As noted above, the Commission believes that the Display Rule should apply equally to exchange-traded as well as non-exchange-traded securities. In addition, the Commission believes it is appropriate to include all Nasdaq securities within the definition of ''covered security.'' The Commission believes that, regardless of the current trading volume of a particular security, the investors in any security can benefit from the uniform display of customer buying and selling interest if all quotations in that security are required to be firm. As noted previously,[160] data analyzed by the Commission shows that limit orders are used frequently for transactions in NYSE securities with ADTVs under $100,000. On average, 63% of customer orders in such securities are limit orders. Of those limit orders, 30% narrowed the NYSE quote and 32% matched the quote. This data indicates that the display requirement may lead to increased customer trading interest in securities that are currently thinly traded.[161]

The Commission reiterates that limit order display is not solely an issue of improved transparency. The Display Rule will improve the handling of customer orders across all markets and increase the probability that a customer limit order will be executed. Therefore, the Commission believes that a uniform limit order display requirement is

[145] The Commission notes that the NASD's NAqcess system, as proposed, would permit market makers to send orders, including proprietary orders, to other market makers through the system. *See supra* note 45. *See also* ITS Plan. Moreover, the Commission believes that the NASD should consider modifying its SOES system to allow OTC market makers to route customer orders for execution against limit orders displayed by another market maker in the same security.

[146] If the market maker or specialist attempted but was unable to execute the displayed limit order through a reasonable and efficient means, such as sending an order through an automated system for an OTC security, the market maker or specialist would not be expected to give that limit order price to its customer.

[147] SRO rules that impose more stringent standards would continue to apply.

[148] Although the Commission consolidated certain sections of the proposed rule for clarity, the rule as adopted applies to the same entities identified in the proposed rule.

[149] Section 240.11Ac1–4(b)(1).

[150] Section 240.11Ac1–4(b)(2).

[151] Section 240.11Ac1–4(b)(2).

[152] Section 240.11Ac1–4(b)(1).

[153] Section 240.11Ac1–4(b)(1)(i) and (b)(2)(i). The Commission wants to clarify that references to a specialist's or OTC market maker's bid or offer include instances where the bid or offer is a proprietary quote, as well as instances where the bid or offer represents a customer limit order. Further, if a market maker is not quoting publicly (*e.g.*, a market maker that does not meet the 1% threshold of the Quote Rule), it still must publish a quotation that displays the limit order, or avail itself of one of the exceptions. Moreover, the Commission notes that some commenters suggest that the rule should require broker-dealers that are not specialists or OTC market makers to immediately transmit limit orders they receive to an entity or system that will display the orders in a manner consistent with the rule. *See, e.g.*, CSE Letter; Madoff Letter; Whitcomb Letter. Also, at least one commenter believes that institutional firms trading in block size should be considered ''OTC market makers'' for purposes of the rule and subject to the display requirement. Amex Letter. *See generally infra* notes 191–193 and accompanying text. The fact that the Commission has not adopted these suggestions as part of the Display Rule does not relieve broker-dealers which receive such orders from compliance with their obligation to obtain best execution for those orders.

[154] Section 240.11Ac1–4(b)(1)(ii) and (b)(2)(ii).

[155] Securities listed on regional exchanges that do not substantially meet NYSE or Amex original listing criteria do not satisfy the definition of ''covered security.'' Such securities are not ''reported securities'' as that term is defined, nor do they meet the other elements of the definition of covered security. OTC Bulletin Board (''OTCBB'') securities also do not satisfy the definition of covered security. The Commission has determined not to extend the display requirement to any of those securities at the present time.

[156] *See, e.g.*, Bear Stearns Letter; Lehman Letter; Merrill Letter; NASD Letter; SIA Letter.

[157] SIA Letter.

[158] PSE Letter.

[159] Ricker Letter.

[160] *See supra* notes 50 and 52.

[161] As stated previously, because dealers are not required to register as OTC market makers in OTCBB securities and are not required to enter and maintain continuous firm two-sided quotations in OTCBB securities, the Commission does not believe that the Display Rule should be extended to such securities at this time.

closely related to a broker-dealer's ability to obtain best execution for limit orders.

The Commission recognizes, however, that the rule represents a significant change for the OTC market. The Commission, therefore, has determined to provide a phase-in period for application of the rule to customer limit orders in Nasdaq securities.[162] The Commission believes that the phase-in period will allow the Commission to monitor the effects of the rule on the most liquid Nasdaq securities first, while ensuring that customer limit orders in all Nasdaq securities will receive the benefits of the rule within one year of its adoption. This schedule also will provide OTC market makers with time to adjust their systems to comply with the rule's requirements.[163]

Under the rule, a customer limit order includes any order to buy or sell a covered security at a specified price not for the account of a broker or dealer. Customer limit orders transmitted from one broker-dealer to another for execution are included in the definition. Although some commenters believe that the rule should be extended to orders for the account of a broker or dealer, the Commission does not believe such extension is appropriate at this time. The Commission acknowledges that the display of all limit orders, including those of a broker or dealer, would further enhance transparency.[164] Requiring the display of broker-dealer limit orders, however, would be a significant extension of the rule that could change its impact on market maker participation and increase its operational burdens. Therefore, the Commission believes that the effects of the rule should be observed, and additional comment should be solicited, before the rule is expanded.[165]

b. Size

As noted above, some commenters expressed concern regarding the requirement that specialists and OTC market makers display the full size of a customer limit order. These commenters suggest that the rule only require the display of representative size.[166] They argue that the use of representative size would preserve the ability of a specialist or OTC market maker to exercise some discretion in determining the best execution of the order.[167]

Other commenters, however, believe that the full size of a customer limit order should be required to be displayed.[168] Such commenters argue that the display of full size is an important element in the Commission's effort to improve transparency and, therefore, no dealer discretion should be permitted unless a customer expressly requests that its order not be displayed, or expressly grants discretion, pursuant to the Display Rule.[169]

The Commission continues to believe that the display of full size is important to improved transparency. The display of full size will provide the most accurate picture of the depth of the market at a particular price.[170] The Commission believes that size, as well as price, is a factor in attracting order flow and that the display of full size increases the likelihood that a limit order will be executed. The Commission, however, understands that there may be instances where a customer would not want its order displayed, or does not want the full size of its order displayed. The Display Rule, therefore, still contains an exception for a customer that decides to rely on the discretion of a broker-dealer rather than to take advantage of the display requirement for its limit order.[171] The Display Rule also permits a customer to state explicitly what portion, if any, the customer wants displayed.[172] Furthermore, the Display Rule contains other exceptions to the display requirement that will ease any potential operational burdens associated with the display of full size.[173]

The following example illustrates the application of the Display Rule where a customer limit order improves the price of a specialist's or market maker's quote. Assume that a market maker covered by the rule is quoting 10–10½ (2,000×2,000) when it receives a customer limit order in a covered security to buy 4,000 shares at 10¼. Under the rule, the market maker must change the price and size associated with its quote to 10¼–10½ (4,000×2,000). If this new quote represents the NBBO, the Display Rule would require the market maker to increase the size associated with the quote upon the receipt of additional customer limit orders. For example, if the market maker subsequently accepts another customer limit order to buy 4,000 shares at 10¼, the market maker must change its quote to 10¼–10½ (8,000×2,000).

The rule as adopted contains a *de minimis* standard applicable in situations where a customer limit order equals a specialist's or market maker's displayed price and that price is equal to the NBBO. One commenter states that the use of representative size would eliminate the Commission's need to rely on a *de minimis* standard.[174] Another commenter believes that the rationale underlying the *de minimis* standard demonstrates that the display of size does not benefit public customers.[175] Some commenters also believe that the *de minimis* standard should be clarified or even eliminated.[176]

The Commission proposed the *de minimis* standard to strike a balance

[162] *See* description of the phase-in at section III.A.3.d., *infra*.

[163] *See, e.g.*, Amex Letter.

[164] The Commission also is sensitive to the fact that providing suitable opportunities for broker-dealers, including options market makers, to lay off risk is an important component of overall market liquidity and efficiency. *See* Manning II, *supra* note 24.

[165] The Commission notes that other actions recently taken by the Commission address certain anti-competitive behavior in the Nasdaq market that heretofore may have negatively impacted the ability of some broker-dealers, including options market makers, to efficiently perform their market making function. *See* 21(a) Report, *supra* note 28.

[166] *See, e.g.*, BSE Letter; CSE Letter; Madoff Letter; NASD Letter; NYSE Letter; PSE Letter; SIA Letter; Specialists Assoc. Letter; *see also* LJR Letter (questioning whether the display of size, at least with respect to institutional orders, would be consistent with best execution obligations).

[167] *See, e.g.*, Madoff Letter; NASD Letter; NYSE Letter; SIA Letter; Specialists Assoc. Letter.

[168] *See, e.g.*, Amex Letter; CHX Letter; D.E. Shaw Letter.

[169] *See, e.g.*, Amex Letter; CHX Letter; D.E. Shaw Letter; ICI Letter.

[170] A few commenters believe that all customer limit orders should be displayed, including the size of those orders that equal the specialist's or OTC market maker's bid or offer, but are not equal to the NBBO. *See, e.g.*, CHX Letter; Letter from Edward J. Johnsen, Vice President and Counsel, Morgan Stanley & Co., to Jonathan G. Katz, Secretary, SEC, dated January 16, 1996 (''Morgan Stanley Letter''); Peake Letter; Weaver Letter. The Commission believes, however, that the burden associated with the commenters' suggestion would outweigh the corresponding benefit to market transparency. Of course, the rule represents a floor, rather than a ceiling. An exchange, association, or broker-dealer may determine to adopt more stringent display requirements. Requiring display of size when the limit order is away from the NBBO and equals the market maker's or specialist's quote would provide some additional market information but also would require market makers not quoting at the NBBO to change their quote size on an ongoing basis. Although some market makers or specialists may choose to do so to be prepared if their quotation becomes the NBBO, on the whole the Commission believes the increased transparency that would result from this updating would not outweigh the burdens imposed by a display requirement.

[171] Section 240.11Ac1–4(c)(2).

[172] *Id.*

[173] As noted above, a specialist or OTC market maker has the ability to execute a customer limit order upon receipt; transmit the order to another exchange member or OTC market maker that will display the limit order in accordance with the rule; or transmit the order to an exchange or association sponsored system pursuant to the rule. Additionally, a specialist or OTC market maker may transmit an order to an ECN that provides for public display of limit orders and provides access to these orders. Moreover, the rule contains an exception to the display requirement for certain orders of *de minimis* size.

[174] CSE Letter.

[175] Dean Witter Letter.

[176] *See, e.g.*, Amex Letter; CHX Letter; Schwab Letter.

between the benefits of increased transparency and operational burdens that might arise under the display requirement in displaying limit orders irrespective of size. The *de minimis* standard was intended to reduce the burdens of displaying the smallest of limit orders where the frequent updating of the quote for smaller orders would not result in significant improvements in quotation size. The Commission believes that the size of a customer limit order should be considered *de minimis* if it is less than or equal to 10% of the displayed size associated with a specialist's or OTC market maker's bid or offer.[177]

The Commission believes that this *de minimis* standard will ease potential operational burdens associated with the display of additional size in a specialist's or OTC market maker's quote. The following example illustrates the application of the *de minimis* standard.

Assume a market maker's quote is 10–10½ (1,000×1,000), and the NBBO is 10–10¼ when the market maker receives a customer limit order to buy 2,000 shares at 10. Under the rule, the market maker is obligated to change the size of its quote immediately to 10–10½ (3,000×1,000).[178] In this case, the 2,000 share order size is more than *de minimis* in relation to the size associated with the market maker's quote. If the limit order was for 100 shares, however, the market maker would not be required to change its quotation size because the order is *de minimis* in relation to its quote.[179] Alternatively, the market maker could voluntarily display the additional 100 shares.

c. Exceptions

The rule requires the ''immediate'' display of certain customer limit orders. To satisfy this requirement, a specialist or OTC market maker must display the limit order immediately upon receipt unless there exists an applicable exception to the display requirement. Some commenters have asked for clarification of the ''immediate'' display requirement.[180] The Commission is mindful that some measure of time is needed for specialists or market makers to display limit orders in the quote. Assuming that a specialist or OTC market maker does not rely on one of the exceptions to the Display Rule, however, such specialist or OTC market maker must display the order as soon as is practicable after receipt which, under normal market conditions, would require display no later than 30 seconds after receipt.[181]

There are seven exceptions to the general requirements of the rule. The first exception applies to any customer limit order that is executed upon receipt of the order.[182] If the order is executed upon receipt, then no duty arises under the rule.

The second exception applies to any limit order that is placed by a customer who expressly requests that the order not be displayed.[183] This request may take place on an order by order basis, or may be agreed to prospectively. Most commenters that addressed the issue were in favor of the exception.[184] The Commission included this exception because there could be instances in which a customer prefers to exclude its order from public display. For example, a customer with a large limit order could wish to let its broker work the order rather than display the entire order. This exception gives the customer the right to decide if the order should be displayed in its entirety, in part, or not at all.[185] The Commission notes that under this exception, a customer may leave the decision to display an order to the discretion of a broker-dealer. Therefore, rather than instructing a broker-dealer not to display an order, a customer, consistent with this exception, may instruct the broker-dealer to use its discretion in determining whether to display the order. Although allowing some orders to not be displayed or to be displayed partially in the system reduces transparency, the Commission believes this exception is appropriate to give investors flexibility in deciding how their orders should be handled.

The exception to the rule requires a customer to expressly request that an order *not* be displayed.[186] A customer request that an order be placed in a particular non-public trading system would not, by itself, be deemed to be a non-display request. The Commission expects that most retail customers will want their limit orders displayed pursuant to the rule. Thus, the Commission has written the rule to require specialists and OTC market makers to assume that retail customers wish to have their orders displayed unless the customer specifically requests that the order not be displayed.

The exception also permits any customer to negotiate with its broker-dealer an individual agreement regarding the display of its limit orders either on an order-by-order basis or prospectively. Standardized disclaimers or contractual language in broker-dealer new account agreements, however, would not be deemed to be an individual request by a customer that its order or orders not be displayed.

The third exception applies to odd-lot orders.[187] The rule does not require the display of an order for less than a unit of trading as established by the rules of the exchange or association. In the event that a round-lot limit order represented in the quote is partially filled and, as a result, the remainder of the order would then be deemed an odd-lot order, the remainder of the order may be treated as an odd-lot for purposes of this exception. For example, assume a

[177] Any SRO may set more stringent display requirements through its own rules.

[178] If the original 1,000 shares displayed represents the market maker's proprietary quote and, consistent with Rule 11Ac1–1, the market maker no longer wishes to trade for its own account at 10, the market maker may quote at 10–10½ (2,000×1,000).

[179] The Commission stresses that all other orders previously considered *de minimis* and not displayed must be added to the order under consideration for purposes of the *de minimis* calculation. Therefore, in the case of a 100 share limit order to buy at 10, where the market maker had a previous 100 share limit order to buy at 10 that was not displayed pursuant to the *de minimis* standard, both orders must be considered together for purposes of making the *de minimis* calculation. Because 200 shares is more than 10% of the displayed size of 1,000, the market maker must include the 200 shares in its quote.

The Commission notes that if an OTC market maker chooses not to display a *de minimis* limit order, the NASD's interpretation regarding limit orders would prohibit the market maker from trading ahead of the limit order. *See* Manning I & II, *supra* note 24. In addition, the NASD has indicated that market makers must establish and consistently follow policies regarding the priority in which limit orders received from customers, which would include *de minimis* orders, will be executed. *See* Special NASD Notice to Members 95–43 (June 5, 1995).

[180] *See, e.g.,* Amex Letter; D.E. Shaw Letter; NYSE Letter; PSE Letter.

[181] The Commission stresses that specialists and OTC market makers still are under an obligation to protect the customer limit order even during the time the limit order is not displayed. *See, e.g.,* Manning I & II, *supra* note 24 (prohibiting trading ahead of customer limit orders). It should also be noted that this standard would supersede SRO rules that are less stringent with regard to the time in which limit orders are to be displayed. Those rules that impose more stringent standards may continue to apply.

[182] Section 240.11Ac1–4(c)(1).

[183] Section 240.11Ac1–4(c)(2).

[184] *But see, e.g.,* Madoff Letter; Morgan Stanley Letter.

[185] Any portion of a customer limit order that is not displayed pursuant to this exception shall not be included in the calculation for determining whether any other limit order is *de minimis. See supra* note 179.

[186] At least one commenter believes that documentation of such customer requests should be required. CHX Letter. Although the Commission does not believe it necessary to mandate a particular method of record keeping, the Commission expects the compliance departments of individual firms to discharge their responsibilities in such a manner as to allow adequate supervision of compliance with the customer's request not to display or to display pursuant to discretionary authority provided by the customer.

[187] Section 240.11Ac1–4(c)(3).

market maker is quoting at the NBBO (10¼–10⅜ (200×1000)) and is representing a 200 share customer limit order to buy when a market order to sell 150 shares is received. Upon execution of 150 shares of the 200 share customer limit order, the market maker is not required to display the remaining 50 shares of the order at 10¼.[188]

The fourth exception applies to block size orders.[189] Orders of at least 10,000 shares or for a quantity of stock having a market value of at least $200,000 need not be displayed in accordance with the rule, unless the customer so requests.[190] The Commission recognizes that the display of block size orders would add to market transparency. In practice, however, the handling of block size orders differs from other orders. For example, in the OTC market, market makers often negotiate terms and conditions with respect to the handling of block size orders, and display of block size orders may impact market maker quotations in a security more than would smaller limit orders.[191] Further, one of the major objectives in proposing the Display Rule was to improve the handling and execution opportunities afforded to customers that lack the power to negotiate better terms. Because most investors that trade in block size have such power, the Commission has chosen not to mandate the display of block size orders, unless the customer so requests.[192] The Commission is satisfied that the current definition strikes an appropriate regulatory balance by requiring a presumption in favor of display for those orders requiring enhanced protection, while not extending the presumption to those orders less likely to need such protection. Of course, the Commission may reevaluate its treatment of block size orders at a later date.

As proposed, the fifth exception would have applied to a limit order that is delivered immediately to an exchange or association sponsored system that displays limit orders and complies with the requirements of the rule with respect to that order.[193] This exception did not relieve a specialist or OTC market maker from its display obligation for orders it received through exchange or association facilities, unless the facility itself displayed the order.[194]

In the Proposing Release, the Commission requested comment on whether to extend this exception from display to instances where customer limit orders are sent to ECNs or PTSs by a specialist or OTC market maker.[195] As discussed below in connection with the amendments to the Quote Rule, the Commission is amending the Quote Rule to require specialists and OTC market makers to include priced orders they enter into ECNs in the bids and offers they communicate to their exchange or association for reflection in their published quotations, when such orders improve their published quotations.[196] In recognition of the concerns raised by commenters, the Commission also has included an alternative to the amendment designed to preserve the anonymity of specialists and OTC market makers that is currently provided by certain ECNs, while still publicizing in the public quotation stream better prices entered into ECNs. The ECN display alternative in the Quote Rule is available only if the ECN provides for public dissemination of the price and full size of the orders entered by specialists and OTC market makers to an exchange or association and provides access to other broker-dealers to trade at those prices which is equivalent to that provided in the market where the prices are disseminated.[197]

The Commission believes that ECNs that provide their best specialist and market maker prices to the public quotation system and provide ready access to their prices can provide an effective means for specialists and OTC market makers to ensure that customer limit orders are handled in a manner consistent with the Display Rule. In view of the ECN display alternative in the Quote Rule, the Commission believes it is appropriate to extend the exception in the Display Rule to orders entered into ECNs that comply with the Quote Rule alternative.[198] Accordingly, a specialist or OTC market maker that delivers a customer limit order to an ECN will be deemed to have satisfied its display obligation with regard to that order if the ECN complies with the requirements of the new alternative in the Quote Rule.[199] The proposed exception for limit orders entered into exchange or association sponsored systems contemplated that such orders would be transparent and accessible. Therefore, expanding the exception to include the use of ECNs that provide for the requisite transparency and accessibility is consistent with the rule as proposed.

The Commission notes that this exception to the Display Rule maintains the benefits, including increased transparency, provided to customer limit orders under the rule. The

[188] The market maker still will have best execution obligations with respect to the remaining odd-lot portion of the customer limit order.

[189] Section 240.11Ac1–4(c)(4).

[190] This block definition is consistent with the current definition used in NYSE Rule 127.10. Some commenters, however, suggest that the parameters for such orders be increased or made flexible depending on the liquidity of a particular security. *See, e.g.,* D.E. Shaw Letter; PSE Letter; Schwab Letter. Still others believe that there should be no exception for orders of block size. Instead, these commenters want such orders to be included within the scope of the rule so as to add to market transparency. *See, e.g.,* Amex Letter; ICI Letter; Lehman Letter; Peake Letter; Ricker Letter. One commenter suggests the use of a ''block indicator'' to give a specialist or OTC market maker the option of displaying the full size of the order or using the indicator to identify the quote as representing a block size order. Lehman Letter.

[191] *See, e.g.,* Manning II, *supra* note 24.

[192] Customers placing block orders, however, may request that the order be displayed in accordance with the requirements of the rule; a specialist or OTC market maker that accepts the order will be obligated to honor such a request. Section 240.11Ac1–4(c)(4). The Commission expects that adequate procedures will be developed to ensure compliance with a customer request. *See supra* note 186.

[193] Section 240.11Ac1–4(c)(5). A facility would not be deemed to comply with the requirements of the Display Rule if the highest priced buy orders and lowest priced sell orders entered by a specialist or OTC market maker in the facility for a particular security were not included in calculating the best bid and offer for the market and incorporated in the consolidated quote.

[194] One commenter argues that the exception permits specialists and OTC market makers to become ''fair weather dealers,'' effectively allowing them to selectively withdraw from the national market system, which creates a misleading picture of liquidity. Madoff Letter. The Commission believes, however, that the exception provides a specialist or OTC market maker with an appropriate amount of discretion in handling a customer limit order while ensuring that orders at the best price are displayed to the marketplace.

[195] *See, e.g.,* Letter from James Lynch, General Counsel, ITG, Inc., to Jonathan G. Katz, Secretary, SEC, dated, January 15, 1996 (''POSIT Letter'') (not supporting the extension of the exception); PSE Letter (extension of exception should be contingent on access provided by ECNs); Whitcomb Letter (doubtful that exception could be extended in today's environment); *see also* Madoff Letter (market makers and specialists should be able to represent a portion of the size of a customer limit order in other markets or ECNs, but the best price and some size should be reflected in their quote).

[196] *See* § 240.11Ac1–1(c)(5)(i)(A); *see also* Amendments to the Quote Rule discussion at section III.B.2.c.ii., *infra*.

[197] As discussed, the Commission expects the SROs to work expeditiously with ECNs that wish to avail themselves of this alternative, and is prepared to act if necessary to ensure the effectiveness of the ECN display alternative, prior to the effective date of the Quote Rule amendments. *See* Introduction and Summary, *supra; see also* § 240.11Ac1–1(c)(5)(ii); Amendments to the Quote Rule discussion at section III.B.2.c.iii., *infra*.

[198] *See* Amendments to the Quote Rule discussion at section III.B.2.c.i., *infra*, for a description of the ECN definition; *see also* § 240.11Ac1–1(a)(8); § 240.11Ac1–4(a)(8).

[199] Section 240.11Ac1–4(c)(5). *See also,* Amendments to the Quote Rule discussion on accessibility at section III.B.2.c.iii., *infra*. Additionally, a specialist or OTC market maker may be relieved of its display obligation if it delivers the customer limit order to an exchange or association sponsored system that complies with the new alternative in the Quote Rule. Section 240.11Ac1–4(c)(5).

exception ensures that customer limit orders will have equivalent public disclosure whether they are sent to an ECN that complies with the alternative or displayed directly in a specialist's or OTC market maker's quote.[200]

The sixth exception applies to a limit order that is delivered to another exchange member or OTC market maker that complies with the display requirements of the rule with respect to that order.[201] For example, a market maker that receives a limit order subject to the display requirement under the rule may immediately send the order to another market maker in the security if the other market maker will display the order in accordance with this rule.[202]

The seventh exception applies to ''all-or-none limit orders.'' An ''all-or-none limit order'' is an order accompanied by the customer's instruction that the order is to be executed in its entirety or not at all.[203] Although this exception was not included in the proposed rule, the Commission believes that exempting all-or-none limit orders is necessary to avoid operational difficulties regarding partial executions at the public quote.[204] In this regard, all-or-none limit orders typically are not displayed in the exchange markets today.[205] The Commission believes, therefore, that this exception is consistent with the goals and objectives of the Display Rule.

Finally, a new provision has been included that enables the Commission to exempt, conditionally or unconditionally, any transactions that it may determine are not encompassed within the purposes of the Display Rule. The Commission believes that this exemptive authority provides flexibility in applying the Display Rule.[206]

d. Effective Date and Phase-In

The Display Rule will become effective on January 10, 1997. As of this date, the Display Rule will apply to exchange-traded securities. Moreover, this date will mark the beginning of the first phase-in for Nasdaq securities. As of this date, the Display Rule will apply to the 1,000 Nasdaq securities with the highest average daily trading volume in the previous quarter.

The second phase-in date will be on March 28, 1997. From this date forward, the Display Rule will apply to the next 1,500 Nasdaq securities with the highest average daily trading volume over the previous quarter.[207]

The third phase-in date will be on June 30, 1997. From this date forward, the Display Rule will apply to the next 2,000 Nasdaq securities with the highest average daily trading volume over the previous quarter.

The final phase-in date will be on August 28, 1997. From this date forward, the Display Rule will apply to all remaining Nasdaq securities.

Although the Commission believes that the Display Rule should apply equally to exchange-traded and non-exchange-traded securities, the Commission understands that the Display Rule will more significantly impact current order handling procedures for Nasdaq securities in light of existing practices in that market. The phase-in period will allow the Commission to monitor the effects of the Display Rule on successive groups of Nasdaq securities while ensuring that all covered securities receive the benefits of the display requirement within one year of the Display Rule's adoption.

B. Amendments to the Quote Rule

1. Background

Public quotation reporting for equity securities is governed by the Commission's Quote Rule,[208] as well as by exchange and NASD rules. These rules require registered exchanges and securities associations to file quotation reporting plans with the Commission that provide for the collection and transmission of quotation information on a real-time basis for securities covered by the Quote Rule.[209] Market makers and exchange specialists communicate their quotes to the NASD or to an exchange pursuant to these plans and the NASD and exchanges in turn make this information available to vendors for dissemination to the public.[210]

The Quote Rule requires the collection and public dissemination of the best bid, best offer, and size for each market quoting any security covered by the Quote Rule, as well as the consolidation of those markets' quotations and public dissemination of the national ''consolidated'' best bid and offer (''NBBO'').[211] These quotations must be firm, and a market maker or specialist generally is obligated to execute an order at a price at least as favorable as its published bid or offer up to the size of its published bid or offer.[212] Broker-dealers covered by the Quote Rule, including dealers trading listed securities in the OTC market (*i.e.*, third market makers), must supply quotations to their exchange or association for dissemination to quotation vendors.

The 1975 Amendments identified the need for a prompt, accurate and reliable

[200] An OTC market maker or specialist choosing to enter customer limit orders for display through an ECN must still evaluate whether the customer order is likely to obtain best execution through display in that ECN. *See* section III.C.2., *infra*.

[201] Section 240.11Ac1–4(c)(6).

[202] One commenter believes that the rule should require a specialist or OTC market maker to obtain assurances that a customer's limit order will be displayed in accordance with the rule before such an order is sent. MJT Letter. *But see* PSE Letter; Salomon Letter. As noted earlier, the Commission believes that it is best left to a firm's compliance department to decide on the necessary assurances that the order will be displayed in conformance with the rule.

[203] *See, e.g.*, NYSE Rule 13.

[204] For example, if an all or none order to buy 1,000 shares at 10¼ were displayed in the quote and represented the NBBO, a subsequent market order to sell 500 shares could not be matched against the all or none order.

[205] *See, e.g.*, NYSE Rule 13.

[206] Section 240.11Ac1–4(d).

[207] Any security already covered by the rule will not be included as part of the calculation of the securities to be included in any subsequent group. Therefore, if a security is included as one of the 1,000 securities in the first group, such security will not be counted as one of the next 1,500 securities in the second group (even if such security's average daily trading volume over the previous calendar quarter would otherwise place it in the second group).

[208] 17 CFR 240.11Ac1–1. *See also* Securities Exchange Act Release No. 14415 (January 26, 1978), 43 FR 4342 (February 1, 1978) (''Quote Rule Adopting Release'').

[209] Rule 11Ac1–1(b)(1), 17 CFR 240.11Ac1–1(b)(1) (dissemination requirements for exchanges and associations).

[210] Rule 11Ac1–2, 17 CFR 240.11Ac1–2 (''Vendor Display Rule'') requires vendors of market information to display quotation information in a non-discriminatory manner.

[211] Rule 11Ac1–1(b)(1), 17 CFR 240.11Ac1–1(b)(1). Pursuant to the Quote Rule and the Joint Consolidated Quotation Plan (''CQS Plan''), the inside quotations collected and calculated by the exchanges and Nasdaq for exchange-listed securities are consolidated and disseminated to vendors by SIAC, the exclusive processor for consolidated quotations in listed securities. Similarly, Nasdaq is the exclusive processor for quotations in Nasdaq National Market (''Nasdaq NMS'') securities. Nasdaq collects and consolidates inside quotations furnished by OTC market makers and by exchanges pursuant to a Joint Self-Regulatory Organization Plan that provides for exchange trading of Nasdaq securities. Nasdaq then disseminates to vendors the inside bid and offer in Nasdaq NMS securities, and disseminates to various subscribers more specific information concerning the individual market maker and exchange quotes in each Nasdaq security. The terms ''consolidated quote'' and ''publicly available quotation,'' when used with respect to information disseminated by exchanges and Nasdaq via their exclusive processors, refer to the quotes that SIAC or Nasdaq furnishes to vendors for dissemination to the public. The terms ''public quote'' or ''publicly available quote,'' when used with respect to a specialist or market maker, refer to the bid and offer that the specialist or market maker has furnished to its exchange or association for inclusion in the consolidated quote. The term ''public quotation system'' refers to this entire structure through which SROs collect quotations from market participants, and the exclusive processors collect, process, and disseminate those quotations to vendors.

[212] Rule 11Ac1–1(c)(1), 17 CFR 240.11Ac1–1(c)(1). This is referred to as the broker-dealer's ''firmness'' requirement.

central quotation reporting system.[213] The Quote Rule, in particular, was designed to facilitate the NMS by requiring specialists and market makers publishing quotes to provide these quotes to a central system so they could be made available to the public. Congress considered the public availability of quotation information to be critical to fair and competitive markets because published quotations provide investors, their brokers, and other market participants with essential information about the condition of the market. This information assists investors in making investment decisions and in finding the best market for a security, while making it possible for investors to evaluate the quality of their executions.

Since the 1975 Amendments and the adoption of the Quote Rule, there have been dramatic changes in the markets and the technologies used by market participants. To ensure that the Quote Rule keeps pace with the evolution of the securities markets and continues to ensure the public availability of accurate, reliable, and comprehensive quotation information, the Commission has determined that certain amendments to the Quote Rule are necessary and appropriate in furtherance of the objectives of the Exchange Act.

The Commission proposed an amendment to the Quote Rule to require specialists and market makers to reflect in their public quotes any better priced orders they place in certain systems that are not currently integrated into the NMS. In particular, the ECN amendment is intended to incorporate within the public quotes any better priced orders broadly displayed by market makers and specialists through ECNs. This amendment is being adopted with modifications to address concerns raised by some commenters. Specifically, in order to provide specialists and market makers with an alternative method to meet the ECN display requirement, the Commission is adopting an alternative suggested in the proposing release that deems a specialist or market maker in compliance with the ECN amendment if the ECN provides the best prices entered into the ECN by market makers or specialists for each covered security to an exchange or association for inclusion in the public quotation system and provides access to those prices equivalent to the access currently available to other quotes published by the exchange or association. In addition, the Commission is amending the Quote Rule to expand the categories of securities covered by certain existing Quote Rule provisions. The quotation requirements that previously applied to substantial specialists and market makers in only certain exchange-listed securities now will apply to substantial specialists and market makers in all exchange-listed securities. Further, certain Quote Rule provisions that previously applied to market makers electing to quote particular Nasdaq securities now will apply to market makers electing to quote any Nasdaq security. The Commission is adopting these amendments substantially as proposed, along with minor technical amendments to the Quote Rule that are discussed more fully below.

2. Public Dissemination of Market Maker and Specialist Prices in ECNs

a. Basis for the ECN Amendment

Over 20 years ago, the Commission noted that an essential purpose for the establishment of the NMS was ''to make information on prices, volume, and quotes for securities in *all* markets available to *all* investors, so that buyers and sellers of securities, wherever located, can make informed investment decisions and not pay more than the lowest price at which someone is willing to sell, or not sell for less than the highest price a buyer is prepared to offer.'' [214] At the time, the lack of consolidated quote information made it difficult to ascertain the different prices that were often available in the various markets for a particular security. This lack of transparency as to the best prices among competing markets was widely recognized as preventing investors and their brokers from ascertaining accurate trading interest for a security and obtaining the best prices for their orders.[215] To address these concerns, Congress directed the Commission to facilitate the creation of a national market system that would link the various markets trading a security. The price and quotation transparency resulting from the Commission's ensuing NMS initiatives has produced extremely liquid, successful, and, in most cases, competitive markets.

As discussed in the Proposing Release, the Commission for many years has been concerned that the development of so-called ''hidden markets,'' in which a market maker or specialist publishes quotations at prices superior to the quotation information it disseminates on a general basis, impedes these NMS objectives.[216] Over the course of the last decade, certain trading systems that allow market makers and specialists to widely disseminate significant trading interest to certain market participants without making this trading interest available to the public market at large have become significant markets in their own right. Although offering benefits to some market participants, widespread participation in these hidden markets has reduced the completeness and value of publicly available quotations contrary to the purposes of the NMS. Because these systems are not registered as exchanges or associations, they are currently not required to integrate into the public quote the prices at which their subscribers, including subscribing market makers and specialists, are willing to trade.[217] The use of these systems by market makers and specialists to quote prices not incorporated into the NMS has resulted in fragmented and incomplete dissemination of quotation information.

Certain markets, in particular ECNs that allow subscribers [218] to enter priced orders that are widely disseminated to third parties [219] and permit such orders to be executed in whole or in part through the system, communicate orders that are closely analogous to quotations. These ECNs, in effect, allow market makers and specialists to display different prices to different market participants.

Although these ECNs can facilitate the execution of their subscribers' orders and allow institutions to participate

[213] Senate Report, *supra* note 31. *Cf.* H.R. Rep. No. 229, 94th Cong., 1st Sess. 29 (1975) (''Conference Report'') (noting that the conference committee adopted the Senate's provisions on the NMS with minor revisions).

[214] Securities and Exchange Commission, *Statement of the Securities and Exchange Commission on the Future Structure of the Securities Markets* (February 2, 1972) (''Future Structure Statement'') at 9–10, 37 FR 5286, 5287 (February 4, 1972) (emphasis added). *See also* Securities and Exchange Commission, *Policy Statement of the Securities and Exchange Commission on the Structure of a Central Market System* (1973) at 25–28.

[215] *See* Senate Report, *supra* note 31.

[216] *See* Proposing Release at 4.

[217] Certain ECNs may be registered with the Commission as broker-dealers and indeed perform various brokerage functions. Nevertheless, the Commission recognizes that in providing a mechanism by which system subscribers can (1) broadcast prices to other system subscribers and (2) trade with one another at those prices, these systems also function as securities markets.

[218] ECN subscribers may include institutional investors, broker-dealers, and market makers. ECNs provide their services to subscribers for a fee or commission equivalent. Some ECNs (such as SelectNet) have been available only to broker-dealers and not to investors generally.

[219] ''Third parties'' in this context refers to subscribers or any other entities (such as customers of subscribers) that receive information from the ECN concerning any priced order entered into the ECN by another subscriber.

directly in price discovery, the display of better prices privately in ECNs reduces the reliability and completeness of consolidated quotations, the accuracy of which continues to be an essential element of the NMS. These private markets have resulted in fragmented quotations and a reduction in the reliability of public quotations as an accurate indicator of market makers' and specialists' best prices, the identical situation that prompted Congress to adopt the NMS amendments in 1975. The unavailability of full market maker and specialist quotation information prevents investors and their brokers from ascertaining the true trading interest for a security, and obtaining the best price for market orders, and prevents investors from monitoring the efforts of their brokerage firms to obtain best execution for their orders.

The Commission's analysis of the trading activity in these ECNs has produced clear evidence of the existence of a two-tiered market in which market makers routinely trade at one price with retail customers and at better prices with ECN subscribers.[220] For example, analysis of trading activity in the two most significant ECNs in the Nasdaq market, Instinet and SelectNet, reveals that approximately 85% of the bids and offers displayed by market makers in Instinet and 90% of the bids and offers displayed on SelectNet were at better prices than those posted publicly on Nasdaq.[221] Furthermore, approximately 77% of the trades executed on Instinet and 60% of the trades executed on SelectNet occurred at prices between the Nasdaq best bid and offer. Market makers participated on at least one side of approximately 90% of the trades in these ECNs. The trading activity in Instinet, which comprised approximately 17% of trades and 15% of the volume in Nasdaq securities, represents a significant portion of the overall market for Nasdaq securities.[222]

The Commission's recent investigation into various trading practices in Nasdaq stocks revealed that the existence of this two-tiered market facilitated the maintenance of wide spreads on Nasdaq. As discussed in the 21(a) Report, Nasdaq market makers engaged in a widespread course of conduct that resulted in artificially wide spreads in a large percentage of Nasdaq stocks. The maintenance of wide spreads was made possible at least in part by the fact that ECNs like Instinet and SelectNet did not affect the prices at which market makers traded with the general public, thus allowing market makers to attract trading interest at prices inside the spread without adjusting their Nasdaq quotes. Integrating the better prices market makers quote in ECNs should significantly limit the types of uncompetitive practices identified in the investigation without limiting the usefulness of these systems as efficient alternative mechanisms for negotiating transactions.

The Commission firmly believes that *all* investors should have an opportunity to have their orders filled at the best prices made available by market makers. Consistent with Congress's goals for a NMS, these opportunities must be made available to *all customers*, not just those customers who, due to size or sophistication, may avail themselves of prices in ECNs not currently linked with the public quotation system. The vast majority of investors may not be aware of the better prices widely disseminated by market makers or specialists through ECNs and many do not have the ability to route their orders directly or indirectly to such systems. As a result, many customers, both institutional and retail, do not always obtain the benefit of the better prices entered by a market maker or a specialist into an ECN.

Brokers frequently use the consolidated quote as the benchmark for automated execution of customer orders and for the starting point in negotiating execution prices with institutional investors.[223] Consolidated quotations in listed stocks are provided by CQS to vendors, who then provide this information to the public. In approving the CQS as the mechanism to serve this vital function, the Commission stressed that it would expect broker-dealers to take into account pricing information made available through the CQS in fulfilling their best execution obligations.[224] Similarly, for OTC securities, Nasdaq disseminates to market makers, vendors, and investors multiple market maker quotations, and a ''best'' bid and offer derived from these quotations. As broker-dealers and markets have developed automated order-routing and order execution systems, they have relied on these consolidated quotes in pricing and executing customer orders routed through their systems.[225] Including the prices entered into ECNs by market makers and specialists in the consolidated quotation will help broker-dealers using these automated systems to provide their customers' orders with improved executions, and will improve institutions' ability to ascertain true market prices.

In light of the stated fundamental purposes of the 1975 Amendments and clear evidence of a two-tiered market, the Commission believes it is imperative to amend the Quote Rule to ensure the public dissemination of accurate quotes that represent the *best* prices that market makers and specialists widely disseminate. Thus, the ECN amendment is intended to integrate into the public quote the prices of market makers and specialists that are now widely disseminated to ECN subscribers but are not available to the rest of the market.[226]

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[220] For example, a market maker with a public offer constituting the best public offer of 20¾ might offer to sell shares in an ECN at 20⅝. If the market maker did not change its public offer to reflect this improved selling price, public customers buying from the market maker would pay the higher price of 20¾ for the security because they do not have access to the market maker's price in the ECN.

[221] The Commission's analysis is based on Instinet and SelectNet data for the months April through June 1994. *See* 21(a) Report at notes 48–52 and accompanying text and Appendix at notes 18–28 and accompanying text.

[222] More trading volume now occurs on Instinet than on any of the organized U.S. stock markets other than the NYSE and Nasdaq. In 1994, trading volume on Instinet totalled approximately 10.8 billion shares with an approximate dollar volume of $282 billion. In comparison, Nasdaq traded approximately 74 billion shares, with an approximate dollar volume of $1,449 billion. *Id.* at note 50 and accompanying text.

[223] Some commenters argue that the ECN amendment focuses on expanding the availability of these systems to small investors, and ignores the fact that small investors already benefit from these systems in that institutional subscribers in ECNs primarily represent the collective interests of small investors, *e.g.*, through mutual funds and 401(k) plans. *See, e.g.*, CALpers Letter; Dillon Letter; Instinet Letter; LJR Letter; Northern Trust Letter; SIA Letter; STAIC Letter. The objectives of the ECN amendment, however, are not limited to improving market transparency and accessibility for small investors. Comprehensive and transparent information about market conditions is critical to efficient and competitive markets for all investors, whether retail or institutional. Indeed, while large institutional investors often have access to ECNs, the public quotes nevertheless frequently serve as a benchmark for their negotiations with market makers. In any event, while retail investors directly account for a significantly smaller percentage of trading volume than institutional investors, they still account for half of the direct equity investment in U.S. markets. *NYSE 1995 Fact Book* at 57. The Commission recognizes that direct retail participation provides critical liquidity and therefore limited access and transparency to the best prices available undermines the efficiency of our markets and jeopardizes public confidence in their fairness.

[224] *See* Securities Exchange Act Release No. 15009 (July 28, 1978), 43 FR 34851 (declaring the CQS Plan temporarily effective); Securities Exchange Act Release No. 16518 (Jan. 22, 1980), 45 FR 6521 (permanently approving the CQS Plan).

[225] *See* discussion of best execution principles, *infra* section III.C.2.

[226] Several commenters characterize ECNs as ''wholesale'' markets, and argue that the ECN rule would require market makers to trade with retail customers at wholesale prices. *See, e.g.*, Davis Letter; Instinet Letter; LJR Letter; Merrill Letter. The Commission notes that market makers are compensated by the spread between their bid and offer prices, and nothing in the ECN rule prevents

Most commenters support the Commission's goal of improving the quality of quotation information made available to the public, although many raise questions, discussed below, about the proposal. In particular, and as discussed below, some commenters expressed concern about the potential impact of the rule on benefits provided to the market as a whole by ECNs. Upon review of the comments received, the Commission has determined that it is appropriate to adopt the proposed ECN amendment. Furthermore, in response to the concerns noted, and to facilitate compliance with the ECN amendment, the Commission has included the ECN display alternative that permits a market maker or specialist to comply with the amendment through an ECN that meets two conditions. First, the ECN into which the market maker or specialist enters its order must ensure that the best prices market makers and specialists have entered therein are communicated to the public quotation system. Second, the ECN must provide brokers and dealers access to orders entered by market makers and specialists into the ECN, so brokers and dealers that do not subscribe to the ECN can trade with those orders. The ECN display alternative therefore allows a market maker or specialist to comply with the ECN amendment directly by changing its quote, or alternatively by using an ECN that meets the above two conditions.

As discussed above, the Commission expects the SROs to work expeditiously with ECNs that wish to avail themselves of the ECN display alternative to develop rules or understandings of general applicability. The Commission is prepared to act as necessary to ensure implementation of the ECN display alternative prior to the effective date of the Quote Rule.

b. Response to Comments [227]

The Commission solicited comment on whether the proposed amendment achieves the goals of deterring fragmented markets and promoting improved quotations. The Commission also invited comment on whether there are any feasible alternatives to the rule, and on possible business or economic justifications for permitting market makers and specialists to publish prices in ECNs that differ from their public quotations. The Commission requested comment on the competitive effects of the proposal on existing ECNs, subscribers, and users.[228] In addition, the Commission solicited comment on alternatives to the proposal that would minimize any negative effects, yet still achieve the Commission's goals. The Commission specifically asked whether ECNs should, as an alternative, furnish market makers' and specialists' best prices to the applicable exchange or association for further dissemination, and provide access to those prices through some form of linkage.[229]

i. General Comments

The Commission received numerous comments on the ECN proposal. Many commenters support the proposal as an important initiative designed to further investor protection by improving publicly available quotation information and assuring best execution of customer orders.[230] Some commenters recognize that a number of brokers and dealers have adopted the practice of placing superior priced orders in ECNs without including these better prices in their public quotes.[231] These commenters agree that the Commission should be concerned that some retail investors may have neither knowledge nor access to the best available prices under these circumstances.[232] They voice general support for the rule, and recommend one or more mechanisms [233] by which the Commission could ensure that public quotes contain the best prices otherwise widely disseminated by market makers and specialists.

ii. Impact on ECNs, Market Makers and Specialists, and Institutions

Some commenters express concern that the amendment could negatively impact services provided by ECNs and caution the Commission not to diminish the benefits provided by ECNs to the market as a whole. Some commenters argue that, under the proposal, market makers and specialists that use ECNs would lose the anonymity that these commenters believe is crucial to successfully execute large trades for institutional investors.[234] Some commenters anticipate the adoption of the ECN amendment prompting a potential decline in the use of certain ECNs.[235] In addition, some commenters contend that this amendment, because of the impact on ECNs and their subscribers, will lead to a loss of liquidity in both ECNs and the public markets [236] and to a decline in the variety of available trading options which could be detrimental to all investors.[237] Other commenters argue that the proposal would effectively double the risk of a specialist or market maker that enters orders into an ECN because the specialist or market maker could be simultaneously responsible for multiple executions based on its disseminated quote as well as its ECN order.[238] Moreover, at least one commenter argues that quotes, bids, offers, and orders have historically had different meanings and that the proposal's treatment of priced orders as quotes confuses the essence of the terms, thereby resulting in inadvertent anti-competitive effects.[239] Some commenters also argue that the better prices frequently available in ECNs reflect the lower costs of doing business in those systems, and therefore, it would be inappropriate to require market

market makers from buying at the bid from one customer and selling at the offer to another.

[227] This section includes a discussion of the principal arguments advanced by the commenters. A more detailed discussion of the comments is provided in the Summary of Comments.

[228] The Commission also specifically solicited comment on whether exceptions to the rule would be appropriate, particularly if a customer requests that the market maker refrain from publicly disseminating its order. The Commission also solicited comment on whether market makers should be required to disseminate publicly the full size of orders placed in ECNs. The Commission received only minimal response to these questions, which is discussed in the Summary of Comments.

[229] *See* Proposing Release at 28–29.

[230] *See, e.g.*, DOJ Letter; Lehman Letter; Madoff Letter; Amex Letter; NASD Letter.

[231] *See, e.g.*, Amex Letter; DOJ Letter; Madoff Letter; RPM Letter.

[232] *See, e.g.*, Letter from Gerri Detweiler, Policy Director, National Counsel of Individual Investors, to Jonathan G. Katz, Secretary, SEC, dated January 22, 1996 (''NCII Letter''); Goldman Sachs Letter; PaineWebber Letter; SIA Letter; Madoff Letter; Lehman Letter; DOJ Letter.

[233] *See* discussion of alternative approaches, *infra* at section III.B.2.b.iv.

[234] *See* AZX Letter; Instinet Letter; ICI Letter; Investors Research Letter; NASD Letter; Ruane Letter; STAIC Letter; Letter from Edward G. Shufro, Partner, Shufro, Rose & Ehrman, to Jonathan G. Katz, Secretary, SEC (''Shufro Letter''); Sutro Letter.

[235] *See* Goldman Sachs Letter; STA Letter; AZX Letter; Instinet Letter; Schwartz and Wood Letter; Ruane Letter.

[236] *See* DOJ Letter; STA Letter; Alex. Brown Letter; Letter from Jeffrey L. Davis, Economists Incorporated, to Jonathan G. Katz, Secretary, SEC, dated October 25, 1995 (''Davis Letter''); Dillon Letter; Instinet Letter; Merrill Letter. (citing the ''deleterious effects concerning liquidating inventory and replacing necessary capital'' at pp. 7–8); Schwartz and Wood Letter; Letter from Mary Kay Wright, Second Vice President and Senior Equity Trader, The Northern Trust Company, to Jonathan G. Katz, Secretary, SEC, dated February 28, 1996 (''Northern Trust Letter'').

[237] *See* Letter from Anthony R. Gray, Chairman and CIO, STI Capital Management, to Jonathan G. Katz, Secretary, SEC, dated February 12, 1996 (''STI Capital Letter''); Ruane Letter; DOJ Letter; and LJR Letter.

[238] *See, e.g.*, Merrill Letter.

[239] *See* Instinet Letter. Instinet also bases much of its arguments on its regulatory identification as a broker-dealer. Instinet argues that the proposal targets its ECN operations for treatment different from other broker-dealers. The Commission notes that Instinet (and similar systems) provides to its customers ECN services that are significantly different from the services provided by other broker-dealers to their customers. Specifically, Instinet, without discretion, publicizes subscriber orders and enables other subscribers to trade with these orders at their stated price.

makers and specialists to match their ECN prices in their public quotes.[240]

The Commission agrees with commenters that ECNs provide certain valuable benefits to their subscribers. It also recognizes the benefits competing systems bring to the market as a whole, particularly systems that take advantage of new technologies to offer improved trading opportunities. The Commission, therefore, has adopted an alternative method of compliance with the ECN requirement discussed in the proposing release to reduce the amendment's potential impact on existing ECNs and their subscribers, and to maintain incentives and opportunities for new ECNs to enter the marketplace.[241] The Commission continues to believe it is important that the best prices of orders entered into these markets by market makers and specialists are properly integrated into the public market so that all market participants can benefit from the price discovery taking place within these markets.

In its comment letter, the NASD stated its view that the proposal could discourage market makers' use of ECNs because a market maker placing an order in an ECN at a better price would have to simultaneously change its quote, thereby telegraphing its interest. In proposing a solution to this situation, the NASD specifically referred to the ECN alternative noting ''* * * this problem can be addressed without discouraging market maker use of ECNs through the approach suggested by the Commission as a possible alternative, *i.e.*, by reflecting the better ECN prices in the *inside market* display, rather than in individual quotes.'' [242]

In response to the concerns raised by the NASD and other commenters, the ECN display alternative is designed to preserve the benefits associated with the anonymity that some ECNs currently offer to subscribing market makers and specialists and their customers.[243] This alternative will ensure that the best prices of market makers and specialists are publicly disseminated and that non-ECN-subscribing brokers and dealers can trade with the ECN orders represented by those prices. Under the display alternative, the best prices and sizes of orders entered into an ECN by specialists and market makers would be publicly disseminated while the specialists and market makers themselves would remain anonymous. This alternative not only preserves anonymity, but also eliminates the risk that a market maker or specialist could be exposed to multiple executions at the ECN price.[244]

The ECN amendment, as proposed, sought to minimize the potential impact on market makers, specialists, and ECNs by requiring a market maker or specialist to display in its public quote only the size required by its exchange or association, rather than the actual size of any order the firm places into an ECN. This part of the amendment is being adopted as proposed for orders for the accounts of market makers and specialists. However, for customers' orders entered into an ECN by a market maker or specialist that are smaller than the quote size required by the market maker's or specialist's exchange or association, the Commission has amended the rule to allow market makers and specialists to display only the customer's order size.[245] The requirement to display no more than the required size for market makers' and specialists' own orders should reduce any disincentives to use ECNs that could otherwise result from the ECN amendment, and responds to the concern that disclosure of the full size of the order in the market maker's or specialist's quote could impede its ability to execute the order.[246] Moreover, permitting the display of customer orders of less than the minimum quote size should reduce the potential burden on a specialist or market maker of having to publish a public quote for more than the customer's order size when the customer's order is for less than the minimum quotation size required by the specialist's or market maker's exchange or association.

Market makers and specialists who avail themselves of the ECN display alternative will be required to furnish to the public quotation system the full size of the best buy and sell orders they enter into the ECN. The Commission believes that the display of full size by the ECN will help inform the public market of the true trading interest entered by specialists and market makers, without impeding the execution of these orders by disclosing the identity of the specialist or market maker placing the order. Under the ECN display alternative, the market maker or specialist will be able to continue to represent the order on an anonymous basis both in the ECN and in the public

[240] *See, e.g.*, Dillon Letter; HHG Letter; LJR Letter; Merrill Letter; STA Letter; Goldman Sachs Letter.

There appear to be counter arguments. For example, there is no reason to suppose that adverse selection costs—that is, the risks of trading with an informed trader—are any lower in ECNs, whose subscribers typically can include market makers, other broker-dealers, institutional money managers, hedge funds, momentum traders, and options market makers. Second, because traders can more easily mask their identities and thus their trading motives in ECNs than in the primary market, informed traders may prefer to trade in ECNs. These higher information asymmetries would be expected to lead to higher, rather than lower, trading costs. Finally, ECNs often impose transactions charges that may not otherwise be incurred by dealers trading in the primary market.

Furthermore, it does not appear that the better prices available in ECNs can be explained by differences in the size of orders and transactions given that the average order size and trade size in one ECN (Instinet) is substantially similar to the average size of quotes and trades in the primary market. In any event, the Commission generally would not expect larger size orders to receive better prices in view of the considerable literature suggesting that in equities markets, larger orders tend to get *worse* prices because of the risk of trading with an informed trader. *See, e.g.*, David Easley and Maureen O'Hara, 19 J. Fin. Econ. 69, (No. 1, September 1987).

[241] The Commission believes that although the ECN amendment may marginally reduce the incentive of some subscribers to participate in an ECN, on the whole the effect on ECNs should not be so significant as to affect their viability. Moreover, given the availability of the ECN display alternative, which is designed to minimize any potentially detrimental effects of the rule on ECNs, the Commission believes that the benefits of the amendment to investors of publicizing the better prices entered by market makers and specialists outweigh the limited likely costs to ECNs. Many of the comments received that addressed the ECN proposal raised concern about the importance of preserving the anonymity offered by these systems. *See, e.g.*, Alex. Brown Letter; AZX Letter; Dillon Letter; Estep Letter; ICI Letter; Instinet Letter; NASD Letter.

[242] NASD Letter at 14.

[243] The Commission recognizes that in certain securities, specific market makers or specialists may be viewed as price leaders for those securities. Therefore, if the market knows that one of those firms has changed its quote, other market makers or specialists are likely to follow that price change and frustrate the first's firms ability to obtain an execution at the improved price. The ability to place an anonymous order in an ECN allows the firm to change its price without triggering corresponding price changes from other market makers or specialists and thereby increases its potential to obtain an execution at the improved price.

[244] Certain commenters fear that, as originally proposed, the amendment would have an adverse impact on institutional investors which currently subscribe to ECNs. These commenters appeared to believe that the ECN amendment would seriously harm ECNs, and thus harm institutional users. *See, e.g.*, ICI Letter; Ruane Letter. The Commission does not believe that the amendments will significantly interfere with the operations of ECNs. Moreover, the Commission believes that as adopted, particularly with the addition of the ECN display alternative, ECNs will continue to be able to provide services to institutional investors of similar value to those they provide today. The Commission also believes that the benefits of the amendments, including increased market maker competition and decreased fragmentation, will flow to all investors, institutional as well as retail. *See* 21(a) Report.

[245] As discussed *supra* in footnote 144, SROs may wish to allow market makers or specialists to quote in sizes smaller than the minimum quotation increment when the quote represents a customer limit order.

[246] The Commission received several comments that support this aspect of the proposal. *See, e.g.*, Lehman Letter; and Smith Barney Letter. These commenters believe that display of full size in a market maker's quote could impair the quality of an execution obtained for a customer because the display in the public quotation system is broader than the display in the ECN.

quote, substantially reducing any negative impact of the amendment on ECN users.

Where the order entered by the market maker or specialist is on behalf of a customer, the display of full size under the ECN display alternative is consistent with the requirement under the Display Rule, which requires market makers and specialists to display the full size of their customer limit orders. Therefore, the full size of customer limit orders will be displayed whether the specialist or market maker displays the order itself or enters the order into an ECN complying with the ECN display alternative.[247]

The Commission believes that the concerns expressed by some commenters about a potential loss of liquidity resulting from the proposal have been substantially addressed by the alternative adopted today. Because this alternative preserves the anonymity some ECNs afford to the users of their systems, the proposal maintains incentives for subscribers to continue participating in such systems. In fact, a market maker or specialist, who presumably wants its orders executed at prices it is widely displaying through the ECN, should benefit from attracting greater trading interest by having the prices of its orders displayed to the entire market.

Finally, under the proposal, priced orders of institutions and other non-market makers entered directly into ECNs would not be required to be reflected in the public quote. Some commenters criticized the proposal because it did not require the inclusion of all better priced orders in the public quote. This result, however, is consistent with existing quotation principles. Institutional bids, offers, and orders handled independent of a market maker historically have been outside the scope of the Quote Rule, and the Commission's proposal was not intended to expand the scope of the Quote Rule in this respect.[248] Furthermore, the Commission believes that, although institutional investors' direct orders in ECNs provide valuable liquidity, the amendments will substantially strengthen the public quotation system by publishing orders entered by market makers and specialists without creating new requirements for orders not controlled by market makers or specialists.[249] Nevertheless, the Commission will continue to monitor closely issues involving the display of prices published by institutions in light of the Quote Rule and its objectives.

iii. Technology and Innovation

Some commenters predict that the proposal may have a chilling effect on technological innovation, primarily because the proposal applies only to ECNs and not to all available communication technologies that may be used for disseminating interest to buy and sell a particular number of shares at a specified price.[250] Some commenters argue that the proposal is anti-competitive and otherwise antithetical to the purposes of the Exchange Act because it will deter future technological advances in automated trading environments by favoring less automated trading methods (*e.g.*, telephone transactions).[251]

The Commission is cognizant of the importance of the continued development of innovative trading systems and services. New technologies have expanded the ways in which investors' buying and selling interest can be brought together and have fostered additional competition in the securities markets. The Commission believes that this competition should be encouraged. Nonetheless, to promote competition, efficiency, and transparency in the securities markets, and insure the integrity of publicly available information, the Commission believes it is appropriate to set minimum standards that apply to the entry of the functional equivalent of quotations by market makers and specialists in trading systems.[252] Indeed, consistent with the Commission's experience with previous NMS initiatives,[253] these minimum standards will permit and foster the development of new technologies that improve the public availability of trading information, while discouraging practices that are inconsistent with the purposes of the 1975 Amendments. The Commission believes that the Quote Rule as amended will not unduly diminish the beneficial services provided by existing ECNs, nor will it stifle the development of new trading technologies or new ECNs.

iv. Alternative Approaches

In the Proposing Release, the Commission suggested alternatives to the proposal, and solicited comment on these alternatives. The Commission also invited commenters to suggest possible alternatives. The Commission specifically asked whether it should require ECNs to furnish prices to the applicable exchange or association for public dissemination and to provide some access, such as a linkage, to the prices in the ECN.[254] A number of commenters supported this approach.

The NASD recommended, as an alternative to the proposed rule, that the better ECN price be reflected in the inside market, rather than in individual quotes. Under the alternative described by the NASD, an ECN would report its best market maker or specialist inside prices to the SRO that is the primary market in the security. The NASD also recognizes that more assured access to orders in the ECNs would be necessary under this option.[255] Similarly, one commenter agreed that the inside market available to the public should reflect the best bid and offer prices whether in a market maker's quote or in a market maker's order on an ECN. The Commenter suggested that this could be accomplished by requiring quotations in ECNs to be made part of the public quotation and by separately identifying the ECN into which the order is entered rather than the market maker that

[247] The Commission notes that the exceptions under the Display Rule for limit orders of block size and for limit orders that a customer has asked not to be displayed will not apply to customer limit orders entered by a market maker or specialist into an ECN. If entered into an ECN, these orders must either be reflected in the market maker's or specialist's own quote or displayed via the ECN alternative. As discussed previously, the Commission believes that a customer should have discretion to permit a market maker or specialist to handle its limit order without public display, and large limit orders should not be required to be displayed unless the customer makes a request. However, the Commission does not believe these orders should be withheld from public display if they are being displayed in an ECN. The Commission believes that if these orders, when handled by market makers or specialists, are displayed widely through an ECN to the ECN's subscribers, then they should also be displayed to the public generally. Moreover, limiting display to only one market would be inconsistent with Congress's goal for a NMS in which trading interest in disparate markets would be consolidated and publicly disseminated.

[248] The fact that ECNs will continue to contain institutional investors' orders priced better than the public quotes will provide another incentive for market participants to continue to participate in those systems.

[249] The Commission notes that, as described in the Commission's 21(a) Report, institutions trading with dealers or others accounted for less than 20% of trades in one ECN (Instinet). *See* Appendix to the 21(a) Report at A–11.

[250] *See* DOJ Letter; SIA Letter; Instinet Letter; Schwab Letter; STI Capital Letter; Sutro Letter.

[251] *See, e.g.*, Instinet letter.

[252] The Commission notes that the focus of the proposal is not on any particular system or systems but, rather, on the types of orders that are the fundamental equivalent of quotations, and the fragmented market that results when the prices of these orders are not integrated into publicly available quotations.

[253] *See* Simon and Colby, *supra* note 58. The Commission also notes the growth in technologies over the past twenty years, including broker-dealer and exchange automated execution systems, that clearly rely on, and were facilitated by, successful operation of NMS and joint industry initiatives such as the Quote Rule, CTA, and the ITS Plan.

[254] *See* Proposing Release and *e.g.*, NASD Letter.

[255] *See* NASD Letter.

placed the order.[256] Finally, certain commenters state that expanding ITS to include orders entered into ECNs would be a better alternative to the proposal.[257]

The Commission believes that the ECN display alternative adopted today is consistent with these suggested alternatives and will minimize many of the asserted negative effects of the rule. The adopted provision provides an alternative to an ECN that disseminates specialists' and market makers' best prices to the public quotation system. Thus, the amendment enables a market maker or specialist to comply with the Quote Rule either directly by sending to its exchange or association the prices of orders it places into ECNs that improve the market maker's or specialist's public quote, or indirectly by using an ECN that transmits the best prices entered therein by market makers and specialists for publication in the public quotation system.

The ECN display alternative is consistent with the alternative recommended by the NASD because the adopted provision enables the specialists' or market makers' best prices in ECNs to be consolidated with the exchange's or association's best prices for dissemination within the consolidated quotes. In addition, the adopted amendment requires the ECNs to provide an equivalent means of access to those best prices.

The Commission recognizes that this alternative may reduce the content of information that is publicly available because under the ECN display alternative, the identity of the market maker or specialist that entered the better priced order in the ECN will be withheld.[258] The Commission believes this result is justified because the inside prices and full sizes of orders entered by market makers and specialists will be in the public quotation system to inform the entire market of these prices and ECNs will provide equivalent access to those prices. Moreover, the Commission believes the benefits of facilitating the use of ECNs, by permitting the continued anonymity of market makers and specialists, more than offset the reduced information available on the identity of a particular market maker or specialist.

As an alternative to the ECN amendment, certain commenters suggested that enforcement of best execution principles would be sufficient to protect public investors.[259] As discussed in more detail in section III.C.2., the Commission does not believe this is a practical alternative because ECNs do not provide broker-dealers with automated links and thus may not be reasonably available for the handling of retail orders on an automated basis. Furthermore, investors and their brokers cannot efficiently ascertain if they have received the best prices for their orders if publicly available prices do not reflect the best prices at which specialists and market makers are willing to trade. Under these circumstances, providing customers the best executions available can be achieved most effectively by ensuring that the consolidated quotes systematically include the better prices that market makers and specialists have entered into an ECN.

Finally, certain commenters argue that, as an alternative to adopting the ECN proposal, the Commission should defer any action until further study is completed on the use of ECNs because the Proposing Release provides insufficient data regarding whether customers currently get the best available price, or market maker and specialist use of ECNs results in harm to customers.[260] The Commission has determined to go forward with the amendments now because of compelling concerns presented by two-tiered markets. Many of the commenters to the proposed rules also recognize these concerns. Furthermore, as part of its recently concluded Nasdaq investigation, the Commission has conducted an extensive analysis since the proposals were published that supports the Commission's proposal and clearly evidences the existence of a ''two-tiered'' market in which customer orders are executed at publicly available prices inferior to prices contemporaneously available in existing ECNs.[261] Moreover, Commission data shows that the pricing opportunities available in at least two ECNs (Instinet and SelectNet) are not limited to block trades, but extend to smaller orders executed in the system.[262] The Commission believes, therefore, that further study is not necessary to address a structural disparity in market information that disadvantages investors who lack access to ECNs.

c. Operation of the Rule Amendment

i. Definition of the Term ''Electronic Communications Network''

The proposed amendment did not specifically define the term ''electronic communications network.'' The Commission did state, however, that priced orders that market makers and specialists enter into certain ECNs are bids and offers for the purposes of the Quote Rule.[263] The proposal applied to systems that widely disseminate priced orders to third parties and permit such orders to be executed against in whole or in part. The Commission further explained that the term ''electronic communications network'' was intended to include continuous auction trading systems, but was not intended to include crossing systems or broker-dealer internal order routing systems.

Several commenters suggested the need for a definition of the term ''electronic communications network.'' [264] The Commission agrees that it is appropriate to define the term in the Quote Rule and has decided to adopt a definition that reflects the fundamental characteristics of an ECN as discussed in the Proposing Release.

As discussed earlier, the objective of the ECN amendment is to incorporate within the consolidated public quote firm prices quoted by market makers and specialists in securities markets that widely disseminate those prices but are not registered as exchanges or associations and thus are not integrated

[256] Morgan Stanley Letter. *See also,* PaineWebber Letter (recommending that priced orders in ECNs be included in the NBBO).

[257] *See, e.g.,* STAIC Letter; ICI Letter.

[258] The Commission also notes that under the alternative, a specialist or market maker that puts an order into an ECN that is priced better than that specialist's or market maker's public quote, but is not the best priced quote from any specialist or market maker in the ECN, will not have its better priced order reflected in the public quote. The prices will be displayed, however, if the better price in the ECN is executed or withdrawn and the lower specialist's or market maker's priced quote then becomes the best priced quote.

[259] *See, e.g.,* Instinet Letter.

[260] *See, e.g.,* Instinet Letter, asserting that the Commission should obtain and study data on this matter and that, absent such data, adoption of the proposed amendment is unwarranted.

[261] As discussed previously, the Commission believes the data it has reviewed supports the need for prompt adoption of the ECN amendment to the Quote Rule. *See supra* notes 222 and 223, and accompanying text. Given the strong evidence that investors would benefit from public dissemination of the hidden prices that are broadly disseminated to subscribers in these systems, the Commission believes that it is appropriate to adopt the amendments to the Quote Rule.

[262] As noted above, the Appendix to the 21(a) Report states that average trade size for Nasdaq NMS securities on Instinet was approximately 1,600 shares for the period studied, while the average trade size generally in the securities was approximately 1,900 shares. *See* Appendix to the 21(a) Report at A–8.

[263] As a result, relevant provisions of the Quote Rule, such as the obligation on exchanges and associations to disseminate quotes, and the firmness requirement placed on a market maker or specialist who furnishes the quotes, become operative with respect to a security when a market maker or specialist enters an order for that security into an ECN. *See* section III.B.2.c.v., *infra*.

[264] *See* Goldman Sachs Letter; Instinet Letter; Schwab Letter. In addition, one commenter argues that ECNs should include SRO stock crossing systems and all non-market-maker broker-dealers. NYSE Letter.

into the NMS. Therefore, the Commission has defined the term ''ECN'' as an electronic system that widely disseminates to third parties[265] orders entered therein by a market maker or specialist, and permits such orders to be executed against in whole or in part. The definition specifically excludes any system that crosses multiple orders at one or more specified times at a single price set by the system and that does not allow orders to be crossed or executed against directly by participants outside of such times. This exclusion is consistent with statements made in the Proposing Release that it was not the Commission's intention to cover crossing systems because these systems do not communicate to multiple market participants the prices at which system subscribers are willing to trade. Rather, the excluded crossing systems themselves establish an internal trading price for subscribers on an episodic basis.[266]

The ECN definition also excludes any system operated by, or on behalf of, a market maker or specialist that executes customer orders primarily for its own account as principal, other than as riskless principal. This exclusion is intended to ensure that, as discussed in the Proposing Release, internal broker-dealer order routing systems in which the market maker trades primarily with customer orders on a principal basis are not ECNs within the scope of the amendment. The exclusion would not except from the ECN definition systems that involve multiple market makers or specialists competing as principal in a security or that cross multiple market maker and customer orders.

Furthermore, the Commission believes the definition should be read broadly to include systems that match orders internally and deliver the matched order to some other market for execution. Thus, the term ''permits such orders to be executed against'' should not be read to exclude systems where a narrow technical reading of ''executed'' is the only reason that the system would not fall within the ECN definition. For example, if a system puts buy orders and sell orders together for execution, completes all necessary elements of the trade, and then sends the matched pair to an exchange or association merely to print the terms of the trade on the Consolidated Tape, the system would be an ECN.

ii. ''Priced Orders'' in ECNs

Under this definition, the Commission intends to include in the public quotation system firm prices for securities entered by market makers or specialists, whether such firm prices are labeled as ''quotes'' or ''orders.'' The Commission believes that priced orders entered by market makers or specialists into ECNs where the orders are widely disseminated and executable are the functional equivalent of market maker or specialist quotations, and like quotations, play a key role in the price discovery process. The Commission thus believes that these ''quotation-equivalents'' should be made part of the public quote.

Although some commenters argue that priced orders entered into ECNs are more closely parallel to prices communicated over the telephone to other market makers than to market quotes, the Commission recognizes a fundamental distinction between limited communication of price in bilateral telephone negotiations and broad exposure of firm prices to multiple participants in a market.[267] Accordingly, prices communicated by telephone are excluded because these prices generally are not widely disseminated to other parties for execution. The rule also would not cover indications of interest that do not constitute firm prices.

In this connection, the Commission intended the term ''priced order,'' which is deemed under the ECN amendment to be a bid or offer, to encompass commitments to buy or sell a security at a particular price for a particular number of shares. The Commission also does not intend the term ''priced orders'' to include interest to buy or sell a security where price or the number of shares is not specified to system subscribers, unless the price or size is otherwise understood as part of the system's operation.[268] The ECN amendment would, however, include priced orders entered into an ECN by a market maker or specialist that are visible only to *some* system subscribers if these orders can be executed against in the ECN. The ECN amendment is intended to require the public display of priced orders entered into ECNs by market makers and specialists where these priced orders are similar to quotations. Accordingly, the Commission does not intend the ECN amendment to apply to a priced order that is entered into an ECN by a market maker or specialist merely in order to execute against an existing order visible in the ECN, and not entered to elicit other buying or selling interest. If, however, the order entered by the market maker or specialist does not in fact execute immediately in full against an existing order but rather is itself disseminated as an open order in the ECN, the market maker or specialist must comply with the requirements of the ECN amendment with respect to the order.

In order to ensure that customers consistently receive the benefit of better prices entered into ECNs, a market maker or specialist entering an all-or-none or minimum size order for its own account into an ECN would be required to include this price in its public quote, or disseminate the price via the ECN display alternative, and thereby publicly display the order for the full number of shares for execution in whole or in part. Although the execution of an all-or-none order is typically conditioned on execution of the entire size of the order, the Commission believes that allowing market makers to avoid public display of an unconditional quote when using this type of order could seriously undermine the purposes of the rule.[269] The rule will permit, however, a market maker or specialist to enter an all-or-none customer order into an ECN without requiring public display of the quote for that order where the customer specifically requests that the order be executed on an all-or-none basis. This latter provision accommodates the desire of some customers to trade only at a specific size associated with a specific price.

iii. ECN Display Alternative

Pursuant to the amendment as adopted, a priced order entered by a market maker or specialist into an ECN that widely disseminates the order is deemed to be a bid or offer for the

[265] The Commission intends the term ''third parties'' to refer to subscribers to the ECN, other than the ECN and the market maker or specialist that is entering its priced order into the ECN. The ECN also may disseminate to others, including non-subscribers.

[266] The Commission notes that broker-dealers that publish quotes through a vendor are already covered by the rule.

[267] The Commission recognizes that market makers and specialists may be willing to trade with certain customers at better, negotiated prices, such as when market makers negotiate with customers over the telephone. In contrast, however, the prices quoted by market makers and specialists in ECNs are widely disseminated to market participants. In adopting the ECN amendment, the Commission is reaffirming the NMS principle that prices advertised in one market must be integrated into the national market—that is, the consolidated public quote.

[268] The definition of an ECN specifically excludes any system that crosses multiple orders at one or more specified times at a single price set by the ECN (by algorithm or by any derivative pricing mechanism) and does not allow orders to be crossed or executed against directly by subscribers outside of such times. *See* 11Ac1–1(a)(8).

[269] All-or-none and minimum size orders are rarely used by market makers and specialists in ECNs and are prohibited from being included in the public quotes by the registered exchanges and Nasdaq.

purposes of the market maker's or specialist's quotation reporting obligations under the Quote Rule. As a result, specialists and market makers are required to include such orders in the bids and offers they communicate to their exchange or association for inclusion in the published quotations made available by the exchange or association.[270]

As discussed above, in response to the concerns of some commenters, the adopted amendment includes an alternative to the specialist or market maker itself revising its public quotation to reflect its better priced order entered in an ECN. This alternative allows the ECN to act as an intermediary in communicating to the public quotation system the best price and size of orders for each security that have been entered into the ECN by a specialist or market maker. To communicate the quotations publicly, the ECN must submit the best price entered by a specialist or market maker to an exchange or association, or to a securities information processor acting on behalf of one or more exchanges or associations.

The alternative reduces the impact of the amendment on specialists and market makers because they have a choice regarding how to comply with their obligation. This alternative also reduces the impact of the amendment on ECNs by offering these systems an opportunity to provide additional services to their subscribers, and creating an opportunity to generate additional order flow from non-subscribers. At the same time, more accurate prices are provided through public quotation systems than are currently available.

Under this alternative, consistent with the goals of the initial proposal, the ECN must comply with two conditions. First, the ECN must provide the best prices and sizes that market makers or specialists have entered in the ECN to the public quotation system for inclusion in the consolidated quotation. The market maker or specialist responsible for the price does not have to be identified.[271] The ECN must, however, at a minimum, publicly identify itself as the originating system for these prices. Accordingly, if a market maker puts an order that improves the NBBO into an ECN and the ECN disseminates that price to the public quotation system, the disseminated price must either be identified as originating from the market maker or from the ECN.

Second, the ECN must provide non-subscriber brokers and dealers with a means of access to those prices entered in the ECN by market makers and specialists. This access must be equivalent to the access that would have been available for the relevant security if these prices had been published in the market makers' or specialists' quotation.[272] The extent and form of this access will depend on the form(s) of access available in the market to which the ECN supplies the bids and offers for public dissemination.[273]

For example, market makers in Nasdaq NMS and SmallCap securities typically can be reached through the telephone and through the NASD's Small Order Execution System. Therefore, an ECN that chooses, pursuant to the alternative, to act as an intermediary for its market maker and specialist subscribers for Nasdaq NMS and Smallcap securities would have to be prepared to receive and execute telephone orders from broker-dealers against those market makers' and specialists' orders entered in the ECN. The ECN will have to execute these orders promptly at the prices the market makers and specialists have entered into the ECN. In addition, because a market maker with the best price in a Nasdaq NMS security is subject to SOES executions, this equivalent access condition would require the ECN to provide broker-dealers who use SOES with equivalent automated access to the best priced market maker orders in the ECN. This could be accomplished either through an electronic linkage to SOES or by other means agreed upon with the NASD. For example, the ECN could supply the NASD with an identifier for the market maker who entered the best priced order, which the NASD could use in assigning SOES executions to that market maker.[274]

Similarly, in exchange-listed securities, the degree of access that the ECN must offer would depend on the current access that the market receiving the information from the ECN offers to broker-dealers in the relevant type of security. If the ECN communicates prices for exchange-listed securities to an exchange, the specialist or market maker orders in the ECN must be accessible to broker-dealers in the same manner as quotes on that exchange. This access would include any automated execution features offered to broker-dealers by the exchange. The ECN must provide to the exchange, or to the exchange specialist in each security, access to the market maker or specialist orders in the ECN. Such access must provide broker-dealers with the ability to enter and obtain executions for their orders at least as promptly as that exchange offers to its own members through its order-routing and execution systems. Because the ITS Plan applies to exchange-trading of listed securities, orders received from other markets through ITS must have the same ability to trade with ECN orders whose prices are displayed through the exchange as they have with the exchange's own quotations. For instance, if the exchange specialist typically receives incoming ITS commitments and executes them manually, the ECN must at a minimum enable the incoming ITS commitment to be manually entered into the ECN for execution.

If the ECN instead provides orders in exchange-listed securities to the NASD for inclusion in the public quotation system, the orders must be as accessible to broker-dealers as the quotes published by third market makers in

[270] An OTC market maker that places priced orders for execution into any ECN will in effect be making an election to communicate quotations to its association bids, offers and quotation sizes in the security. *See* 11Ac1–1(a)(25)(ii)(B).

[271] An ECN that does not offer the option of anonymity to its subscribers could choose to include the identity of the market maker or specialist with the prices furnished to the SRO for public dissemination. As discussed below, the ECN also must provide access to these prices.

[272] For access to be ''equivalent'', the ECN must enable non-subscribing broker-dealers to execute against the ECN's published best price to the same extent as would be possible had that best price been reflected in the public quote of a specialist or market maker. The ECN, however, may impose charges for access to its system, similar to the communications and systems charges imposed by various markets, if not structured to discourage access by non-subscriber broker-dealers.

[273] The extent and form of the access will not necessarily be the same as the access available in the market to which the specialist or market maker would otherwise supply its bid and offers.

[274] As discussed *supra* section II., the NASD has proposed a new facility, NAqcess, which, as part of its proposed services, would widely disseminate priced orders for execution in whole or in part. *Supra* note 45. As proposed, Naqcess would publish its best prices in the Nasdaq quotation system stream and would be accessible to all NASD members for order entry and execution against those orders. Thus, NAqcess, as proposed, would appear to make prices entered by market makers into NAqcess available, and provide equivalent access under the alternative. Therefore, a market maker that entered its best priced order into NAqcess would comply with the requirements of the ECN amendment without reflecting the order in the market maker's own quote. Moreover, a market maker that entered an order into another ECN at a price better than its quote could satisfy the requirements of the ECN amendment by entering an order reflecting this price into NAqcess, even if the other ECN does not directly provide the price to the public quotation system, because this use of NAqcess, as proposed, would meet the requirements of the amendment. Similarly, an ECN availing itself of the ECN display alternative could provide prices directly to NAqcess. The ECN and the NASD also could develop mechanisms to ensure public anonymity of market makers that use ECNs, while providing to the NASD the identity of the market makers that are at the inside quote solely for the purpose of direct order-routing between NAqcess and the market maker.

exchange-listed securities. At a minimum, these prices must be included as part of the third market quotation display and identified as originating from a named market maker or from a named ECN. For non-Rule 19c-3 securities, broker-dealers must be able to contact the ECN by telephone and have an order promptly entered into the ECN for execution. For Rule 19c-3 securities, the ECN also must be accessible through the ITS/CAES linkage, operated by the NASD, in the same manner as other third market maker quotes in those securities.[275]

Under the ECN display alternative, the ECN must furnish to an exchange or association the full size associated with the best priced orders placed in the ECN by market makers and specialists to buy and to sell a security. This full size requirement under the alternative is intended to give the public information about the depth of the market at the ECN prices, while maintaining the anonymity of market makers and specialists. For example, if an ECN is furnishing quotation information to Nasdaq under this alternative, and a market maker enters a 4,000-share order into the ECN at a price that is better than other market maker or specialist prices for that security in the ECN, the ECN will be required to provide Nasdaq that price and size of 4,000 shares as a quotation for public dissemination. If 2,500 shares of this order is executed, the ECN must display the remaining 1,500 shares. If two market makers enter 4,000-share orders for a security at the same price, which is the best price in the ECN for that security, the ECN is required to show all 8,000 shares publicly. In contrast, if a market maker enters a 100-share order for a Nasdaq security at the best price in the ECN for that security, the alternative requires the ECN to furnish the price for only 100 shares, even though NASD rules require Nasdaq market makers to display no less than 1000, 500, or 200 shares in Nasdaq, depending on the characteristics of that security.

The Commission recognizes that the means of providing equivalent access will vary for different markets, and that ECNs operating under the ECN display alternative that currently do not provide access to their systems to non-subscribers will have to develop methods to provide this access. Meeting this requirement may be achieved in a variety of ways, including a linkage between ECNs and one or more of the SROs. The Commission believes an SRO that accepts the prices provided by an ECN for publication should be authorized to impose reasonable rules related to the public dissemination of those prices upon market makers and specialists who avail themselves of this alternative. The rules an SRO imposes in this regard, however, may not establish standards for the dissemination of these prices that are more burdensome for market makers and specialists using ECNs than the SRO rules that apply to quotations delivered directly to the SRO by specialists and market makers.

The Commission looks forward to working closely with all market participants to effect the necessary market developments to ensure that this alternative method of compliance with the Quote Rule is made possible. In order to ensure prompt implementation of the necessary changes before the effective date of the rule amendments, the Commission requests each SRO, individually or jointly as signatories to the CQS Plan, to notify the Commission in writing by October 28, 1996 regarding its willingness and its plan to afford ECNs the opportunity to communicate, for inclusion in the public quotation system, the prices of market makers and specialists.

In order to implement the changes to the Quote Rule under new subsection (c)(5), the prices sent to an ECN by market makers and specialists will have to be displayed in the public quotations disseminated by SROs, and order routing or access linkages will have to be in place. After hearing from the SROs, the Commission will determine whether it will be necessary to use its authority under Section 11A(a)(3)(B) of the Exchange Act to require the SROs to act jointly to provide means to accomplish these objectives.

iv. Minimum Price Variations

In the Proposing Release the Commission recognized that there may be different minimum price variations in any given security between the SROs providing a market for the security and ECNs through which the security is also traded. Currently most exchange-listed securities tend to be quoted and traded with a minimum price variation of ⅛ point or 1⁄16 point.[276] Nasdaq securities can be publicly reported in variations as low as 1⁄64, and can be quoted in minimum variations as low as 1⁄32, depending on the price at which the security trades.[277] Some ECNs allow priced orders in variations as low as 1⁄256; other systems provide for orders priced in decimals as small as one cent.

Most commenters did not address the issue of ECN minimum price variations. Some commenters that did address the issue, however, recommended that the ECN quote be rounded for public dissemination either downward from or upward to better prices in increments of 1⁄16 or smaller.[278] Other commenters recommended rounding in decimals,[279] while still others strongly opposed the use of decimals.[280] One commenter asserted that non-standard increments (*i.e.*, increments not approved by the primary market for the relevant security) should be prohibited in non-primary markets.[281] To address situations where the priced order in an ECN is at a non-standard increment, the Commission has determined that it is appropriate to interpret the ECN amendment to allow market makers and specialists to comply with the amendment (either individually or through the ECN) by rounding up or down to the nearest fraction accepted by the market disseminating the quote provided by the ECN.[282] The Commission believes, however, that rounding is appropriate only if the rounded public quotes are accompanied by an identifier that marks the quote as rounded.[283] Market makers, specialists, and ECNs will be permitted to round the prices of ECN buy orders

[275] As discussed below concerning expansion of the ITS/CAES linkage, currently non-Rule 19c-3 securities may not be traded via the ITS/CAES linkage.

[276] NYSE Rule 62 provides that bids or offers in stocks selling above one dollar per share may not be made at a variation of less than one-eighth of a dollar or twelve and a half cents; Amex Rule 127 allows for one-sixteenth spreads for stocks priced under ten dollars, and one-eighth spreads for stocks priced ten dollars and over.

[277] The NASD does not have a minimum variation policy for Nasdaq stocks. Nasdaq, however, is designed to process quotes and trades in particular minimum variations.

[278] *See, e.g.,* NASD Letter; Lehman Letter; Instinet Letter.

[279] *See, e.g.,* Letter from Leslie M. Marx, Assistant Professor of Economics and Management, and Eugene Kandel, William E. Simon Graduate School of Business Administration, University of Rochester, to Commissioner Steven Wallman, SEC, dated November 27, 1995 (''Marx and Kandel Letter''), concluding that the markets should move toward decimal pricing.

[280] *See* CHX Letter.

[281] *See* Madoff Letter.

[282] The Commission believes this alternative is preferable to imposing particular trading increments on the markets. At the same time, however, this alternative will provide the markets with an incentive to voluntarily move towards finer trading increments.

[283] In order to facilitate compliance with the rule, it will be necessary for SROs to provide a means for rounded prices to include a ''rounded'' identifier that makes clear that a better price is available in the ECN. The Commission notes that SROs, and the public quotation system, may not currently have such a field available for identifying quotations as rounded. The Commission, therefore, requests that the SROs work jointly to modify the public quotation system to ensure that specialists, market makers, and ECNs that are disseminating rounded prices have the ability to distinguish those rounded quotes.

down to the nearest quote increment, and round the prices of ECN sell orders up to the nearest increment. For example, under this interpretation, if a market maker or specialist enters a priced buy order into an ECN at 10 5/16 and the market receiving the price from the ECN for dissemination has a minimum quote increment of 1/8, a bid of 10 1/4 will be displayed in the public market and identified as a rounded price. This result reflects an SRO rule that prohibits dissemination of quotes in 1/16 variations. If the market maker or specialist already is bidding publicly at 10 1/4 when it enters the 10 5/16 buy order in an ECN, the market maker or specialist publishing a quote must reflect the ECN order by identifying its 10 1/4 bid as rounded.

In addition, market makers and specialists entering orders into ECNs that are reflected at rounded prices in the public quote will be expected to give their customers an execution at the superior non-rounded price. Thus, the market maker or specialist quoting a rounded price of 10 1/4 to reflect a 10 5/16 buy order must give a customer sell order an execution at 10 5/16 up to the published size. Similarly, an ECN providing market maker or specialist prices pursuant to the rounding alternative must execute an incoming order at the non-rounded price. The Commission recognizes that it may not be feasible for market makers or specialists that have not entered the rounded order into an ECN to determine, in an efficient manner, the actual price of the better order in the ECN. This may particularly be true with respect to market makers or specialists operating automated execution systems. The Commission believes that it is appropriate in such instances for such market makers and specialists that did not enter the rounded order to execute orders at the displayed rounded price.[284]

The Commission recognizes that this interpretation will allow prices in ECNs that are denominated in non-standard quotation increments not to be fully displayed, but believes this interpretation is appropriate to accommodate ECN prices in the existing public quotation system without imposing uniform trading increments.[285] The rounding identifier will inform investors that a better price is behind the rounded quote. Thus, even though the actual price cannot be readily displayed, investors will be aware of, and will be able to obtain, the better price in the ECN or from the market maker or specialist.

v. Effect on the Voluntary Aspect of the Quote Rule

If an OTC market maker uses an ECN that does not rely on the alternative of communicating that market maker's best prices to the public quotation system, then the market maker must publish in its own quote that better priced order entered into the ECN. Once a market maker publishes a quote through its association to reflect a priced order it entered into an ECN, pursuant to Rule 11Ac–1(c)(5)(i)(A), it will be deemed to have elected to publish quotations in that security,[286] and will therefore be subject to the quotation provisions of the Quote Rule. Moreover, pursuant to certain existing SRO rules,[287] withdrawal of that quotation after the ECN order has been executed or withdrawn prevents the market maker from immediately reinstating quotes in that security.[288] As a practical matter, once electing to quote, a withdrawal then precludes the market maker from continuing to enter priced orders for the security in an ECN because of the SRO prohibition on re-entering quotes after withdrawal.

The Commission solicited comment on this aspect of the ECN proposal. Although most commenters were silent concerning this issue, certain comments indicate confusion as to the effect on market makers who currently use ECNs but who do not voluntarily quote under the existing Quote Rule.[289] The Commission, therefore, reiterates that the combined operation of the ECN amendment and SRO rules may require a market maker or specialist who enters an order into an ECN that does not rely on the ECN display alternative, and publishes a quote reflecting that price, to continue to publish quotes in the public market regardless of the number of shares traded by the market maker or specialist in the security during the previous quarter.

In determining whether a market participant will be required to publish quotes after entering orders in an ECN, the Commission notes that, with respect to any given security, the quote rule requirements only apply if the market participant falls within the definition of the term ''OTC market maker'' for that security. To be an OTC market maker, the participant must hold itself out as willing both to buy and sell on a regular or continuous basis.[290]

The ''OTC market maker'' definition is not intended to capture subscribers who enter orders into ECNs on one side of the market to limit or offset their risk, such as options market makers who use ECNs to hedge their positions in the securities underlying the options they trade. They would not be required to publish public quotes in a security simply because they had entered an order for the security into an ECN, unless they regularly or continuously hold themselves out as willing to buy and sell the security. An entity that holds itself out via contract, marketing, or other communications with its customers, as being willing both to buy *and* sell a specific security on a regular or continuous basis would be an ''OTC market maker'' for the security. This latter market maker's entry of a superior priced order into an ECN for a security that itself does not publish quotes would compel the market maker to publish a quote and potentially, depending on SRO rules, trigger on-going quotation obligations.

vi. Exemptive Relief

Finally, the Commission is amending Section (d) of the Quote Rule concerning exemptive relief. Under that section, the Commission previously could exempt from the provisions of the Quote Rule, either conditionally or on specified terms and conditions, any responsible broker or dealer (which now will include a specialist or market

[284] *See also,* section III.C.2. for a discussion of best execution, *infra*.

[285] If primary markets in the future allow narrower quotation increments, these ECN prices between the existing quotation increments could be more accurately displayed in the public quote.

[286] 17 CFR 240.11Ac1–1(b)(5), as amended. *See also,* 17 CFR 240.11Ac1–1(a)(25), 17 CFR 240.11Ac1–1(c)(4)(ii), and 11Ac1–1(c)(5)(ii), as amended, acting jointly to ensure that OTC market makers publish quotations pursuant to the Quote Rule in securities they trade via ECNs.

[287] *See NASD Manual,* Marketplace Rules, Rule 4600 *et. seq.,* Nasdaq Market Maker Requirements (requiring members to maintain continuous two-sided quotations in the Nasdaq securities for which they are registered as market makers). *See also,* ITS Plan, Section 6(A)(i)(B), Furnishing Quotations (requiring each ITS Participant to furnish the current bid-asked quotation emanating from its floor or, in the case of the NASD, the best bid and offer emanating from ITS/CAES market makers in eligible securities). Unexcused withdrawal of quotations violates these NASD rules and ITS provisions.

[288] This will be true even if the market maker traded less than 1% of the share volume in the security in the previous quarter because the 1% threshold of the Quote Rule for mandatory quotes would not exempt the market maker from disseminating quotes once the market maker has ''elected'' to quote the security by using the ECN.

[289] *See, e.g.,* Madoff Letter; Instinet Letter. In its comment letter, Instinet notes that some market makers that make a continuous market in a security, but do not normally publish quotations in that security, will now be required to disseminate quotations for that security if the market maker places a priced order for that security on an ECN. The Commission recognizes this result, but notes the ECN display alternative of allowing such market makers to continue to place orders in a security into an ECN without having to directly publish quotes in that security.

[290] Rule 11Ac1–1(a)(8), as amended.

maker under the ECN amendment), exchange, or association if the Commission determined that such an exemption was consistent with the public interest, the protection of investors and the removal of impediments to and perfection of an NMS. The Commission is adding a provision allowing it to exempt an ECN from the definition in the rule. The Commission did not solicit comment on expanding its authority to grant exemptive relief in this manner. The Commission believes, however, that the added exemptive authority is appropriate because it provides flexibility in applying the ECN amendment.

3. Amendments to the Quote Rule Concerning Definitions

a. Introduction

In the Proposing Release the Commission proposed to expand the Quote Rule's existing requirements to include quotation information from broker-dealers that, while internalizing order flow, hold themselves out as willing to buy and sell on a regular or continuous basis. This expansion of the Quote Rule would be accomplished by amending the definition of OTC market maker. The Proposing Release also recommended that quotation requirements be imposed on substantial broker-dealers in non-Rule 19c–3 securities by amending the definition of subject security, and on broker-dealers in Nasdaq SmallCap securities by amending the definition of covered security.[291] In putting forward this proposal, the Commission noted that some dealers quote on a selective basis, choosing not to display quotes for securities that they actively trade because these securities are subject only to the voluntary quote provisions of the Quote Rule.

The amendments adopted by the Commission today are substantially the same as those proposed.[292] The Commission believes these amendments will benefit investors by improving price discovery and liquidity, and increasing competition between OTC market makers and specialists. The Commission further believes that these amendments are in keeping with Congress's directive that the Commission use its rulemaking authority to remove impediments to competition.

b. Basis for Amendments to Rule 11Ac1–1(a)

i. Amendment to 11Ac1–1(a)(25) (Definition of a ''Subject Security'')

The Commission is amending the Quote Rule's definition of subject security to require continuous two-sided quotations from OTC market makers and exchanges that are responsible for more than 1% of the volume in a non-Rule 19c–3 security. The Commission believes that this amendment removes an impediment to competition that exists under the current rule. Broker-dealers that held themselves out as willing to buy and sell non-Rule 19c–3 securities on a regular or continuous basis were not previously required to disseminate quotation information unless they transacted the largest percentage of the aggregate trading volume in a particular security. Consequently, regardless of the volume transacted by other exchanges or OTC market makers, the primary market, which was the market responsible for transacting the largest percentage of the aggregate trading volume, was the only market participant required to disseminate quotations in these securities.[293]

As noted in the Proposing Release, third market trading in non-Rule 19c–3 securities has increased considerably since the Quote Rule was last amended.[294] Third market trading in Rule 19c–3 securities now accounts for a greater number of stocks and a more substantial percentage of U.S. trading volume than it did when the Commission initially established disparate regulatory treatment under the Quote Rule for Rule 19c–3 securities and non-Rule 19c–3 securities.[295] In view of the growth of third market trading volume, the Commission believes that requiring all broker-dealers trading more than 1% of the volume in a listed security to publish quotations will provide more accurate and comprehensive quotation information for non-Rule 19c–3 securities.

The Commission believes that disparate regulatory requirements for Rule 19c–3 and non-Rule 19c–3 securities can no longer be justified by differences in the trading of the two types of securities. Moreover, the Commission finds that differences in regulatory treatment have impaired transparency. Because of the growth of third market trading in non-Rule 19c–3 securities, the absence of quotes revealing the substantial third market makers in a security and the prices they are prepared to publicly quote results in the consolidated quotations in the security being incomplete.[296] The Commission therefore believes that significant dealers in non-Rule 19c–3 securities should become subject to the same standards required for trading

[291] OTC market makers and specialists are not required by the Quote Rule to provide continuous two-sided quotations for any Nasdaq security. As amended, an OTC market maker or specialist may make an election, pursuant to paragraph (b)(5)(i) of the Quote Rule, to collect, process, and make available quotations for Nasdaq NMS or Nasdaq SmallCap securities. The Commission is soliciting comment on a proposed amendment which would require continuous two-sided quotations from OTC market makers and specialists responsible for more than 1% of the aggregate transaction volume for a Nasdaq security. *See* Companion Release.

[292] The only substantive difference between the amendments as adopted today and as proposed is the definition of the term ''OTC market maker.'' The definition as proposed read ''* * * sell to a customer * * *'' but has been modified to read ''* * * sell to its customers * * *.'' Rule 11Ac1–1(a)(13), 17 CFR 240.11Ac1–1(a)(13). *See infra* note 308.

In addition to the amendments discussed in detail herein, the Commission is making technical, non-substantive amendments to the Quote Rule. The terms ''association'', ''revised bid or offer'', and ''revised quotation size'' will be separately defined in the rule. The definition of ''exchange-traded security'' has been revised to exclude OTC securities traded on an exchange pursuant to unlisted trading privileges. The definition of ''plan processor'' has been amended to reflect the appropriate cross-reference. The definition of ''principal market'' has been removed from the Quote Rule because it is no longer applicable. In addition, the definitions have been arranged in alphabetical order.

Paragraph (b)(1)(i) of the rule has been reorganized to separately set forth the exclusions in subparagraphs (A) and (B). Paragraph (b)(1)(iii) has been eliminated and the substance of the provision has been incorporated into paragraphs (b)(1)(i) and (b)(1)(ii).

The Commission is also amending the definition of the term ''reported security'' as it appears in Rule 11A3–1(a)(4). The amendment alters the form but not the meaning of the term or its application. The amendment will make the term consistent with the definition of ''reported security'' in the Quote Rule.

The amendments to Rule 11Ac1–1(a) are being adopted prospectively. Outstanding Quote Rule interpretations and no-action letters continue to be operative, to the extent that the positions taken therein are not materially in conflict with the amendments adopted today. Persons seeking clarification regarding the status of outstanding no-action letters should contact the Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission.

[293] An OTC market maker or specialist, although not the principal market for a listed security, could elect to disseminate quotes for the security. Under the amended 11Ac1–1(a)(25) an OTC market maker or specialist may still elect to disseminate quotations if it is responsible for 1% or less of the volume in that security.

[294] Third market maker trading interest is more concentrated in non-Rule 19c–3 securities, as evidenced by the fact that the percentage of third market quotes in non-Rule 19c–3 securities (36%) is greater than that for Rule 19c–3 securities (28%). *See Fragmentation* vs. *Consolidation* of Securities Trading: Evidence of the Operation of Rule 19c–3, Office of Economic Analysis, SEC, at 5 (March 29, 1995) (''*Fragmentation* vs. *Consolidation*'').

[295] Third market trading volume has grown, at least in part, because the universe of securities subject to Rule 19c–3 has increased considerably. For example, nearly 60% of the stocks listed on the NYSE are subject to Rule 19c–3, accounting for approximately 48% of the total NYSE volume. *See Fragmentation* vs. *Consolidation* at 4–5.

[296] *See, e.g., supra* note 294.

Rule 19c–3 securities.[297] As a result of this amendment, market participants will have more complete information about significant OTC market makers and specialists in a security and the prices at which they are willing to trade. The majority of commenters who addressed the amendment to Rule 11Ac1–1(a)(25) endorse the Commission's proposal to end the disparity between Rule 19c–3 securities and non-Rule 19c–3 securities, noting that there is no basis for continuing to draw a regulatory distinction between Rule 19c–3 and non-Rule 19c–3 securities, and that the extension of the Quote Rule will provide meaningful information about significant market makers in listed securities.[298] One commenter asserts that requiring quotations from all significant OTC market makers will succeed in improving the quality of the NMS for all listed securities while at the same time leveling the playing field for all market makers.[299]

Nevertheless, many commenters suggest modifications to the 1% volume threshold. Some commenters suggest that Nasdaq, on behalf of all third market makers, should be viewed as one market participant, and that once its volume exceeds 1% for a listed security, all OTC market makers in that security should be required to maintain continuous two-sided quotations.[300] Other commenters believe that the Commission should adopt a ''continuousness of execution'' standard rather than a rigid 1% volume threshold.[301] This suggestion would require a dealer to quote if it executes orders on a regular or continuous basis, even if it accounts for less than 1% of the volume, while excluding from quotation requirements a dealer that executes a few large trades that account for more than 1% of the volume. The NYSE suggests an additional threshold, to be used in the alternative with the 1% of volume threshold.[302] This alternative would have the effect of requiring public quotations from market makers who, while not accounting for more than 1% of the aggregate transaction volume, have an active retail business in small-sized trades.

The Commission believes that extending the 1% threshold based on quarterly aggregate trading volume to non-Rule 19c–3 securities is a reasonable method to improve the scope of quotation information to include significant OTC market makers and specialists. This 1% threshold, currently in effect for Rule 19c–3 securities, has proved effective in supplying comprehensive quotation information to the market at large. Moreover, based on the increase in third market trading volume for these securities, the Commission does not believe this standard is unduly burdensome on OTC market makers or specialists.[303] Rather, the Commission believes this threshold strikes a balance between requiring the dissemination of all quotation interest and accommodating those specialists and OTC market makers that are small entities. The Commission believes that OTC market makers and specialists that account for 1% or less of the aggregate volume are not active enough to justify the additional expense of providing continuous quotation display.[304]

Similarly, the Commission believes that applying the 1% threshold to the total over-the-counter volume in a listed security would extend the quotation requirements to inactive market makers. The Commission questions whether the added quotation information would justify the added burden.[305] The Commission also believes that reliance on something other than a numerical standard in this circumstance would lead to confusion in the marketplace. Accordingly, the Commission believes the ''greater than 1% aggregate trading volume'' threshold for mandatory quotations continues to be appropriate.

ii. Amendment to 11Ac1–1(a)(13) (Definition of an ''OTC Market Maker'')

Amended Rule 11Ac1–1(a)(13)[306] revises the definition of ''OTC market maker'' to include any dealer who holds itself out as willing to buy from and sell to its customers, or otherwise, a covered security for its own account on a regular or continuous basis otherwise than on an exchange in amounts of less than block size.[307] Accordingly, dealers that internalize customer order flow in particular stocks, by holding themselves out to customers as willing to buy and sell on an ongoing basis, would fall within the definition even though they may not hold themselves out to all other market participants. In addition, dealers

[297] OTC market makers that trade a significant volume in non-Rule 19c–3 securities have not been subject to the same requirements as third market makers that meet the 1% threshold for Rule 19c–3 securities. For example, an OTC market maker meeting the 1% threshold is required to quote in a Rule 19c–3 security and therefore must register as a CQS market maker with the NASD. *NASD Manual*, Rule 6320. CQS market makers are subject to the NASD's CQS market maker rules, which include firm and continuous two-sided quote obligations and mandatory participation in the ITS through Nasdaq's Computer Assisted Execution System. *NASD Manual*, Rules 6320 and 6330.

[298] *See, e.g.*, Amex Letter; Blume Letter; BSE Letter; CHX Letter; CSE Letter; NASD Letter; PSE Letter; Alex. Brown Letter; Schwab Letter; D.E. Shaw Letter; Dean Witter Letter; Lehman Letter; Madoff Letter; Merrill Letter; PaineWebber Letter; Salomon Letter; Smith Barney Letter; STA Letter.

There were some commenters who did not support the extension of the Quote Rule's requirements to non-Rule 19c–3 securities. *See, e.g.*, NYSE Letter; and Specialists Assoc. Letter, which note that the Commission, rather than expanding the Quote Rule to include non-Rule 19c–3 securities, should re-examine the validity of Rule 19c–3. *See, e.g.*, Letter from Alexander H. Slivka, Executive Vice-President, National Securities Corporation, to Jonathan G. Katz, Secretary, SEC, dated October 25, 1995 (''NSC Letter''); Fahnestock Letter; Letter from Samuel Lieberman, President, Rothschild Lieberman Ltd., to Jonathan G. Katz, Secretary, SEC (''Rothschild Letter''); Letter from Mark T. DeFelice, Vice President, Roosevelt & Cross, Inc., to Jonathan G. Katz, SEC, dated January 24, 1996 (''Roosevelt Letter''), which note that the extension of the quotation requirements to include non-Rule 19c–3, will have an impact on small firms. *See infra* note 307.

[299] Madoff Letter.

[300] *See* PSE Letter; Specialists Assoc. Letter.

A comparable alternative is to require quotations from all OTC market makers who account for more than 1% of the Nasdaq-reported volume in a security. *See* Investors Research Letter.

In the same vein, two commenters suggest that once an OTC market maker or specialist displays a quotation in a listed security, it should be subject to the requirements of the rule. *See* BSE Letter; CSE Letter.

The NYSE and CSE suggest further application of the rule to include brokers and their private trading systems. *See* NYSE Letter; CSE Letter.

[301] *See* CHX Letter; Fahnestock Letter; Jefferies Letter; Salomon Brothers Letter; STA Letter. *See also* Rothschild Letter.

[302] NYSE Letter. *See also* RPM Letter; Specialists Assoc. Letter.

[303] The Commission seeks to avoid imposing burdens on market participants that are not necessary to achieve the Quote Rule's objective of reliable public quotations from all significant markets in a security. The Commission notes that the 1% threshold for quotations in Rule 19c–3 securities has not impaired trading in these securities. Since the Quote Rule was amended, OTC market makers' volume in Rule 19c–3 securities has increased. *See Fragmentation* vs. *Consolidation* at 4–5. The Commission has no reason to believe that imposing mandatory quotations on specialists and OTC market makers that are responsible for more than 1% of the volume in a non-Rule 19c-3 security will affect market making in these securities.

[304] A few commenters expressed concern that the amendment to the Quote Rule would have a detrimental impact on small firms. *See* Fahnestock Letter; NSC Letter; Roosevelt Letter; Rothschild Letter. The Commission believes the requirement that a dealer must transact greater than 1% of the volume in a security before quotations are mandated prevents the rule from becoming unnecessarily burdensome on small firms. For example, a firm would not have to publish continuous two-sided quotations in AT&T unless it transacted more than 1% of the aggregate transaction volume, which the Commission considers more than modest volume.

[305] In a related release issued today, the Commission is proposing an amendment that would require continuous two-sided quotations from OTC market makers and specialists provided that the OTC market maker or specialist is responsible for more than 1% of the aggregate transaction volume for a security included on the Nasdaq Stock Market. *See* Companion Release for a detailed discussion on the proposed amendment to the Quote Rule.

[306] 17 CFR 240.11Ac1–1(a)(13).

[307] The definition, as proposed, read ''* * * sell to a customer * * * '' but has been modified to read ''* * * sell to its customers * * *. ''

that hold themselves out to particular firms as willing to receive customer order flow, and execute those orders on a regular or continuous basis, also would fall within the definition of an OTC market maker.

This change was in response to the requests of commenters for consistency in the definition of OTC market maker between proposed Rule 11Ac1–1(a)(13) and proposed Rule 11Ac1–4(a)(9). *See, e.g.,* NASD Letter. Additionally, the Commission stated in the Proposing Release that ''[a]s in the past, broker-dealers will not be considered to be holding themselves out as regularly or continuously willing to buy or sell a security if they occasionally execute a trade as principal to accommodate a customer's request.'' Proposing Release at 24. The Commission believes the new language more accurately reflects that premise.

Most commenters addressing this issue assert that it is appropriate to include in the definition of OTC market maker those dealers who internalize customer order flow because they believe that dealers that hold themselves out to their customers as willing to buy and sell securities on a continuous basis should be required to publish quotations.[308] One commenter asserts that the amendment will broaden the definition of who should be required to provide transparency and liquidity to the NMS to include dealers that transact business with other firms' order flow and with their own customers, thus ensuring a minimum level of quotation commitment from those NMS participants vying for public order flow.[309] Some commenters, however, advocate that more than internalization of order flow should be required before a dealer is deemed an OTC market maker. These commenters suggest the Commission adopt some form of a ''holding itself out'' standard, so that the rule would capture the quotations of professional liquidity providers but not dealers that occasionally accommodate a customer's request.[310] Other commenters, deeming the definition too inclusive, suggest the Commission add an exception for broker-dealers that act solely as agents.[311]

One commenter believes that excluding firms that transact primarily block size orders and therefore account for significant volume is inconsistent with the Commission's goals for increased transparency.[312] However, several commenters note that block size orders are excluded from the existing definition of OTC market maker and argue strongly that it is consistent with the purposes of the rule to continue to exclude them.[313]

The Commission believes that adoption of the amendment is warranted to ensure the availability of quotation information that accurately reflects the interests of all significant market participants. Increased transparency is fundamental to the fairness and efficiency of the securities markets. As noted in the Market 2000 Study, enhanced transparency helps link various market segments.[314] Currently, a dealer can receive order flow from internalization or pre-existing order routing arrangements but avoid publishing quotations, even when it accounts for more than 1% of the volume in a non-Rule 19c–3 security, because it is not currently deemed to be an OTC market maker.[315] Allowing significant market makers that deal actively in securities without publicizing their activity or making available their prices undermines the NMS goal of transparency. The Commission believes that those dealers should be classified under the rule as market makers and be required to publicize their quotations so that investors may know of, and trade on similar terms with, those market makers.

The Commission has considered commenters' suggestions regarding alternative definitions. In fact, in response to the suggestions of some commenters, the Commission has modified the proposed amendment to make clear that more than an isolated transaction is necessary before a dealer is designated an OTC market maker.

The Commission, in regard to orders of block size, has determined to continue to exclude dealers that hold themselves out as only willing to deal in orders equal to or greater than 10,000 shares. Orders of block size are generally negotiated with the dealer and exposed upon execution. Block positioners usually do not maintain prices at which they are willing to buy and sell a particular security; rather, they make known their role of assisting in the purchase and sale of large positions in securities at some price. Consequently, these dealers do not function as typical dealers that maintain a regular or continuous price quote. The Commission has concluded that requiring quotations from these dealers would not provide useful price information and therefore a dealer that acts solely as a block positioner should remain excluded from the definition.

iii. Amendment to 11Ac1–1(a)(6) (Definition of a ''Covered Security'')

As amended, Rule 11Ac1–1(a)(6)[316] defines ''covered security'' to include any security for which a transaction report, last sale data or quotation information is disseminated through an automated quotation system as described in Section 3(a)(51)(A)(ii) of the Exchange Act.[317] This amendment would extend the Quote Rule provisions to OTC market makers and exchange specialists quoting in Nasdaq SmallCap securities.

The Proposing Release noted that the Quote Rule presently does not reflect certain developments in the Nasdaq market, including the large number of securities included on the Nasdaq SmallCap market. Only one commenter addressed this amendment. That commenter, MJT, expressed strong support for the proposal, noting that it is both fair and equitable to apply the Quote Rule to Nasdaq SmallCap securities.[318] The Commission believes it is appropriate to extend coverage of the Quote Rule to these securities in recognition of the development of a liquid trading market and increased investor demand for these securities. NASD rules concerning quotations already require firm quotations for both Nasdaq SmallCap securities and Nasdaq/National Market securities.[319] Thus, the amendment simply extends coverage of the Quote Rule requirements to the same range of securities as

[308] *See* Amex Letter; BSE Letter; CHX Letter; CSE Letter; D.E. Shaw Letter; Madoff Letter; NYSE Letter; PSE Letter; RPM Letter; SIA Letter; STA Letter.

[309] Madoff Letter.

[310] *See* NASD Letter; Jefferies Letter; SIA Letter; PaineWebber Letter; STA Letter. It should be noted that the amended definition includes a requirement that the broker-dealer hold itself out to, at a minimum, its customers on a regular and continuous basis in order to be an OTC market maker.

[311] *See* Fahnestock Letter; Salomon Brothers Letter; Rothschild Letter; Investors Research Letter.

[312] Amex Letter.

[313] *See* Fahnestock Letter; Dillon Letter; Goldman Sachs Letter; Merrill Letter; Salomon Brothers Letter.

[314] See Market 2000 Study at III–7.

[315] Although NASD rules require dealers who are registered as CQS market makers to provide quotations, registration is not mandated. A dealer in reported securities may elect to disseminate quotations by registering as a NASD market maker and ''communicating'' its best bids and offers to the association by entering two-sided quotations in the Nasdaq System. *See NASD Manual,* Rule 4611.

[316] Rule 11Ac1–1(a)(6), 17 CFR 240.11Ac1–1(a)(6).

[317] 15 U.S.C. 78c(a)(51)(A)(ii).

[318] MJT Letter.

[319] *See NASD Manual,* Rule 4613.

existing NASD firm quote requirements.[320]

c. Response to Other Specific Requests for Comments

In addition to the Quote Rule amendments discussed above, the Proposing Release solicited comment on whether: (1) revisions are necessary to an NASD rule that restricts certain computer generated quotations;[321] and (2) whether the ITS linkage should be expanded to allow NASD CAES members access to the linkage in non-Rule 19c–3 securities.

i. Automatic Generation of Quotations

Requiring active third market makers in non-Rule 19c–3 securities to quote also raises the issue of whether NASD members should continue to be prohibited from using computer systems to generate quotations automatically.[322] Currently, exchange specialists may use automated mechanisms to track the NBBO in a security if they maintain a quotation size of no more than 100 shares.[323] OTC market makers, however, are prohibited by NASD requirements from using automated quotation tracking systems.

The Commission requested comment on whether computer generated quotations should be permitted if active third market makers are required to quote in non-Rule 19c–3 securities, and if so, under what conditions. Commenters in favor of lifting the NASD's automated quotation ban believe that worthwhile computer generated quotes should be permitted.[324] For example, one commenter stresses that a ban on all computer generated quotations impedes technological innovation, protecting the franchise of inefficient market makers at the expense of the investing public. Moreover, the commenter asserts, given the same regulatory environment, there is no reason to believe that firms that make automated markets will quote away from the market any more than firms posting quotes manually.[325]

Certain commenters, including the NASD, believe that the ban should continue in effect. In general, these commenters believe that lifting the ban could create systems capacity and data traffic problems, and result in useless quotations that are automatically maintained away from current market prices.[326]

Even commenters in favor of lifting the ban tend to believe that, while some types of computer generated quotes are appropriate, others, such as quotations automatically maintained away from the best market quotation, should not be permitted. The NASD, which generally favors the ban on automated quotes, believes it may be appropriate to revise its autoquote policy to permit a market maker to automatically update its quote to match either the best bid or best offer, provided liquidity is not withdrawn from the contra-side of the quotation. In this situation, the NASD believes a market maker will be exposed to an execution and will be genuinely contributing to market liquidity.

The Commission believes that a total prohibition on the use of computer generated quotes is not appropriate. Such an approach excessively limits the use of sophisticated trading strategies that rely on automation in the quotation process for their success, and it also may act as a competitive disadvantage to market makers and specialists that would otherwise rely on technology to meet their quotation obligations more efficiently. In the latter instance, broad prohibitions on the use of computer generated quotes may cause some market makers and specialists to restrict the number of stocks in which they are willing to make markets.

While the Commission recognizes traditional concerns related to the accessibility of computer generated quotes and the impact of such quotes on systems capacity, it believes that more can and should be done in this area. This is particularly true given the enhanced quotation obligations that will be imposed on some market participants under the revised Quote Rule. The Commission urges the NASD, ITS Participants,[327] and other interested market participants to develop revised standards that would permit the use of computer generated quotes that contribute value to the market. Specifically, the Commission requests that the NASD and ITS Participants resolve this issue before the effective date of the Quote Rule amendments. In the absence of such progress, the Commission recognizes that it will consider invoking its own authority to address this issue.

ii. Expansion of ITS/CAES Access

As discussed in the Proposing Release, the uniform application of the Quote Rule to all exchange-listed securities raises the issue of the disparate treatment of Rule 19c–3 and non-Rule 19c–3 securities under the ITS Plan. The Commission solicited comment on this disparate treatment. The same issue arises with the provision allowing the use of an ECN as an intermediary in communicating quotes to the public quotation system if equivalent access is provided.

Currently, the ITS Plan provides access to the ITS System to any Participant in any Rule 19c–3 security in which the Participant disseminates continuous two-sided quotations, but excludes OTC market makers from ITS access for non-Rule 19c–3 securities. In the past, market makers in non-Rule 19c–3 securities were not subject to mandatory quote requirements. The amendments to the Quote Rule adopted today will subject OTC market makers and exchange specialists to the same quotation requirements for all exchange-listed securities.

The Commission requested comment on whether the Quote Rule amendments justify an expansion of the linkage between ITS and the NASD's CAES interface to provide ITS access to and from any market maker for any exchange-listed security in which that market maker disseminates continuous two-sided quotations. Numerous commenters support expanding the linkage in this manner because they believe an expansion will enhance fair competition and increase opportunities

[320] Section 11A(c)(1) of the Exchange Act grants the Commission the authority to prescribe, among other matters, rules and regulations to assure accurate and reliable quotations ''with respect to any security other than an exempted security.'' The Commission believes that extending the requirements of the Quote Rule to Nasdaq SmallCap securities will further these interests. No new costs should be imposed on market participants because the NASD rules concerning quotations already treat Nasdaq/National Market and SmallCap securities similarly.

[321] *NASD Manual*, Rule 6330. The NASD, however, provides an automated quotation update capability (''auto-refresh'') as part of the Small Order Execution System which market makers may elect to use. Specifically, the quote of a market maker using auto-refresh will be automatically updated when the market maker exhausts its exposure limit in the NASD's Small Order Execution System.

[322] *See supra* note 288, concerning the impact of the ECN amendment to the 1% rule.

[323] The 100-share limitation follows the ITS Plan requirement that no ITS Participant may use an automated computer tracking system to generate quotes for more than 100 shares in any security the Participant trades through the ITS system.

[324] *See, e.g.*, BSE Letter; CSE Letter; D.E. Shaw Letter; Investors Research Letters; Lehman Letter; Madoff Letter; Merrill Letter; NSC Letter; NYSE Letter; Smith Barney Letter.

[325] D.E. Shaw Letter.

[326] *See*, e.g., Dean Witter Letter; NASD Letter; PSE Letter; RPM Specialist Letter.

[327] The ITS Plan also places certain restrictions on the use of computer generated quotes. *See supra* note 323. Given the technologies that have developed during the nearly 20 years that these ITS Plan restrictions have been in place, the Commission requests that the ITS Participants review these limitations and whether they continue to be appropriate, in whole or in part, and whether new limitations should replace the existing provisions or whether there should be any ITS Plan limitations on automated quotes.

for best execution.[328] Several commenters also assert that arguments previously made to exclude OTC market maker quotes in non-Rule 19c–3 securities from ITS are no longer valid.[329]

One commenter specifically argues that adoption of the Commission's proposals should end any objection to the NASD's full participation in ITS because the operation of the Quote Rule will reduce opportunities for OTC market makers to trade in ECNs while simultaneously availing themselves of the voluntary aspect of the Quote Rule, and therefore, will expand the imposition of NASD quotation requirements upon OTC market makers. These requirements, according to the commenter, are equal to those of any other market and add greater transparency and liquidity to the markets for exchange-listed securities as well as the NMS.[330]

Those commenters opposed to the expansion generally believe that the existing limitation on ITS access is justified in view of disparities in customer protections afforded by exchanges and exchange members when compared to customer protections mandated by NASD rules.[331]

The Commission recognizes that the expansion of ITS/CAES is a significant issue of concern to many market participants. The Commission therefore encourages a continuing dialogue among the ITS Participants to solve this issue on a timely basis and in a manner beneficial to the market as a whole.

d. Operation of the Rule With Amended Definitions

i. Amendment to 11Ac1–1(a)(25) (Definition of a ''Subject Security'')

As a result of the amendment adopted today, OTC market makers and exchange specialists who hold themselves out as willing to buy and sell non-Rule 19c–3 securities on a regular or continuous basis, and that account for more than 1% of the quarterly aggregate trading volume, will be subject to the Quote Rule and required to make continuous two-sided quotations available to the public, even if they have not previously elected to register as CQS market makers with the NASD. This amendment will close a significant gap in the quotation information that has been available heretofore to market participants and investors. In a parallel action, the Commission is proposing for comment an additional amendment to the Quote Rule.[332] The Commission believes that the additional proposal, if adopted, would further improve transparency by providing investors with quotation information on Nasdaq securities from significant OTC market makers and specialists.

ii. Amendment to 11Ac1–1(a)(13) (Definition of an ''OTC Market Maker'')

The definition of OTC market maker now includes any dealer holding itself out as willing to transact business for its own account on a regular or continuous basis, whether it transacts exclusively with its own customers or with the customers of other dealers. Those dealers that hold themselves out to customers as willing to execute orders on a regular or continuous basis, whether by the internalization of customer order flow in particular stocks or through arrangements with particular firms to execute their customer order flow, now fall within the definition of OTC market maker. Therefore, obligations under the Quote Rule will now apply to dealers that internalize customer order flow or hold themselves out to particular firms as willing to execute their customer order flow, and that execute those orders on a regular or continuous basis. As in the past, broker-dealers will not be considered to be holding themselves out as regularly or continuously willing to buy or sell a security if they occasionally execute a trade as principal to accommodate a customer's request.

iii. Amendment to 11Ac1–1(a)(6) (Definition of a ''Covered Security'')

The amendment extends the coverage of the Quote Rule to all Nasdaq securities where the rule had previously applied only to Nasdaq/National Market securities. As noted previously, NASD rules already require a dealer that makes a market in a Nasdaq SmallCap security to provide quotations.[333] The Commission, therefore, does not believe extending the Quote Rule to include securities covered by an existing NASD rule will result in additional burdens on OTC market makers. Although the definition of covered security has been amended to include Nasdaq SmallCap securities, an exchange specialist or OTC market maker still must make an election, pursuant to paragraphs (b)(5)(i) and (ii), respectively, of the Quote Rule.[334] Accordingly, although the definition has been amended, an OTC market maker or specialist is not mandated by the Quote Rule to provide quotations on Nasdaq SmallCap securities. If, however, an exchange specialist or OTC market maker makes an election to make available quotations, the firmness obligations under paragraph (c) of the Quote Rule become operative.

e. Effective Date

The amendments to Rule 11Ac1–1 adopted by the Commission today will become effective on January 10, 1997.

C. Price Improvement for Customer Market Orders

1. Proposed Rule

In the Proposing Release, the Commission sought comment on a market-wide Price Improvement Rule for customer market orders. The proposed rule was designed to apply across exchange and OTC markets to promote the execution quality of orders by providing increased opportunities for customer orders to interact at better prices without the intervention of a dealer. The proposal included a non-exclusive safe harbor as one means by which a specialist or OTC market maker could be assured that an order received a sufficient opportunity for price improvement for purposes of the rule.

The proposed rule was intended to encourage market participants to take advantage of current technologies and provide customer market orders with improved access to price improvement opportunities, regardless of where such orders are routed for execution. Although the proposed rule would have required specialists and OTC market makers to provide price improvement opportunities for customer orders, the Commission did not prescribe any particular method of achieving price improvement in recognition of the fact that competition can produce innovative price improvement mechanisms. The Commission proposed a non-exclusive safe harbor, however, to provide certainty regarding one alternative by which a specialist or OTC market maker would be deemed to have satisfied its price improvement obligation.

Under the safe harbor, a specialist or OTC market maker would have been deemed in compliance with the

[328] *See, e.g.* D.E. Shaw Letter; Investors Research Letter; Lehman Letter; NASD Letter; NSC Letter; Madoff Letter; Rothschild Letter; Schwab Letter; STA Letter.

[329] *See, e.g.*, Madoff Letter.

[330] *Id.* Madoff states that the NASD now requires every OTC market maker to conform with NMS principles, respect all other NMS quotations in listed securities, and not trade through better quotes in the NMS. Madoff further notes that, in contrast, exchanges do not impose similar restrictions with respect to trading through off-exchange quotations.

[331] *See* Amex Letter; BSE Letter; CHX Letter; CSE Letter; PSE Letter; Specialists Assoc. Letter.

[332] *See* Companion Release.

[333] *See* NASD Rule 4613.

[334] 17 CFR 240.11Ac1–1(b)(5)(i)

proposed price improvement rule if it exposed, in its quote, a customer market order at an improved price and provided the customer with a guaranteed execution at the ''stop'' price.[335] This procedure was designed to promote the interaction of exposed orders at prices better than the NBBO with orders or trading interest in other markets. The safe harbor also was intended to lead to increased competition by encouraging specialists and OTC market makers to compete more actively for order flow on the basis of their published quotations. The Commission made clear, however, that the order exposure procedures set out in the proposed safe harbor neither would be mandatory, nor the exclusive means by which to satisfy the obligation to provide an opportunity for price improvement.

Many of the 145 commenters discussed the proposed Price Improvement Rule. The commenters raise numerous questions and concerns regarding the proposed rule. For example, some commenters claim that an absolute rule would reduce the broker-dealer's fiduciary obligation of best execution to an algorithm, eliminating the exercise of professional judgment in identifying price improvement opportunities.[336] Instead, the commenters argue that customers and market professionals should be able to use discretion in deciding when and how price improvement should be sought.[337]

In addition, several commenters are concerned that the proposed safe harbor would become the industry standard. These commenters believe that, although non-exclusive, the proposed safe harbor would dictate the minimum acceptable standard to follow, thereby stifling innovation and competition.[338] Many commenters also are troubled by various technical aspects regarding the application of the safe harbor. For example, some commenters believe the 30-second exposure period would be insufficient to allow other market participants to respond to the exposed order, even with today's technology.[339] Other commenters are concerned with the mechanics of the ''stopping'' procedures.[340] At least one commenter argues that the requirement to stop stock blurs the distinction between price guarantees and price improvement opportunities.[341]

The potential costs associated with the proposed rule also concern many commenters. They claim that necessary systems upgrades would be expensive.[342] In addition, several commenters claim that the number of quotes generated as a result of the safe harbor would pose a serious threat to system capacity.[343] Many commenters warn that the increased traffic would reduce trading efficiency, decrease transparency and increase overall risk.[344] Some commenters also state that market price integrity would be reduced due to the proliferation of flickering, ephemeral quotations.[345]

A common suggestion from the commenters is that the Commission not adopt the proposed rule prior to evaluating the effects of the other initiatives contained in the proposal.[346] Some commenters believe that the amendments to the Quote Rule and the proposed Limit Order Display Rule should act to narrow spreads by eliciting the true market for a given security, thereby decreasing the utility and necessity of seeking better prices for customer orders. According to these commenters, if such results are achieved through the other initiatives, the potential costs and significant market operations changes associated with the proposed Price Improvement Rule would far outweigh any potential benefit.

Although the Commission continues to believe that the opportunity for price improvement can contribute to providing customer orders with enhanced executions, the Commission has determined to defer action on the proposed Price Improvement Rule for the present time. The Commission believes that the other initiatives adopted today will greatly improve the price discovery process and the opportunity for customer orders to receive enhanced execution prices. These initiatives should act to narrow spreads by making available to all market participants the true buying and selling interest in a given security. The Commission believes, therefore, that the most appropriate course of action is to monitor the operation of the initiatives adopted today, and assess their impact on spreads, the quality of markets, and the quality of executions. This assessment will enable the Commission to better determine the need for further Commission action regarding specific price improvement obligations.

2. Best Execution Obligations

The proposed Price Improvement Rule was designed to complement the long-standing duties of broker-dealers to seek to obtain best execution of their customer orders; the Commission did not intend for the proposed rule to modify this existing best execution obligation.[347] Therefore, the Commission's decision to defer consideration of the proposed rule in no way should be taken as an indication that the duty of best execution has been altered.

A broker-dealer's duty of best execution derives from common law agency principles and fiduciary obligations, and is incorporated both in SRO rules and, through judicial and Commission decisions, in the antifraud provisions of the federal securities laws.[348] This duty of best execution requires a broker-dealer to seek the most favorable terms reasonably available under the circumstances for a customer's transaction.[349] The scope of this duty of best execution must evolve as changes occur in the market that give rise to improved executions for customer orders, including

[335] The proposed safe harbor provided for an order to be ''stopped'' at the national best bid (for a sell order) or offer (for a buy order) for the lesser of either the full size of the order, or the size associated with the national best bid (for a sell order) or offer (for a buy order).

[336] *See, e.g.,* Goldman Sachs Letter; Jefferies Letter; Madoff Letter; Merrill Letter; NYSE Letter; PaineWebber Letter; PSE Letter.

[337] *See, e.g.,* CSE Letter; Goldman Sachs Letter; Madoff Letter; Merrill Letter; NSC Letter; NYSE Letter; PSE Letter.

[338] *See, e.g.,* AZX Letter; Blume Letter; HHG Letter; Lehman Letter; Merrill Letter; Morgan Stanley Letter; NASD Letter; Salomon Letter; Schwab Letter; Smith Barney Letter; PaineWebber Letter; Ruane Letter.

Some commenters believe their current operations would satisfy the rule and, therefore, they would not need to utilize the safe harbor procedures. *See, e.g.,* Amex Letter; BSE Letter; CHX Letter; NYSE Letter; PSE Letter.

[339] *See, e.g.,* Amex Letter; Blume Letter; BSE Letter; CHX Letter; CSE Letter; NYSE Letter; PSE Letter; Schwab Letter;. *But see, e.g.,* Letter from Raymond E. Wooldridge, Chief Executive Officer, Southwest Securities, to Mr. Jonathan G. Katz, Secretary, SEC, dated January 9, 1996 (''Southwest Letter''); STANY Letter.

[340] *See, e.g.,* Madoff Letter; MJT Letter; Smith Barney Letter.

[341] *See* Sutro Letter.

[342] *See, e.g.,* Blume Letter; Dean Witter Letter; Fahnestock Letter; Goldman Sachs Letter; LJR Letter; NASD Letter; PaineWebber Letter; Ruane Letter; Salomon Letter; Schwab II Letter; SIA Letter.

[343] *See, e.g.,* Bear Stearns Letter; FIF Letter; Merrill Letter; PSE Letter; STANY Letter.

[344] *See, e.g.,* Amex Letter; Bear Stearns Letter; Blume Letter; FIF Letter; LJR Letter; Madoff Letter; Merrill Letter; Morgan Stanley Letter; NASD Letter; PSE Letter; Salomon Letter; STA Letter; STANY Letter; Specialist Assoc. Letter.

[345] *See, e.g.,* Dean Witter Letter; ICI Letter; Merrill Letter; Morgan Stanley Letter; NASD Letter; NYSE Letter; PSE Letter; Salomon Letter; Schwab II Letter; Specialist Assoc. Letter; STANY Letter.

[346] *See, e.g.,* Bear Stearns Letter; Dean Witter Letter; DOJ Letter; Goldman Sachs Letter; Lehman Letter; Madoff Letter; Morgan Stanley Letter; NASD Letter; NSC Letter; Schwab II Letter; SIA Letter; Sutro Letter.

[347] Proposing Release at 49.

[348] *See* Market 2000 Study, Study V at V–1, 2 and sources cited therein.

[349] *See* Market 2000 Concept Release, *supra* note 10; Market 2000 Study, Study V.

opportunities to trade at more advantageous prices. As these changes occur, broker-dealers' procedures for seeking to obtain best execution for customer orders also must be modified to consider price opportunities that become ''reasonably available.'' [350]

In the past the Commission has recognized the practical necessity of automating the handling of small orders, and has indicated that automated routing or execution of customer orders is not necessarily inconsistent with best execution.[351] At the same time, the Commission has emphasized that best execution obligations require that broker-dealers routing orders for automatic execution must periodically assess the quality of competing markets to assure that order flow is directed to markets providing the most beneficial terms for their customers' orders.[352] While in the past quote-based executions in OTC securities were generally recognized as satisfying best execution obligations, the development of efficient new facilities has altered what broker dealers must consider in seeking best execution of customer orders.[353] The Commission thus noted the importance of the opportunity for price improvement as a factor in best execution, speaking in the context of aggregate order handling decisions for both listed and OTC stocks.[354] Therefore, the Commission believes that routing order flow for automated execution, or internally executing order flow on an automated basis, at the best bid or offer quotation, would not necessarily satisfy a broker-dealer's duty of best execution for small orders in listed and OTC securities.[355]

Both the rule and the amendments adopted today should further improve a broker-dealer's ability to obtain improved executions for customer orders. These changes will enhance the public quote by including in the public quotation system many superior prices not currently reflected there. The ECN amendment is intended to publicize superior market maker ECN prices in the public quote, which should make these prices more easily accessible. Similarly, the Display Rule will include more customer prices in the public quote through requiring the display of customer limit orders.

Nonetheless, various markets and market makers may continue to provide opportunities for executions at prices superior to the enhanced national best bid and offer for their customer orders.[356] For example, some markets or market makers may continue to offer price improvement opportunities, based on internal order flow or execution algorithms. The Commission believes that broker-dealers deciding where to route or execute small customer orders in listed or OTC securities must carefully evaluate the extent to which this order flow would be afforded better terms if executed in a market or with a market maker offering price improvement opportunities. In conducting the requisite evaluation of its internal order handling procedures, a broker-dealer must regularly and rigorously examine execution quality likely to be obtained from the different markets or market makers trading a security.[357] If different markets may be more suitable for different types of orders or particular securities, the broker-dealer will also need to consider such factors.

Where material differences exist between the price improvement opportunities offered by markets or market makers, these differences must be taken into account by the broker-dealer. Similarly, in evaluating its procedures for handling limit orders, the broker-dealer must take into account any material differences in execution quality (*e.g.*, the likelihood of execution) among the various markets or market centers to which limit orders may be routed. The traditional non-price factors affecting the cost or efficiency of executions also should continue to be considered; [358] however, broker-dealers must not allow an order routing inducement, such as payment for order flow or the opportunity to trade with that order as principal, to interfere with its duty of best execution.[359] Of course, as the Commission has previously noted, in light of a broker-dealer's obligation to assess the quality of the markets to which it routes packaged order flow absent specific instructions from customers, the Commission does not believe that a broker-dealer violates its best execution obligation merely because it receives payment for order flow or trades as principal with customer orders.[360]

Prices superior to the public quote may at times be available in ECNs, even after adoption of the ECN amendment, based, for example, on orders of institutional participants and others not covered by the ECN amendment. Superior prices also may be available in other systems not classified as ECNs. As the Commission noted in the Proposing Release in September, 1995, and reiterates today, where reliable, superior prices are readily accessible in such systems, broker-dealers should consider these prices in making decisions regarding the routing of customer orders.[361] The Commission recognizes that many of these systems are less accessible and involve higher costs for broker-dealers than the public markets. In addition, in many cases it is not currently feasible to efficiently obtain price information from these systems or link to these systems on an automated basis. The Commission is not suggesting that broker-dealers must engage in manual handling of small orders if necessary to access these systems.[362] Nonetheless, the Commission believes that because technology is rapidly making these systems more accessible, broker-dealers must regularly evaluate whether prices or other benefits offered by these systems are reasonably available for purposes of seeking best execution of these customer orders. For example, if an ECN provides an automated link that makes it cost effective for a broker-dealer to access these systems for its retail orders on an automated basis, the broker-dealer must take the prices and other relevant costs in that system into account in handling these customer orders.

Pursuant to the Display Rule, most customer limit orders at superior prices will be required to be displayed and

[350] Proposing Release at 7–10.

[351] *Id.* at 8.

[352] Payment for Order Flow Release, *supra* note 23, at n. 30 and accompanying text; *See* Securities Exchange Act Release No. 37046 (March 29, 1996), 61 FR 15322 (April 5, 1996) (''CSE Approval Order''); Securities Exchange Act Release No. 37045 (March 29, 1996), 61 FR 15318 (April 5, 1996) (''BSE Approval Order'').

[353] Proposing Release at 10.

[354] *Id.*; *see also* Payment for Order Flow Release, *supra* note 23 at text accompanying notes 31–33. *See* CSE Approval Order, *supra* note 352; BSE Approval Order, *supra* note 352.

[355] Proposing Release at 9–10; *see also* note 360 and accompanying text (factors relevant to best execution).

[356] *Id.*

[357] CSE Approval Order, 61 FR at 15329. ''Price improvement'' in this context is defined as the difference between execution price and the best quotes prevailing in the market at the time the order arrived at the market or market maker. Any evaluation of price improvement opportunities would have to consider not only the extent to which orders are executed at prices better than the prevailing quotes, but also the extent to which orders are executed at inferior prices.

[358] *See* Market 2000 Study, Study V at V–2, 3.

[359] Payment for Order Flow Release, *supra* note 23.

[360] *Id.*

[361] Proposing Release at 10.

[362] The Commission has recognized that it may be impractical, both in terms of time and expense, for a broker that handles a large volume of orders to determine individually where to route each order it received. Proposing Release at 8.

included in the public quote.[363] The display of a limit order by a market maker directly affects its responsibilities in handling other customer orders. The Commission has long said that broker-dealers must consider quotation information contained in the public quotation system in seeking best execution of customer orders.[364] In executing customer market orders, a market maker must give no less consideration to the price of its own displayed customer limit order than any other public quotation price. Therefore, under the new Display Rule, a market maker that has displayed a customer limit order would be expected to provide an offsetting customer market order an execution at that limit price at least up to the size of the limit order.

In addition, the Commission notes that currently, some market makers that hold a customer limit order on one side of the market, priced better than the market maker's own quote, and a customer market order on the other side of the market, will execute both orders as principal rather than crossing the two orders. As a result, the market order customer receives the best bid and offer rather than receiving the benefit of a better limit order price. In light of the increased opportunities for price improvement now available and the rules the Commission is adopting today, the Commission believes that going forward this practice is no longer appropriate given the broker-dealer's obligation, as part of its duty of best execution, to its market order customer.[365]

In conclusion, although the Commission has determined for the present to defer final action on the proposed Price Improvement Rule, the Commission's adoption of the Display Rule and the Quote Rule amendments should substantially improve public quotations. Moreover, the Commission firmly believes that broker-dealers, when deciding where to route or execute customer orders, must carefully consider and evaluate opportunities for obtaining improved executions.

IV. Authority

As discussed above, the 1975 Act Amendments to the Exchange Act set forth Congress' goals for a national market system. Several commenters argue that the proposed rules violate Congress's direction that the Commission facilitate the establishment of, rather than design, a national market system.[366] Many of these comments were directed at the proposed Price Improvement Rule and in particular the proposed price improvement safe harbor. The Commission today is deferring action on that rule proposal. To the extent that the comments relate to the rule and amendments adopted today, however, they reflect a fundamental misunderstanding regarding the purpose of the rules and the Commission's role in facilitating a national market system.

The Commission's adoption of these rules is fully consistent with the role that Congress envisioned in 1975 for the Commission. Congress's direction to the Commission to ''facilitate'' the establishment of a national market system for securities that implemented Congressionally enumerated objectives was not intended as a limitation on the Commission's authority but rather was ''designed to provide maximum flexibility to the Commission and the securities industry in giving specific content to the general concept of the national market system.'' [367] Congress granted the Commission broad rulemaking authority over the national market system and market participants and this grant of specific rulemaking authority was not conditioned on the expectation that the Commission refrain from using it.

Although Congress expressed a preference that where possible the national market system evolve through the interplay of competitive forces, it recognized that ''competition may not be sufficient'' and that in such cases, the Commission should act ''promptly and effectively to insure that the essential mechanisms of an integrated secondary trading system [be] put into place * * *.'' [368] Congress specifically identified in 1975 some of the concerns addressed today and the Commission has examined these issues on several occasions over the intervening years in response to evolving market conditions and technologies. In view of the caution and deliberation with which the Commission has proceeded over the past 21 years, its actions today cannot fairly be viewed as arresting natural competitive forces, but rather should be regarded as an attempt to foster efficiency and redress shortcomings in the national market system that have developed since then, or that the securities industry on its own has been unable to resolve over this time.

The subject matter of these rule and rule amendments is an area of the national market system in which Congress itself recognized that the Commission's expertise and authority were paramount. Indeed, Section 11A was specifically enacted to eliminate ''arguments about the SEC's authority'' in this area. For that reason, the Commission was given ''pervasive rulemaking power'' with respect to the business of collecting, processing, or publishing information relating to quotations for and transactions in securities.[369] The rules adopted today implement Congress' goals as to dissemination of trading information: ''to insure the availability of prompt and accurate trading information, to assure that these communications networks are not controlled or dominated by any particular market center, to guarantee fair access to such systems by all brokers, dealers and investors, and to prevent any competitive restriction on their operation not justified by the purposes of the Exchange Act.'' [370]

It bears noting that the standards adopted by the Commission today are intended to allow markets to adapt and evolve in meeting the objectives of the national market system; the rules establish performance standards but do not dictate market structure. With regard to the Quote Rule, the rules do not determine how non-Rule 19c–3 market makers may make markets or how electronic communications networks may operate. Non-Rule 19c–3 market makers are free to operate as they please so long as they report their quotations to the extent they execute a certain level of volume in a security. Likewise, market makers and specialists may place priced orders in ECNs of many different designs as long as they change their quotes to reflect the orders in the ECN or the ECNs publicly report the quotes and provide access to such

[363] The Commission notes that the NASD's interpretation prohibiting market makers from trading ahead of customer limit orders applies both to displayed and nondisplayed customer limit orders held by the market maker. *See* NASD Conduct Rule IM 2110–2 (Trading Ahead of Customer Limit Orders).

[364] *See* Quote Rule Adopting Release, *supra* note 208.

[365] *Cf.*, NASD Notice to Members 96–10 (February, 1996) at 43; NASD Notice to Members 95–67 (August, 1995) at 417.

[366] *See, e.g.*, ABA Letter; Fahnestock Letter; HHG Letter; LJR Letter; NSC Letter; PaineWebber Letter; RPM Letter; Ruane Letter; SIA Letter.

[367] Conference Report, *supra* note 213, at 92. *See* Senate Report, *supra* note 31, at 8–9 (''the sounder approach appeared * * * to be to establish a statutory scheme clearly granting the Commission broad authority to oversee the implementation, operation, and regulation of the national market system and at the same time to charging it with the clear responsibility to assure that the system develops and operates in accordance with Congressional determined goals and objectives.''). The Conference Committee report on the 1975 Act Amendments indicates that the conferees adopted with minor revisions the Senate's provisions concerning the national market system. Conference Report, *supra* note 213, at 92.

[368] Conference Report, *supra* note 213 at 92.

[369] Conference Report, *supra* note 213, at 93.

[370] Senate Report, *supra* note 31.

priced orders. With regard to the Limit Order Display Rule, the rule does not seek to create a central limit order book or central limit order file. Broker-dealers are free to satisfy the rule in several different ways, so long as the result is that customer limit orders priced at or better than the NBBO are publicly displayed.

Some commenters also argue that the proposed rules are contrary to Congress' direction to assure fair competition between auction and dealer markets as structures for the trading of securities [371] and inappropriately introduce auction market principles into dealer markets. Although requiring display of superior-priced customer limit orders could be viewed as an auction market principle, such a requirement does not supplant the basic features of a dealer market or undermine competition between the exchange and OTC markets. Congress clearly intended that dealer markets would benefit from use of some auction market principles [372] and the 1975 Amendments specifically announce as a goal of the national market system that customer orders be able to interact without the intervention of a dealer to the extent that such a goal is consistent with other national market system objectives.[373] At a minimum, where feasible, customer limit orders should have a meaningful opportunity to interact with customer market orders.[374]

One of the main benefits contemplated by Congress was that the national market system would enable investors in dealer markets to execute against another limit order or market order at a better price than currently being quoted by a dealer for his own account.[375] Display of superior-priced limit orders would permit investors to compete in some cases with market makers and specialists, thereby increasing the competitiveness of dealer markets in these securities and enhancing the quality of customer limit order execution. Display of customer limit orders, however, would not compromise the essential features of dealer markets. In the absence of any superior-priced customer limit orders, dealers would continue to compete for market orders at their published quotations and would be able to execute against customer limit orders that would otherwise prevent the market maker from trading with a market order. Further, the widespread use by OTC dealers of ECNs to trade at prices better than the dealers' published quotes is of such recent vintage that it can hardly be viewed as a necessary part of a dealer market structure.[376]

V. Summary of Final Regulatory Flexibility Act Analysis

This following discussion summarizes the Commission's analysis of the rules adopted today under the Regulatory Flexibility Act. A complete final copy of the Final Regulatory Flexibility Act is available in the Public File.

The rules adopted today by the Commission are intended to allow markets to adapt and evolve in meeting the objectives of the national market system. In this regard, the rules establish performance standards but do not dictate market structure. The Quote Rule does not dictate how market makers or specialists that trade non-Rule 19c–3 securities may conduct their market making activities or how ECNs may service their subscribers. Market makers will be able to continue their regular market making activities so long as they report their quotations if they trade more than 1% of the transaction volume in a security. Likewise, market makers and specialists may place priced orders in ECNs of many different designs as long as they change their quotes to reflect better priced orders they have entered in ECNs or, alternatively, such ECNs provide for the public reporting of these prices and provide access to such priced orders. Moreover, broker-dealers are free to satisfy the Display Rule in several different ways, so long as the result is that customer limit orders priced at or better than the NBBO are publicly displayed in accordance with the rule.

A. Display Rule

The Commission considered several significant alternatives to Rule 11Ac1–4 consistent with the Rule's objectives and designed to minimize the impact of the rule on small entities. The Commission solicited comment on, among other things: (i) Whether the display requirement should be based on a *de minimis* threshold; (ii) the classes of securities to which the Rule should apply; (iii) whether to permit limit orders to be delivered to an exchange- or association-sponsored system that displays limit orders in accordance with the rule; and (iv) whether to permit limit orders to be delivered to an ECN or a PTS. The Commission believes that the rule as adopted imposes a smaller burden upon small brokers and dealers than do other alternatives considered.

The Commission believes that the ability of brokers and dealers to send a limit order to another party or system that will display that order provides all brokers and dealers, including small brokers and dealers, with the greatest possible flexibility to satisfy the NMS objectives embodied in the rule in the most economical manner. In this regard, the Commission decided to expand one of the exceptions to the display requirement that will permit market makers to comply with the rule by delivering customer limit orders to an ECN that complies with the ECN amendment to the Quote Rule. Furthermore, the Commission added a new exemptive provision that enables the Commission to exempt any responsible broker or dealer, ECN, exchange, or association from the requirements of the Display Rule.

The Commission considered allowing display of a representative size of a limit order rather than the full size, but concluded that display of the full size will provide the most accurate picture of the depth of the market at a particular price. The Commission does not believe that it is practicable to exempt small entities from the Display Rule because to do so would be inconsistent with the Commission's statutory mandate to protect investors. In that regard, the Commission believes that the pricing and size conventions documented in the 21(a) Report referenced above make it imperative that the requirements of the Display Rule apply to all market participants with equal force. The Commission notes that any exception for small brokers and dealers could create an incentive for Nasdaq market makers to create special market making subsidiaries qualifying as small broker-dealers which would be free to engage in the anti-competitive practices identified in the 21(a) Report.

B. Quote Rule

Allowing market makers that deal actively in securities without publicizing their activity or making available their prices undermines the NMS goal of transparency. The Commission believes that those dealers should be recognized as market makers and their quotations publicized so that investors may know of, and trade on similar terms with, those market makers. Therefore, the definition of OTC

[371] *See, e.g.*, Goldman Sachs Letter; Jefferies Letter; Merrill Lynch Letter; RPM Letter; Schwab I Letter; Schwartz & Wood Letter; SIA Letter; Specialist Assoc. Letter; *see also* Exchange Act Section 11A(a)(1)(C)(ii), 15 U.S.C. 78k–1(a)(1)(C)(ii).

[372] Senate Report, *supra* note 31, at 16.

[373] Exchange Act Section 11A(a)(1)(C)(v).

[374] Exchange Act Section 11A(a)(1)(C)(v).

[375] Senate Report *supra* note 31, at 16.

[376] While the rule and rule amendments adopted today function as an integrated response to the problems the Commission has identified in the implementation of a NMS, each separately advances the Congressional goals of market efficiency, fair competition, transparency, and best execution, and accordingly the Commission intends that they be treated as severable for purposes of review.

market maker now includes any dealer holding itself out as willing to transact business for its own account on a regular or continuous basis, whether it transacts exclusively with its own customers or with the customers of other dealers. Thus, those dealers that internalize customer order flow in particular stocks or through arrangements with other firms to execute that order flow, now fall within the definition of OTC market maker and are subject to the obligations under the Quote Rule. As in the past, broker-dealers will not be considered to be holding themselves out as regularly or continuously willing to buy or sell a security if they occasionally execute a trade as principal to accommodate a customer's request. In response to the suggestions of some commenters, the Commission has modified the amendment to make clear that more than one isolated transaction is necessary before a dealer is designated an OTC market maker.

In addition, the Commission believes that extending the 1% threshold based on quarterly aggregate trading volume to non-Rule 19c–3 securities is a reasonable method to improve the scope of quotation information to include significant OTC market makers and specialists. This 1% threshold, currently in effect for Rule 19c–3 securities, has proved effective in supplying comprehensive quotation information to the market at large. Moreover, based on the increase in third market trading volume for these securities, the Commission does not believe this standard is unduly burdensome on OTC market makers. Rather, the Commission believes this threshold strikes a balance between requiring the dissemination of all quotation interest and accommodating those specialists and OTC market makers that may be small entities. The Commission believes that OTC market makers and specialists that account for 1% or less of the aggregate volume are not active enough to justify the additional expense of providing continuous quotation display. Accordingly, the Commission believes the ''greater than 1% aggregate trading volume'' threshold for mandatory quotations continues to be appropriate. To limit a possible inconsistency in the treatment of exchange-listed and Nasdaq securities, the Commission today is proposing that the 1% test be extended from all exchange-listed securities to all Nasdaq-listed securities.

The Commission considered several significant alternatives to the proposed amendments to the Quote Rule consistent with the Rule's objectives and designed to minimize the impact of the amendments on small entities. The Commission solicited comment on numerous alternatives to the amendments proposed to ensure that investors receive consolidated quotations that truly reflect the best prices available for a security. The Commission solicited comment on, among other issues: (i) Whether the Commission should require SROs to amend their rules to permit computer-generated quotations; (ii) whether there existed alternatives to the ECN proposal that minimized certain consequences of the rule while assuring public dissemination of the best priced orders in such systems; (iii) whether there should be exceptions to the ECN proposal and under what circumstances; and (iv) whether the objectives of the Quote Rule and the ECN amendment could be achieved by allowing ECNs to furnish prices to the applicable SRO, while providing access to the prices in their ECN. The Commission believes that the amendments as adopted impose a smaller burden upon small brokers and dealers than does any other alternative considered.

In recognition of the concerns raised by some commenters, the ECN display alternative is designed to preserve the benefits associated with the anonymity that certain ECNs currently offer to subscribing market makers and specialists. This alternative also ensures that the best market maker and specialist prices in the ECN are publicly disseminated and that non-subscribing brokers and dealers may trade with the orders represented by those prices. Under the display alternative, the price of a specialist's or market maker's order entered into an ECN would be publicly disseminated while the specialist or market maker remains anonymous. This alternative not only preserves anonymity, but also eliminates the risk that a market maker or specialist may be exposed to multiple executions at the ECN price. With the addition of the alternative, the ECN amendment permits the display of the best price either in the specialist's or market maker's quote or through an ECN that provides for the dissemination of the best market maker and specialist prices entered into the ECN.

The Commission also notes that the ECN display alternative reduces the compliance burden on broker-dealers, including small entities, by permitting specialists and market makers to comply with the ECN amendment if the ECN into which the market maker's order is entered ensures that the best market maker prices entered therein are communicated to an exchange, association or securities information processor and the ECN provides a means for brokers and dealers to trade with the orders market makers and specialists put in the ECN.

The Commission recognizes that the ECN display alternative may reduce the content of information that is publicly available because under this alternative, the identity of the market maker or specialist that entered the better priced order in the ECN will be withheld. The Commission believes this result is justified because the inside prices and full sizes of orders entered by market makers and specialists will be in the public quotation system to inform the entire market of these prices and ECNs will provide equivalent access to those prices. Moreover, the Commission believes the benefits of facilitating the use of ECNs, by permitting the continued anonymity of market makers and specialists, more than offset the reduced information available on the identity of a particular market maker or specialist.

The Commission believes the data it has reviewed supports the need for prompt adoption of the ECN amendment to the Quote Rule. As discussed more fully in the Appendix to the 21(a) Report, an analysis of data for April through June 1994 shows that approximately 85% of bids and offers displayed by market makers on Instinet and 90% of bids and offers displayed on SelectNet (an ECN sponsored by the NASD) were at better prices than those disseminated to the public via Nasdaq. In addition, approximately 77% of trades executed on Instinet and 60% of trades executed on SelectNet were at prices superior to the Nasdaq inside spread. Given this strong evidence that investors would benefit from public dissemination of these hidden prices that are broadly disseminated to subscribers in these systems, the Commission believes that it is appropriate to adopt the amendments to the Quote Rule.

The Commission does not believe that it is practicable to exempt small entities from the Quote Rule amendments because to do so would be inconsistent with the Commission's statutory mandate to protect investors. In this regard, the Commission notes the clear evidence of a two-tiered market, in which market makers routinely trade at one price with customers and at better prices with ECN participants. The Commission believes that it is imperative to further the long-standing objectives of the 1975 Amendments to ensure reliable and accurate quotes by making these prices available to the public. The Commission believes that any exception for small brokers and

dealers could create an incentive for Nasdaq market makers to create special market making subsidiaries qualifying as small broker-dealers which would be free to engage in the anti-competitive practices identified in the 21(a) Report.

A final copy of the Final Regulatory Flexibility Act analysis is available in the Public File.

VI. Paperwork Reduction Act

As set forth in the Proposing Release,[377] the proposed amendments to Rule 11Ac1–1 and proposed Rule 11Ac1–4 contain collections of information within the meaning of the Paperwork Reduction Act (''PRA''). Accordingly, proposed amendments to Rule 11Ac1–1 and proposed Rule 11Ac1–4 were submitted to the Office of Management and Budget (''OMB'') for review pursuant to Section 3507 of the PRA (44 U.S.C. 3507), and were approved by OMB which assigned the following control numbers: Amendments to Rule 11Ac1–1, control number 3235–0461; Rule 11Ac1–4, control number 3235–0462. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. This is the final notice regarding the collection of information under Rule 11Ac1–4, the Display Rule. A new notice regarding the collections of information under Rule 11Ac1–1, the Quote Rule, may be found in the Companion Release (published elsewhere in the Federal Register today) which proposes an additional amendment to the Quote Rule. The PRA section in the preamble of the Companion Release provides new estimates of the burden in responding to the collections of information under the Quote Rule as a whole.

The reporting requirement in Rule 11Ac1–4 is found in 17 CFR 240.11Ac1–4. The collection of information is mandatory and responses are not confidential. The respondents are OTC market makers, as defined under the rule. (Although exchange specialists are also required to follow the rule, as noted in the Proposing Release the Commission does not anticipate any significant additional burden on exchange specialists in light of current exchange order handling practices.) The Rule requires market makers to change their published quotation to reflect the price and/or size of a customer limit order that would improve their published bid or offer or otherwise ensure that such limit order is displayed. The burden on market makers will depend on the extent and variety of their market-making activities and their choice of the various compliance options offered by the regulations. The ability of market makers to utilize facilities of national securities exchanges, registered national securities associations, and ECNs to comply with the reporting requirement should ease the compliance burden. The proposed rule would have permitted market makers to execute a limit order or send a limit order to another market maker or exchange or association facility that would ensure display of such orders in lieu of the market makers' own display. Rule 11Ac1–4 as adopted maintains these alternatives and also permits respondents to send a limit order to an ECN meeting certain criteria. The information reported will be displayed to all persons who have access to a quotation montage as that term is defined in 17 CFR 240.11Ac1–2(a)(16).

The Commission carefully considered comments received from the NASD and SIA concerning the Commission's burden estimates.[378] The NASD stated that the Commission underestimated the number of limit orders to be displayed per trading day, given the NASD's view that Rule 11Ac1–4 will lead to increased limit order exposure. After considering the NASD's comment, and based upon further review of the market data, the Commission is revising its burden estimate for Rule 11Ac1–4 as follows. There are approximately 570 respondents. Each respondent on average will respond to the collection of information 42,000 times per year, based on a 252 trading day year. The total time burden for each respondent per year is estimated to be 35 hours, based on an estimate of 3 seconds per response (*i.e.*, the time it takes to update a quote to reflect a limit order, or to transmit the order for display elsewhere).[379] The total annual aggregate burden for all respondents is estimated to be 19,950 hours.

VII. Effects on Competition

Section 23(a)(2) of the Exchange Act[380] requires the Commission to consider the anti-competitive effects of any rules it adopts thereunder, and to balance them against the benefits that further the purposes of the Act. As discussed above, several commenters raised concerns regarding the competitive implications of the order handling proposals.[381] The foregoing discussion contains extensive analysis of the competitive effects of both the rule and rule amendments; this section summarizes the Commission's conclusions. The Commission has considered the proposals in light of the comments and the standard embodied in Section 23(a)(2) and has concluded any burdens on competition imposed by the Display Rule and the amendments to the Quote Rule are necessary and appropriate in furtherance of the purposes of the Exchange Act, in particular, the purposes of Section 11A.

The Commission notes that the primary burden imposed by the Display Rule will be to require exchange specialists and OTC market makers to ensure that customer limit orders improving their quotes are displayed. The Commission believes that if systems upgrades are necessary, those systems upgrades reflect one-time charges. The Commission also notes that ensuring public dissemination of limit orders enhances market transparency, increases pricing efficiency, and quote-based competition, and permits investors' orders to interact with all available market interest. Moreover, the limit order display rule will provide an opportunity for investors to compete directly in the market. This additional competition should limit certain anticompetitive practices identified in the 21(a) Report and discussed supra. For the reasons discussed above, the Commission does not believe the Display Rule will have a significantly different effect on wholesale and retail market makers.[382] The Commission notes that the Antitrust Division of the U.S. Department of Justice similarly concluded that the Display Rule will promote competition and will thereby benefit the investing public.

Similarly, the Commission notes that the primary burden imposed by the ECN Amendment to the Quote Rule will be to require exchange specialists and OTC market makers to add personnel or upgrade systems to ensure that their quotes reflect priced orders entered into those ECNs that do not disseminate

[377] Proposing Release at 70.

[378] The SIA noted that they join in the concerns expressed by the NASD that the Commission's estimates under the PRA are too low, and need to be revised and extended to include the proposed safe harbor under Rule 11Ac1–5. SIA Letter at 4. As noted above, the Commission is not adopting the Price Improvement Rule at this time.

[379] The NASD commented that it believes the PRA burden estimate should include the time market makers spend analyzing market trends and following quotation and last sale information. The Commission has determined not to revise its burden estimate based on this comment, because market makers otherwise engage in such activities apart from the collection of information requirement. For example, market makers are already required to monitor the markets to ensure that they do not trade ahead of customer limit orders.

[380] 15 U.S.C. 78w(a)(2).

[381] *See* ABA Letter; HHG Letter; NASD Letter.

[382] *See supra* note 124 and accompanying text.

order information to the relevant exchange or association. The Commission believes that such systems upgrades reflect one-time charges. The Commission believes that the ECN amendment to the Quote Rule will impose only limited competitive burdens on ECNs. ECNs which have attributes that differentiate them from other types of electronic order routing and order execution systems, will have a choice whether to disseminate order information to the relevant exchanges or association. While choosing this alternative will result in some system costs, the Commission believes that the alternative will provide ECNs with additional business opportunities, including increased order flow. The ECN amendment should allow ECNs to function as valuable facilities for their subscribers, and should not harm ECNs significantly in their competition with other order execution systems.[383] The Commission also notes that ensuring public dissemination of market makers' and specialists' priced orders entered into ECNs enhances market transparency, pricing efficiency, price competition, and allows investors' orders to interact with all available market interest.

Finally, with respect to the amendments extending the Mandatory Quote Rule to non-Rule 19c–3 securities, the primary burden imposed will be to require certain brokers and dealers to register as CQS market makers and make continuous two-sided quotes available to the public. The Commission believes that the benefit to the investing public of ensuring that available market interest is disseminated to the public will enhance competition by facilitating the routing of investor orders to the market center displaying the best quotation for a security. The Commission believes that the added transparency resulting from the amendment outweighs any burden to competition that may be imposed.

List of Subjects in 17 CFR Part 240

Broker-dealers, Confidential business information, Reporting and recordkeeping requirements, and Securities.

Text of the Rules

For the reasons set out in the preamble, the Commission amends Part 240 of Chapter II of Title 17 of the Code of Federal Regulation as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The general authority citation for Part 240 is revised to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.11Aa3–1 is amended by revising paragraph (a)(4) to read as follows:

§ 240.11Aa3–1 Dissemination of transaction reports and last sale data with respect to transactions in reported securities.

(a) *Definitions.* * * *

(4) The term *reported security* shall mean any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan.

* * * * *

3. Section 240.11Ac1–1 is revised to read as follows:

§ 240.11Ac1–1 Dissemination of quotations.

(a) *Definitions.* For the purposes of this section:

(1) The term *aggregate quotation size* shall mean the sum of the quotation sizes of all responsible brokers or dealers who have communicated on any exchange bids or offers for a covered security at the same price.

(2) The term *association* shall mean any association of brokers and dealers registered pursuant to Section 15A of the Act (15 U.S.C. 78*o*–3).

(3) The terms *best bid* and *best offer* shall mean the highest priced bid and the lowest priced offer.

(4) The terms *bid* and *offer* shall mean the bid price and the offer price communicated by an exchange member or OTC market maker to any broker or dealer, or to any customer, at which it is willing to buy or sell one or more round lots of a covered security, as either principal or agent, but shall not include indications of interest.

(5) The term *consolidated system* shall mean the consolidated transaction reporting system.

(6) The term *covered security* shall mean any reported security and any other security for which a transaction report, last sale data or quotation information is disseminated through an automated quotation system as described in Section 3(a)(51)(A)(ii) of the Act (15 U.S.C. 78c(a)(51)(A)(ii)).

(7) The term *effective transaction reporting plan* shall have the meaning provided in § 240.11Aa3–1(a)(3).

(8) The term *electronic communications network,* for the purposes of § 240.11Ac1–1(c)(5), shall mean any electronic system that widely disseminates to third parties orders entered therein by an exchange market maker or OTC market maker, and permits such orders to be executed against in whole or in part; except that the term electronic communications network shall not include:

(i) Any system that crosses multiple orders at one or more specified times at a single price set by the ECN (by algorithm or by any derivative pricing mechanism) and does not allow orders to be crossed or executed against directly by participants outside of such times; or

(ii) Any system operated by, or on behalf of, an OTC market maker or exchange market maker that executes customer orders primarily against the account of such market maker as principal, other than riskless principal.

(9) The term *exchange market maker* shall mean any member of a national securities exchange (''exchange'') who is registered as a specialist or market maker pursuant to the rules of such exchange.

(10) The term *exchange-traded security* shall mean any covered security or class of covered securities listed and registered, or admitted to unlisted trading privileges, on an exchange; *provided, however,* That securities not listed on any exchange that are traded pursuant to unlisted trading privileges are excluded.

(11) The term *make available,* when used with respect to bids, offers, quotation sizes and aggregate quotation sizes supplied to quotation vendors by an exchange or association, shall mean to provide circuit connections at the premises of the exchange or association supplying such data, or at a common location determined by mutual agreement of the exchanges and associations, for the delivery of such data to quotation vendors.

(12) The term *odd-lot* shall mean an order for the purchase or sale of a covered security in an amount less than a round lot.

(13) The term *OTC market maker* shall mean any dealer who holds itself out as being willing to buy from and sell to its customers, or otherwise, a covered security for its own account on a regular or continuous basis otherwise than on an exchange in amounts of less than block size.

[383] Although the Antitrust Division of the U.S. Department of Justice expressed concerns about the effects of the ECN amendment as originally proposed, the Commission believes that with the quote dissemination alternative, the amendment will not impose any unnecessary or inappropriate burdens on competition.

(14) The term *plan processor* shall have the meaning provided in § 240.11Aa3–2(a)(7).

(15) The term *published aggregate quotation size* shall mean the aggregate quotation size calculated by an exchange and displayed by a quotation vendor on a terminal or other display device at the time an order is presented for execution to a responsible broker or dealer.

(16) The terms *published bid* and *published offer* shall mean the bid or offer of a responsible broker or dealer for a covered security communicated by it to its exchange or association pursuant to this section and displayed by a quotation vendor on a terminal or other display device at the time an order is presented for execution to such responsible broker or dealer.

(17) The term *published quotation size* shall mean the quotation size of a responsible broker or dealer communicated by it to its exchange or association pursuant to this section and displayed by a quotation vendor on a terminal or other display device at the time an order is presented for execution to such responsible broker or dealer.

(18) The term *quotation size,* when used with respect to a responsible broker's or dealer's bid or offer for a covered security, shall mean:

(i) The number of shares (or units of trading) of that covered security which such responsible broker or dealer has specified, for purposes of dissemination to quotation vendors, that it is willing to buy at the bid price or sell at the offer price comprising its bid or offer, as either principal or agent; or

(ii) In the event such responsible broker or dealer has not so specified, a normal unit of trading for that covered security.

(19) The term *quotation vendor* shall mean any securities information processor engaged in the business of disseminating to brokers, dealers or investors on a real-time basis, bids and offers made available pursuant to this section, whether distributed through an electronic communications network or displayed on a terminal or other display device.

(20) The term *reported security* shall mean any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan.

(21) The term *responsible broker or dealer* shall mean:

(i) When used with respect to bids or offers communicated on an exchange, any member of such exchange who communicates to another member on such exchange, at the location (or locations) designated by such exchange for trading in a covered security, a bid or offer for such covered security, as either principal or agent; *provided, however,* That, in the event two or more members of an exchange have communicated on such exchange bids or offers for a covered security at the same price, each such member shall be considered a ''responsible broker or dealer'' for that bid or offer, subject to the rules of priority and precedence then in effect on that exchange; and further provided, That for a bid or offer which is transmitted from one member of an exchange to another member who undertakes to represent such bid or offer on such exchange as agent, only the last member who undertakes to represent such bid or offer as agent shall be considered the ''responsible broker or dealer'' for that bid or offer; and

(ii) When used with respect to bids and offers communicated by a member of an association to another broker or dealer or to a customer otherwise than on an exchange, the member communicating the bid or offer (regardless of whether such bid or offer is for its own account or on behalf of another person).

(22) The term *revised bid or offer* shall mean a market maker's bid or offer which supersedes its published bid or published offer.

(23) The term *revised quotation size* shall mean a market maker's quotation size which supersedes its published quotation size.

(24) The term *specified persons,* when used in connection with any notification required to be provided pursuant to paragraph (b)(3) of this section and any election (or withdrawal thereof) permitted under paragraph (b)(5) of this section, shall mean:

(i) Each quotation vendor;

(ii) Each plan processor; and

(iii) The processor for the Options Price Reporting Authority (in the case of a notification for a subject security which is a class of securities underlying options admitted to trading on any exchange).

(25) The term *subject security* shall mean:

(i) With respect to an exchange:

(A) Any exchange-traded security other than a security for which the executed volume of such exchange, during the most recent calendar quarter, comprised one percent or less of the aggregate trading volume for such security as reported in the consolidated system; and

(B) Any other covered security for which such exchange has in effect an election, pursuant to paragraph (b)(5)(i) of this section, to collect, process, and make available to quotation vendors, bids, offers, quotation sizes, and aggregate quotation sizes communicated on such exchange; and

(ii) With respect to a member of an association:

(A) Any exchange-traded security for which such member acts in the capacity of an OTC market maker unless the executed volume of such member, during the most recent calendar quarter, comprised one percent or less of the aggregate trading volume for such security as reported in the consolidated system; and

(B) Any other covered security for which such member acts in the capacity of an OTC market maker and has in effect an election, pursuant to paragraph (b)(5)(ii) of this section, to communicate to its association bids, offers and quotation sizes for the purpose of making such bids, offers and quotation sizes available to quotation vendors.

(b) *Dissemination requirements for exchanges and associations.* (1) Every exchange and association shall establish and maintain procedures and mechanisms for collecting bids, offers, quotation sizes and aggregate quotation sizes from responsible brokers or dealers who are members of such exchange or association, processing such bids, offers and sizes, and making such bids, offers and sizes available to quotation vendors, as follows:

(i) Each exchange shall at all times such exchange is open for trading, collect, process and make available to quotation vendors the best bid, the best offer, and aggregate quotation sizes for each subject security listed or admitted to unlisted trading privileges which is communicated on any exchange by any responsible broker or dealer, but shall not include:

(A) Any bid or offer executed immediately after communication and any bid or offer communicated by a responsible broker or dealer other than an exchange market maker which is cancelled or withdrawn if not executed immediately after communication; and

(B) Any bid or offer communicated during a period when trading in that security has been suspended or halted, or prior to the commencement of trading in that security on any trading day, on that exchange.

(ii) Each association shall, at all times that last sale information with respect to reported securities is reported pursuant to an effective transaction reporting plan, collect, process and make available to quotation vendors the best bid, best offer, and quotation sizes communicated otherwise than on an exchange by each member of such association acting in the capacity of an

OTC market maker for each subject security and the identity of that member (excluding any bid or offer executed immediately after communication), except during any period when over-the-counter trading in that security has been suspended.

(2) Each exchange shall, with respect to each published bid and published offer representing a bid or offer of a member for a subject security, establish and maintain procedures for ascertaining and disclosing to other members of that exchange, upon presentation of orders sought to be executed by them in reliance upon paragraph (c)(2) of this section, the identity of the responsible broker or dealer who made such bid or offer and the quotation size associated with it.

(3)(i) If, at any time an exchange is open for trading, such exchange determines, pursuant to rules approved by the Securities and Exchange Commission pursuant to section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)), that the level of trading activities or the existence of unusual market conditions is such that the exchange is incapable of collecting, processing, and making available to quotation vendors the data for a subject security required to be made available pursuant to paragraph (b)(1) of this section in a manner that accurately reflects the current state of the market on such exchange, such exchange shall immediately notify all specified persons of that determination. Upon such notification, responsible brokers or dealers that are members of that exchange shall be relieved of their obligation under paragraph (c)(2) of this section and such exchange shall be relieved of its obligations under paragraphs (b) (1) and (2) of this section for that security: *provided, however,* That such exchange will continue, to the maximum extent practicable under the circumstances, to collect, process, and make available to quotation vendors data for that security in accordance with paragraph (b)(1) of this section.

(ii) During any period an exchange, or any responsible broker or dealer that is a member of that exchange, is relieved of any obligation imposed by this section for any subject security by virtue of a notification made pursuant to paragraph (b)(3)(i) of this section, such exchange shall monitor the activity or conditions which formed the basis for such notification and shall immediately renotify all specified persons when that exchange is once again capable of collecting, processing, and making available to quotation vendors the data for that security required to be made available pursuant to paragraph (b)(1) of this section in a manner that accurately reflects the current state of the market on such exchange. Upon such renotification, any exchange or responsible broker or dealer which had been relieved of any obligation imposed by this section as a consequence of the prior notification shall again be subject to such obligation.

(4) Nothing in this section shall preclude any exchange or association from making available to quotation vendors indications of interest or bids and offers for a subject security at any time such exchange or association is not required to do so pursuant to paragraph (b)(1) of this section.

(5)(i) Any exchange may make an election for purposes of paragraph (a)(25)(i)(B) of this section for any covered security, by collecting, processing, and making available bids, offers, quotation sizes, and aggregate quotation sizes in that security; except that for any covered security previously listed or admitted to unlisted trading privileges on only one exchange and not traded by any OTC market maker, such election shall be made by notifying all specified persons, and shall be effective at the opening of trading on the business day following notification.

(ii) Any member of an association acting in the capacity of an OTC market maker may make an election for purposes of paragraph (a)(25)(ii)(B) of this section for any covered security, by communicating to its association bids, offers, and quotation sizes in that security; except that for any other covered security listed or admitted to unlisted trading privileges on only one exchange and not traded by any other OTC market maker, such election shall be made by notifying its association and all specified persons, and shall be effective at the opening of trading on the business day following notification.

(iii) The election of an exchange or member of an association for any covered security pursuant to this paragraph (b)(5) shall cease to be in effect if such exchange or member ceases to make available or communicate bids, offers, and quotation sizes in such security.

(c) *Obligations of responsible brokers and dealers.* (1) Each responsible broker or dealer shall promptly communicate to its exchange or association, pursuant to the procedures established by that exchange or association, its best bids, best offers, and quotation sizes for any subject security.

(2) Subject to the provisions of paragraph (c)(3) of this section, each responsible broker or dealer shall be obligated to execute any order to buy or sell a subject security, other than an odd-lot order, presented to it by another broker or dealer, or any other person belonging to a category of persons with whom such responsible broker or dealer customarily deals, at a price at least as favorable to such buyer or seller as the responsible broker's or dealer's published bid or published offer (exclusive of any commission, commission equivalent or differential customarily charged by such responsible broker or dealer in connection with execution of any such order) in any amount up to its published quotation size.

(3)(i) No responsible broker or dealer shall be obligated to execute a transaction for any subject security as provided in paragraph (c)(2) of this section to purchase or sell that subject security in an amount greater than such revised quotation if:

(A) Prior to the presentation of an order for the purchase or sale of a subject security, a responsible broker or dealer has communicated to its exchange or association, pursuant to paragraph (c)(1) of this section, a revised quotation size; or

(B) At the time an order for the purchase or sale of a subject security is presented, a responsible broker or dealer is in the process of effecting a transaction in such subject security, and immediately after the completion of such transaction, it communicates to its exchange or association a revised quotation size, such responsible broker or dealer shall not be obligated by paragraph (c)(2) of this section to purchase or sell that subject security in an amount greater than such revised quotation size.

(ii) No responsible broker or dealer shall be obligated to execute a transaction for any subject security as provided in paragraph (c)(2) of this section if:

(A) Before the order sought to be executed is presented, such responsible broker or dealer has communicated to its exchange or association pursuant to paragraph (c)(1) of this section, a revised bid or offer; or

(B) At the time the order sought to be executed is presented, such responsible broker or dealer is in the process of effecting a transaction in such subject security, and, immediately after the completion of such transaction, such responsible broker or dealer communicates to its exchange or association pursuant to paragraph (c)(1) of this section, a revised bid or offer; *provided, however,* That such responsible broker or dealer shall nonetheless be obligated to execute any such order in such subject security as provided in paragraph (c)(2) of this section at its revised bid or offer in any

amount up to its published quotation size or revised quotation size.

(4) Subject to the provisions of paragraph (b)(4) of this section:

(i) No exchange or OTC market maker may make available, disseminate or otherwise communicate to any quotation vendor, directly or indirectly, for display on a terminal or other display device any bid, offer, quotation size, or aggregate quotation size for any covered security which is not a subject security with respect to such exchange or OTC market maker; and

(ii) No quotation vendor may disseminate or display on a terminal or other display device any bid, offer, quotation size, or aggregate quotation size from any exchange or OTC market maker for any covered security which is not a subject security with respect to such exchange or OTC market maker.

(5)(i) Entry of any priced order for a covered security by an exchange market maker or OTC market maker in that security into an electronic communications network that widely disseminates such order shall be deemed to be:

(A) A bid or offer under this section, to be communicated to the market maker's exchange or association pursuant to paragraph (c) of this section for at least the minimum quotation size that is required by the rules of the market maker's exchange or association if the priced order is for the account of a market maker, or the actual size of the order up to the minimum quotation size required if the priced order is for the account of a customer; and

(B) A communication of a bid or offer to a quotation vendor for display on a display device for purposes of paragraph (c)(4) of this section.

(ii) An exchange market maker or OTC market maker that has entered a priced order for a covered security into an electronic communications network that widely disseminates such order shall be deemed to be in compliance with paragraph (c)(5)(i)(A) of this section if the electronic communications network:

(A) Provides to an exchange or association (or an exclusive processor acting on behalf of one or more exchanges or associations) the prices and sizes of the orders at the highest buy price and the lowest sell price for such security entered in, and widely disseminated by, the electronic communications network by exchange market makers and OTC market makers for the covered security, and such prices and sizes are included in the quotation data made available by the exchange, association, or exclusive processor to quotation vendors pursuant to this section; and

(B) Provides, to any broker or dealer, the ability to effect a transaction with a priced order widely disseminated by the electronic communications network entered therein by an exchange market maker or OTC market maker that is:

(*1*) Equivalent to the ability of any broker or dealer to effect a transaction with an exchange market maker or OTC market maker pursuant to the rules of the exchange or association to which the electronic communications network supplies such bids and offers; and

(*2*) At the price of the highest priced buy order or lowest priced sell order, or better, for the lesser of the cumulative size of such priced orders entered therein by exchange market makers or OTC market makers at such price, or the size of the execution sought by the broker or dealer, for the covered security.

(d) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any responsible broker or dealer, electronic communications network, exchange, or association if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to and perfection of the mechanism of a national market system.

4. Section 240.11Ac1–4 is added to read as follows:

§ 240.11Ac1–4 Display of customer limit orders.

(a) *Definitions.* For purposes of this section:

(1) The term *association* shall mean any association of brokers and dealers registered pursuant to Section 15A of the Act (15 U.S.C. 78*o*–3).

(2) The terms *best bid* and *best offer* shall have the meaning provided in § 240.11Ac1–1(a)(3).

(3) The terms *bid* and *offer* shall have the meaning provided in § 240.11Ac1–1(a)(4).

(4) The term *block size* shall mean any order:

(i) Of at least 10,000 shares; or

(ii) For a quantity of stock having a market value of at least $200,000.

(5) The term *covered security* shall mean any ''reported security'' and any other security for which a transaction report, last sale data or quotation information is disseminated through an automated quotation system as described in section 3(a)(51)(A)(ii) of the Act (15 U.S.C. 78c(a)(51)(A)(ii)).

(6) The term *customer limit order* shall mean an order to buy or sell a covered security at a specified price that is not for the account of either a broker or dealer; *provided, however,* That the term customer limit order shall include an order transmitted by a broker or dealer on behalf of a customer.

(7) The term *electronic communications network* shall have the meaning provided in § 240.11Ac1–1(a)(8).

(8) The term *exchange-traded security* shall have the meaning provided in § 240.11Ac1–1(a)(10).

(9) The term *OTC market maker* shall mean any dealer who holds itself out as being willing to buy from and sell to its customers, or otherwise, a covered security for its own account on a regular or continuous basis otherwise than on a national securities exchange in amounts of less than block size.

(10) The term *reported security* shall have the meaning provided in § 240.11Ac1–1(a)(20).

(b) *Specialists and OTC market makers.* For all covered securities:

(1) Each member of an exchange that is registered by that exchange as a specialist, or is authorized by that exchange to perform functions substantially similar to that of a specialist, shall publish immediately a bid or offer that reflects:

(i) The price and the full size of each customer limit order held by the specialist that is at a price that would improve the bid or offer of such specialist in such security; and

(ii) The full size of each customer limit order held by the specialist that:

(A) Is priced equal to the bid or offer of such specialist for such security;

(B) Is priced equal to the national best bid or offer; and

(C) Represents more than a *de minimis* change in relation to the size associated with the specialist's bid or offer.

(2) Each registered broker or dealer that acts as an OTC market maker shall publish immediately a bid or offer that reflects:

(i) The price and the full size of each customer limit order held by the OTC market maker that is at a price that would improve the bid or offer of such OTC market maker in such security; and

(ii) The full size of each customer limit order held by the OTC market maker that:

(A) Is priced equal to the bid or offer of such OTC market maker for such security;

(B) Is priced equal to the national best bid or offer; and

(C) Represents more than a *de minimis* change in relation to the size associated with the OTC market maker's bid or offer.

(c) *Exceptions.* The requirements in paragraph (b) of this section shall not apply to any customer limit order:

(1) That is executed upon receipt of the order.

(2) That is placed by a customer who expressly requests, either at the time that the order is placed or prior thereto pursuant to an individually negotiated agreement with respect to such customer's orders, that the order not be displayed.

(3) That is an odd-lot order.

(4) That is a block size order, unless a customer placing such order requests that the order be displayed.

(5) That is delivered immediately upon receipt to an exchange or association-sponsored system, or an electronic communications network that complies with the requirements of § 240.11Ac1–1(c)(5)(ii) with respect to that order.

(6) That is delivered immediately upon receipt to another exchange member or OTC market maker that complies with the requirements of this section with respect to that order.

(7) That is an ''all or none'' order.

(d) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any responsible broker or dealer, electronic communications network, exchange, or association if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to and perfection of the mechanism of a national market system.

Dated: September 6, 1996.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–23210 Filed 9–11–96; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–37620; File No. S7–22–96]

RIN 3235–AH00

Proposed Quote Rule Amendment

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Securities and Exchange Commission (''Commission'') today is proposing an amendment to Rule 11Ac1–1 (''Quote Rule'') under the Securities Exchange Act of 1934. The proposed amendment reinforces the Commission's recent initiatives to foster market liquidity, transparency and efficiency. The amendment to the Quote Rule will mandate continuous two-sided quotations from over-the-counter (''OTC'') market makers and exchange specialists that account for more than 1% of the transaction volume in a security included on the Nasdaq Stock Market (''Nasdaq security'').

DATES: Comments should be submitted on or before November 12, 1996.

ADDRESSES: Interested persons should submit three copies of their written data, views and opinions to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7–22–96; this file number should be included on the subject line if E-mail is used. Comment letters will be made available for public inspection at the Commission's Public Reference Room, Room 1024, 450 Fifth Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Gail A. Marshall, 202/942–7129, Attorney, Office of Market Supervision, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Mailstop 5–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The commission is publishing for comment proposed amendment to Rule 11Ac1–1[1] under the Securities Exchange Act of 1934 (''Exchange Act'').[2]

I. Introduction and Background

Today in a related release,[3] the Commission adopted the Display Rule and amendments to the Quote Rule under the exchange Act.[4] The new rule and amendments are designed to reduce the effects of hidden markets and enhance transparency, further permitting investors to evaluate the execution quality of their orders.[5] The Commission received 152 comment letters on the aforementioned proposals[6] and has determined to propose an additional amendment to the Quote Rule in response to an issue raised by some commenters.

Congress, in the Securities Acts Amendments of 1975 (''1975 Amendments''),[7] authorized the Commission to facilitate the development of a national market system (''NMS'') for U.S. equity securities by improving price discovery, liquidity, and competition among OTC market makers[8] and exchange specialists. Moreover, the Commission is authorized, under Sections 11A(c)(1)(B) and (F) of the Exchange Act,[9] to assure the prompt, accurate and reliable distribution of quotation information and to assure the fairness and usefulness of the form and content of such information.

The Quote Rule requires all national securities exchanges and associations[10] to establish and maintain procedures for collecting from their members, bids, offers, and quotation sizes with respect to any subject security,[11] and for making such bids, offers, and sizes available to quotation vendors. It also requires every exchange specialist and OTC market maker to promptly communicate to its exchange or association, pursuant to procedures established by the exchange or association, its bids, offers and quotation sizes.[12] In addition, the Quote Rule requires that, subject to certain exceptions, the broker or dealer responsible for communicating a quotation for a security shall be obligated to execute any order presented to it, other than an odd-lot order, by another broker or dealer, or any other person belonging to a category of persons with whom such responsible broker or dealer customarily deals, at a price at least as favorable as its published bid or offer in any amount up to its published quotation size.[13]

The Commission proposes to amend the Quote Rule to require exchange specialists and OTC market makers to publish quotations for any Nasdaq security when the exchange specialist or OTC market maker is responsible for more than 1% of the aggregate trading volume for that security for the most recent calendar quarter.[14] Upon the effective date of the most recent amendment of the Quote Rule, the mandatory quotation requirement will apply to exchange specialists and OTC market makers that trade more than 1% of the aggregate trading volume for an exchange-listed security for the most recent calendar quarter.

II. Discussion

Since the Quote Rule was adopted in 1978,[15] transaction volume on the Nasdaq Stock Market (''Nasdaq'') has grown substantially. In 1985 there were 20.7 billion shares traded on Nasdaq[16] compared with the more than 100

[1] 17 CFR 240.11Ac–1.

[2] 15 U.S.C. 78a to 78*ll* (1988).

[3] *See* Securities Exchange Act Release No. 37619 (August 29, 1996) (''Adopting Release'').

[4] The Commission proposed the new rule and the amendments to the Quote Rule for public comment in October 1995. *See* Securities Exchange Act Release No. 36310 (September 29, 1995), 60 FR 52792 (October 10, 1995) (''Proposing Release''). The Commission subsequently extended the comment period. *See also* Securities Exchange Act Release No. 36718 (January 16, 1996), 61 FR 1545 (January 22, 1996).

[5] *See* Adopting Release, *supra* note 3.

[6] The comment letters and a summary of comments have been placed in Public File No. S7–30–95, which is available for inspection in the Commission's Public Reference Room. Commenters included 77 individual investors, 10 industry associations, 7 self-regulatory organizations, 8 academics, 41 market participants, and the United States Department of Justice.

[7] Pub. L. No. 94–29, 89 Stat. 97 (1975).

[8] As used in this release, the term OTC market maker includes any dealer who holds itself out as being willing to buy from and sell to its customers, or otherwise, a covered security for its own account on a regular or continuous basis otherwise than on an exchange in amounts of less than block size. *See* section 240.11Ac1–1(a)(12).

[9] 15 U.S.C. 78k–*l*.

[10] Section 15A of the Exchange Act defines the requirements to become a national securities association registered with the Commission. The National Association of Securities Dealers (''NASD'') is the only association of brokers and dealers that is registered as a national securities association. 15 U.S.C. 78*o*-3.

[11] Paragraph (a)(25) of the Quote Rule, as amended, defines ''subject security'' to include exchange-listed securities for which an OTC market maker or exchange specialist trades more than 1% of the aggregate trading volume, as well as any other security for which an OTC market maker or specialist has in effect an election to provide quotes.

[12] This is referred to as the ''mandatory participation'' requirement of the Quote Rule. *See* § 240.11Ac1–1(c)(1).

[13] This is referred to as the ''firmness'' requirement of the Quote Rule. *See* § 240.11Ac1–1(c)(2).

[14] NASD rules already require OTC market makers in Nasdaq securities, once they elect to disseminate quotations, to register and maintain continuous two-sided quotations. *See* NASD Rule 4613. The Commission believes the proposed amendments are consistent with the existing NASD requirements.

[15] *See* Securities Exchange Act Release No. 14415 (January 26, 1978), 43 FR 4342 (February 1, 1978).

[16] *See The Nasdaq Stock Market 1986 Fact Book* at 4.

billion shares traded in 1995.[17] Today Nasdaq is home to many companies that meet the listing requirements of the primary exchanges, whereas in 1978 securities listed on exchanges and those quoted on Nasdaq had more disparate trading characteristics and the Quote Rule reflected those disparities. The Commission questions whether disparate treatment of market makers in OTC and listed securities within the Quote Rule is still warranted in light of the considerable growth in the Nasdaq market in the last decade.

The Commission adopted today an amendment to the Quote Rule that broadens the definition of subject security to include any exchange-listed security for which an OTC market maker or exchange specialist accounts for more than 1% of the aggregate transaction volume for the most recent calendar quarter.[18] An effect of this amendment is to require OTC market makers and exchange specialists to provide continuous two-sided quotations for any exchange-listed security when they are responsible for more than 1% of the aggregate transaction volume in that security. Prior to this amendment, mandatory quotations were only required from OTC market makers and exchange specialists who transacted more than 1% of the volume in a Rule 19c–3 security.[19] The Commission adopted the amendment to the definition to improve transparency and provide investors with information about significant market participants.

Some commenters, in response to the Proposing Release, suggested the Commission further improve transparency by extending the quotation requirements of the Quote Rule to Nasdaq securities.[20] The Commission, consistent with the objectives of the 1978 Amendments and the amendments adopted today, is proposing to amend the definition of ''subject security'' further to include any covered security[21] for which the volume executed during the most recent calendar quarter by an exchange specialist or an OTC market maker in the security constitutes more than 1% of the aggregate trading volume for such security.[22] The effect of this proposed amendment would be to require any OTC market maker or exchange specialist in a covered security responsible for more than 1% of the transaction volume in that security to disseminate continuous two-sided quotations publicly.

Presently, the Quote Rule permits, but does not require, an OTC market maker or exchange specialist trading Nasdaq securities to quote a two-sided market.[23] Consequently, there could be OTC market makers and exchange specialists whose trading constitutes more than a *de minimis* percentage of the volume in a particular Nasdaq security that do not provide continuous two-sided quotations. The Commission believes this potentially reduces transparency, thereby depriving the public of meaningful information about the buying and selling interest of significant market participants. The proposed amendment is intended to enhance transparency by mandating continuous two-sided quotations from OTC market makers and exchange specialists that account for more than 1% of the transaction volume for a Nasdaq security. The proposed amendment also would eliminate artificial regulatory distinctions between Nasdaq securities and exchange-listed securities.

III. Request for Comment

The Commission invites comment on the issues raised in this release, specifically, expanding the definition of subject security to include a 1% volume threshold for Nasdaq securities. The Commission requests comments on the practical implications of the amendment, including the anticipated costs and benefits associated therewith.

The Commission requests comments generally on whether, upon implementation of other initiatives adopted today, OTC markets, exchange specialists, and investors would benefit from the new proposal. The Commission also requests comment concerning whether sufficient similarities exist among trading of Nasdaq securities and exchange-listed securities to warrant extension of the 1% rule to Nasdaq securities when previously applicable only to exchange-listed securities. In addition, the Commission requests comment on whether the 1% threshold is an appropriate threshold with respect to Nasdaq securities.

The Commission also is interested in alternatives to this proposal that would better meet the aforementioned objectives.

Finally, the Commission requests comment on whether the proposed amendment, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act. Comments on the proposal will be considered by the Commission in complying with its responsibilities under section 23(a)(2) of the Exchange Act.

IV. Summary of the Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. 603 regarding the proposed amendments to Rule 11Ac1–1 and Rule 11Ac1–4. The following summarizes the conclusions of the IRFA.

The IRFA uses certain definitions of ''small entities'' adopted by the Commission for purposes of the Regulatory Flexibility Act. In the IRFA, the Commission states that the amendment to the Quote Rule is proposed to ensure that exchange specialists and OTC market makers in covered securities adhere to the firm quote reporting obligations. The IRFA notes that the proposed Quote Rule

[17] *See The Nasdaq Stock Market 1996 Fact Book* at 35. In addition, with unlisted trading privileges extending to Nasdaq securities, pursuant to temporary Commission approval of a joint industry plan, exchange specialists may ultimately transact significant volume in these securities. *See* Securities Exchange Act Release No. 36985 (March 18, 1996), 61 FR 12122 (March 25, 1996).

[18] *See* § 240.11Ac1–1(a)(25).

[19] *See* § 240.19c-3. Exchange Act Rule 19c-3 prohibits the application of off-board trading restrictions to securities that: (1) Were not traded on an exchange before April 26, 1979; or (2) were traded on an exchange on April 26, 1979, but ceased to be traded on an exchange for any period of time thereafter. Accordingly, exchange-traded securities not subject to off-board trading restrictions are referred to as Rule 19–3 securities, and exchange-traded securities subject to off-board trading restrictions are referred to as non-Rule 19c–3 securities.

[20] *See* Letter from Andrew E. Feldman, Director and Associate General Counsel, Smith Barney, to Jonathan G. Katz, Secretary, SEC, dated January 29, 1996 (''Smith Barney Letter'') and Letter from Joseph R. Hardiman, President, The National Association of Securities Dealers, Inc., to Jonathan G. Katz, Secretary, SEC, dated January 26, 1996 (''NASD Letter'').

[21] The term ''covered security'' is defined in the Quote Rule to mean any reported security and any other security for which a transaction report, last sale data or quotation information is disseminated through an automated quotation system as described in section 3 (a)(51)(A)(ii) of the Exchange Act (15 U.S.C. 78c(a)(51)(A)(ii). The term ''reported security'' is defined in the Quote Rule to mean any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective reporting plan. *See* Paragraphs (a)(6) and (a)(20) of Rule 11Ac1–1.

[22] The Commission first proposed amending the Quote Rule to require OTC market makers responsible for more than 1% of the aggregate trading volume in NMS securities to disseminate continuous two-sided quotations over ten years ago. *See* Securities Exchange Act Release No. 17583 (February 27, 1981), 46 FR 15713 (March 9, 1981). The Commission did not adopt the proposal because, at that time, it believed that there were sufficient economic incentives to mandate meaningful quotation dissemination from OTC market makers. Moreover, the Commission believed that meaningless quotations would only burden already taxed vendor quotation systems. *See* Securities Exchange Act Release No. 18482 (February 11, 1982), 47 FR 7399 (February 19, 1982).

[23] *See* § 240.11Ac1–1(b)(5)(ii).

amendment would require OTC market makers and exchange specialists to communicate quotes if they trade more than 1% of a security included on the Nasdaq Stock Market, thus improving transparency in Nasdaq securities.

A copy of the Initial Regulatory Flexibility Analysis may be obtained by contacting Gail Marshall, Division of Market Regulation, SEC, 450 Fifth Street, NW., Washington, DC 20549.

V. Paperwork Reduction Act

Certain provisions of Rule 11Ac1–1, as amended (the ''Quote Rule''), contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), and the Commission has submitted them to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11 and 1320.12. The title for the collection of information is: ''Rule 11Ac1–1.'' Providing information in response to the collections of information, as discussed below, is mandatory, and such responses are not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

In September 1995, the Commission proposed amendments to the Quote Rule as part of its proposal to improve the handling and execution of customer orders.[24] The preamble of that release included a PRA section describing, in part, how the proposed amendments would affect the number of respondents and the collections of information already contained in the Quote Rule. Those proposed amendments, as modified in part in response to comments received, have been adopted and are published elsewhere in the Federal Register today.[25] This release provides new estimates of the overall burden in responding to collections of information under the Quote Rule as a whole, both as amended and in light of the additional amendment proposed today.[26]

The Quote Rule contains two related collections of information necessary to disseminate to the public market makers' published quotations to buy and sell securities. The first collection of information is found in 17 CFR 240.11Ac1–1(c). This reporting requirement obligates each ''responsible broker or dealer,'' as defined under the rule, to communicate to its exchange or association its best bids, best offers, and quotation sizes for any subject security, as defined under the rule. The second collection of information is found in 17 CFR 240.11Ac1–1(b). This reporting requirement obligates each exchange and association to make available to quotation vendors for dissemination to the public the best bid, best offer, and aggregate quotation size for each subject security.[27] Brokers, dealers, other market participants, and members of the public rely on published quotation information to determine the best price and market for execution of customer orders.

For the reporting obligation under Rule 11Ac1–1(c), the likely respondents are OTC market makers and exchange specialists. The Commission estimates that there are approximately 180 exchange specialists and 570 OTC market maker respondents to this collection of information. Each exchange specialist will respond (*i.e.*, report or update bids, offers, and quotation sizes) on average approximately 806,000 times per year (including customer limit orders reflected in the quotes), while each OTC market maker will respond on average approximately 124,000 times per year. These figures are based on a 252 trading day year. The total annual time burden for each exchange specialist is estimated to be 672 hours, while the total annual time burden for each OTC market maker is estimated to be 103 hours. These figures are based on an estimate of three seconds per response (*i.e.*, the time it takes to update a quote). The annual aggregate burden for all respondents combined is estimated to be 120,960 hours for exchange specialists, and 58,710 hours for OTC market makers.[28] The Commission notes that the rules of the various exchanges and the NASD generally already require exchange specialists and market makers to publish quotations in those securities for which they act as market makers and publish two-sided quotations.[29]

The new amendment to the Quote Rule proposed by this release, specifically the change to the definition of ''subject security'' under paragraph (a)(25) of Rule 11Ac1–1, would require an exchange specialist or OTC market maker to fulfill the reporting obligation under paragraph (c) if such specialist's exchange or market maker accounts for more than one percent of the aggregate trading volume for any covered security during the most recent calendar quarter. This amendment of the collection of information requirement is necessary to expand the coverage of existing broker-dealer quotation requirements to include all substantial market participants in securities on the Nasdaq Stock Market and to improve the public information about the prices at which market makers are willing to buy and sell covered securities. The Commission estimates that this change will affect approximately 10 OTC market makers. These OTC market makers are included in the above estimates of the number of respondents and burden hours. The Commission also notes that most, if not all, of these respondents already are required under NASD rules to report their bids, offers, and quotation sizes for dissemination to the public.

For the reporting obligation under Rule 11Ac1–1 (b), the likely respondents are the eight stock exchanges and the NASD.[30] The Commission estimates that each exchange or association on average will respond (*i.e.*, disseminate and update

[24] 60 FR at 52809.

[25] *See supra* note 3.

[26] When originally promulgated, the collections of information contained in the Quote Rule were not required to be submitted for OMB review under the version of PRA that was in effect before October 1995. *See* 5 CFR 1320.12(b).

[27] A third reporting requirement under the Quote Rule, as amended at 17 CFR 240.11Ac1–1(c)(5), will give ECNs the option of reporting to an exchange or association for public dissemination, on behalf of their OTC market maker or exchange specialist customers, the best priced orders and the full size for such orders entered by market makers, to satisfy such market makers' reporting obligation under Rule 11Ac1–1(c). Because this reporting requirement is an alternative method of meeting the market makers' reporting obligation, and because it is directed to nine or fewer persons (ECNs), this collection of information is not subject to OMB review under the PRA.

[28] The Commission also estimates that each OTC market maker on average will display in its own quotation, or transmit to another market participant for display, approximately 42,000 limit orders per year. This translates into an additional annual time burden per OTC market maker respondent of 35 hours and an additional aggregate time burden for all OTC market maker respondents of 19,950 hours. The Commission has included these figures in its PRA burden estimate for the collection of information udner the Display Rule, 17 CFR 240.11Ac1–4.

[29] In comments submitted in response to the Commission's September 1995 release proposing amendments to the Quote Rule, the NASD stated its view that the Commission's burden estimates were too low. The revised burden estimates provided above are the Commission's current burden estimates for the Quote Rule as a whole. The NASD also commented that it believes the PRA burden estimate should include the time market makers spend analyzing market trends and following quotation and last sale information. The Commission has determined not to include such activities in its estimate because market makers engage in them for reasons apart from the collection of information requirement. For example, market makers already are required to monitor the markets to ensure that they do not trade ahead of customer limit orders.

[30] Technically, under the PRA the Commission is not required to submit a collection of information to OMB for review unless it applies to ten or more persons. Because the collection of information under Rule 11Ac1–1(b) applies to the entire securities market industry, the Commission has determined to solicit comments on the requirement from the public and to include the collection of information in its submission to OMB.

bids, offers, and quotation sizes to quotation vendors) approximately 24,226,000 times per year (including customer limit orders reflected in the quotes). These figures are based on a 252 trading day year. Because the reporting and dissemination of quotation information is computerized, automatic, and continuous, and because the systems that accomplish the reporting obligation function have long been in place, the Commission believes that it is not feasible or realistic to provide a burden estimate in terms of either person hours or costs for this collection of information.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to—

(i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments directly to the Commission. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VI. Statutory Basis

The amendments to Rule 11Ac1–1 are being proposed pursuant to 15 U.S.C. 78 *et seq.*, particularly sections 11A, 6, 10(b), 11(a)(2), 11(b), 15A, 15(c) and 23(a)(1); 15 U.S.C. 78k–1, 78f, 78j(b), 78k(a)(2), 78k(b), 78o–3, 78o(c), and 78w(a)(1) (1988).

List of Subjects in 17 CFR Part 240

Brokers, Confidential business information, Reporting and recordkeeping requirements, Securities.

Texts of the Proposed Rule Amendments

For the reasons set out in the preamble, the Commission proposes to amend Part 240 of Chapter II of Title 17 of the Code of Federal Regulation as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITY EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Amending § 240.11Ac1–1 by revising paragraph (a)(25) to read as follows:

§ 240.11Ac1–1 Dissemination of quotations.

(a) *Definitions.* * * *

(25) The term *subject security* shall mean:

(i) With respect to an exchange:

(A) Any covered security other than a security for which the executed volume of such exchange, during the most recent calendar quarter, comprised one percent or less of the aggregate trading volume for such security as reported in the consolidated system or by a national security association; and

(B) Any other covered security for which such exchange has in effect an election, pursuant to paragraph (b)(5)(i) of this section, to collect, process, and make available to quotation vendors, bids, offers, quotation sizes, and aggregate quotation sizes communicated on such exchange; and

(ii) With respect to a member of an association:

(A) Any other covered security for which such member acts in the capacity of an OTC market maker unless the executive volume of such member, during the most recent calendar quarter, comprised one percent or less of the aggregate trading volume for such security as reported in the consolidated system or by a national securities association; and

(B) Any other covered security for which such member acts in the capacity of an OTC market maker and has in effect an election, pursuant to paragraph (b)(5)(ii) of this section, to communicate to its association bids, offers and quotation sizes for the purpose of making such bids, offers and quotation sizes available to quotation vendors.

* * * * *

By the Commission.

Dated: August 29, 1996.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 96–22624 Filed 9–11–96; 8:45 am]

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Part IV

Department of the Treasury

17 CFR Parts 400 and 420

Government Securities Act Regulations: Large Position Rules; Final Rule

DEPARTMENT OF THE TREASURY

17 CFR Parts 400 and 420

RIN 1505–AA53

Office of the Assistant Secretary for Financial Markets; Government Securities Act Regulations: Large Position Rules

AGENCY: Office of the Assistant Secretary for Financial Markets, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (''Department'' or ''Treasury'') is publishing final rules that establish a new Part 420 providing recordkeeping and reporting requirements pertaining to very large positions in certain Treasury securities. The regulations are promulgated pursuant to the Government Securities Act Amendments of 1993, which authorized the Secretary of the Treasury to prescribe rules requiring persons holding, maintaining or controlling large positions in to-be-issued or recently-issued Treasury securities to keep records and file reports of such large positions. The proposed rules were published to solicit public comment on December 18, 1995.

The recordkeeping rules require any person or entity that controls a position equal to or greater than $2 billion in a specific Treasury security to maintain and preserve certain records that enable the entity to compile, aggregate and report large position information. If the Treasury requests large position information, the reporting rules require entities to file a large position report with the Federal Reserve Bank of New York if their reportable position equals or exceeds the large position threshold in a particular Treasury security as specified by the Treasury in the notice requesting the large position information. The Department's large position rules are intended to provide the Treasury and other securities regulators with information on concentrations of control that will enable them to understand better the possible reasons for apparent significant price distortions and the causes of market shortages in certain Treasury securities. Requests by the Treasury for this information are expected to be very infrequent.

DATES: The effective date is October 15, 1996. Further dates: See §§ 420.4(a) and 420.5.

FOR FURTHER INFORMATION CONTACT: Ken Papaj, Director, or Kerry Lanham, Government Securities Specialist, Bureau of the Public Debt, Department of the Treasury, at 202–219–3632.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Authority

The Government Securities Act Amendments of 1993 (GSAA)[1] included a provision granting the Department the authority to write rules for large position recordkeeping and reporting in certain Treasury securities. Specifically, Section 104 of the GSAA, which amended Section 15C of the Securities Exchange Act of 1934,[2] authorizes the Treasury to adopt rules requiring specified persons holding, maintaining or controlling large positions in to-be-issued or recently-issued Treasury securities to maintain records and file reports regarding such positions.[3] The provision was in response to certain market events in 1990–91 and is designed to improve the information available to the Treasury and other regulators regarding very large positions of recently-issued Treasury securities held by market participants and to ensure that regulators have the tools necessary to understand unusual conditions in the Treasury securities market.

The GSAA gives the Department wide latitude and discretion in determining several key features and conditions that would form the underpinnings of the large position recordkeeping and reporting rules. Among the most significant of these features are: defining which persons (individually or as a group) hold, maintain or control large positions; determining the minimum size of positions to be reported; determining what constitutes ''control'' for the purposes of the rules; prescribing the manner in which positions and accounts are to be aggregated; identifying the types of positions to be reported; determining the securities that would be subject to the rules; and developing the form, manner and timing of reporting. Both the proposed and final rules address these points.

B. Participation in Rulemaking Process/ Solicitation of Comments

Throughout the process of developing large position rules, the Department has sought the views of the market participants who would be directly affected by such regulations. We believed that market participant involvement in the rulemaking initiative from its outset would facilitate greater understanding of, and support for, the final rules when implemented. Due to the potential complexity of the rules and the myriad of ways to approach them, we sought advice and initial comment on a variety of conceptual approaches to designing a large position recordkeeping and reporting system.

Accordingly, the Department issued an Advance Notice of Proposed Rulemaking (ANPR) on January 24, 1995.[4] The ANPR addressed several key issues, concepts and approaches to be considered in developing large position recordkeeping and reporting rules and solicited comments, suggestions and recommendations regarding how the requirements should be structured. The ANPR also contained a detailed historical background that provides a fuller understanding of the events and circumstances that resulted in the establishment of this regulatory authority, the purposes and objectives to be achieved from large position rules, and the Congressional intent behind this legislation. The comment period on the ANPR ran through May 24, 1995.[5] In response to the ANPR, the Department received seven comment letters which were summarized in the preamble to the proposed rules.[6] Rather than repeating that information here, readers are referred to the proposed rules for a discussion of the comments.

C. The Proposed Rules

The Department published for comment proposed large position recordkeeping and reporting rules on December 18, 1995.[7] The proposed rules were designed to strike a balance between achieving the purposes and objectives of the statute and minimizing costs and burdens to those entities affected by the regulations. The proposed rules required reports to be submitted only in response to a specific request by the Treasury for large position information on a particular Treasury security issue. Using this approach, reporting would be an infrequent event required primarily in response to pricing anomalies in a specific Treasury security rather than a regular, on-going process resulting from a certain pre-determined large position threshold being exceeded in a broader range of securities.

The proposed rules provided a minimum large position threshold of $2 billion, below which the Treasury would not request large position reports.

[1] Pub. L. 103–202, 107 Stat. 2344 (1993).

[2] 15 U.S.C. 78*o*–5.

[3] Pub. L. 103–202, Sec. 104; 107 Stat. 2344, 2346–2348; 15 U.S.C. 78*o*–5(f).

[4] 60 FR 4576 (January 24, 1995).

[5] 60 FR 20065 (April 24, 1995).

[6] 60 FR 65214 (December 18, 1995).

[7] Ibid.

As a result, very few entities would be required to file large position reports. The proposed recordkeeping requirements would generally not apply to any reporting entity (as defined in the rules) that did not control a position that equalled or exceeded $2 billion in a Treasury security. For those entities currently subject to recordkeeping rules of the Securities and Exchange Commission (SEC), the Treasury or the bank regulatory agencies, the proposed rules would have imposed only minor additional recordkeeping requirements and only if certain conditions were present. Finally, the proposed rules incorporated several concepts from the Treasury's auction rules (e.g., positions to be included in a reportable large position, definition of a reporting entity and method of aggregating positions) which have been in effect since March 1993 and are understood by many of the major participants in the Treasury securities market.[8]

In addition to considering the views expressed by the commenters to the two rulemaking proposals, Department staff has also consulted with various regulatory agencies (i.e., staff of the SEC, the Commodity Futures Trading Commission, the Board of Governors of the Federal Reserve System and the Federal Reserve Bank of New York (FRBNY)) in developing the ANPR, the proposed rules and these final rules.

D. Scope of Large Position Rules

It is important for all market participants to recognize that large position rules create a requirement to maintain records and report information about such positions. However, these requirements apply only to entities that hold or control (i.e., exercise investment discretion over) very large positions, as determined by the Department, in specific Treasury security issues. Accordingly, there is no obligation on executing brokers and dealers to report large trades nor is there an affirmative duty to inform their customers of the large position recordkeeping and reporting requirements prescribed by this rulemaking.

The Department emphasizes that large positions are not inherently harmful and there is no presumption of manipulative or illegal intent on the part of the controlling entity merely because a position is large enough to be subject to these rules. In addition, the rules do not establish trading or position limits or require the identification of large traders or the reporting of large trades. Finally, the GSAA specifically provides that the Department shall not be compelled to disclose publicly any information required to be kept or reported for large position reporting. In particular, such information is exempt from disclosure under the Freedom of Information Act (FOIA).[9]

II. Comments Received in Response to Proposed Rules

As discussed in the ANPR[10] and the proposed rules,[11] the Department made the decision, early on, to obtain the views of the market participants who would be directly affected by such regulations. In the proposed rules, which addressed and incorporated those comments received in response to the ANPR, the Department strongly encouraged market participants to submit comments, including any suggestions for reducing burdens on the industry while still achieving the objective of the rules.

In response to the proposed rules, the Department received thirteen comment letters. The letters were submitted by four trade associations, three primary government securities dealers, four bank holding companies (including two primary dealers), and one mutual fund manager.[12] The Department has carefully considered the comments that were received, which generally supported the approach and process adopted in the proposed rules. Each comment letter did not necessarily address all aspects of the proposed rules.

The comments have been summarized and organized into the following eight basic categories: Control and the Definition of a Reporting Entity; Reporting Threshold; Time Frame for Submitting Reports; Reportable Position Components; Report and Recordkeeping Certifications; Recordkeeping; Announcement of a Request for Reports; and General Commentary.

A. Control and the Definition of a Reporting Entity

Eight comment letters specifically addressed this issue. While the comments were generally in agreement with the definition of control as proposed, the concept of control premised on an entity's investment discretion, and defining a reporting entity or a separate reporting entity under a requested ''carve out'' in conformity with the single bidder process in the uniform offering circular, four letters had specific recommendations.

One commenter expressed concern about the timing and aggregation requirements given the definitions of ''control'' and ''entity'' and believed that it would be difficult to aggregate all of its holdings within the proposed reporting time frame. This commenter recommended that the definition of ''reporting entity'' be limited to a legal entity that exercises independent investment discretion, believing that if a narrower definition were adopted then their concerns would be eliminated. The second commenter, while agreeing with the concept of control premised on investment discretion, suggested that a participant be allowed to exclude from its reportable position those securities for which the entity has investment discretion but which do not exceed a minimum threshold. This approach, which would be similar to the net long position reporting requirement in the uniform offering circular, permits bidders to exclude amounts in non-bidding controlled accounts under a certain threshold from their reporting requirement. This commenter asserted that this exclusion would significantly alleviate the burden in tracking amounts of the security subject to investment discretion.

The third letter, in specifically commenting on the application for separate reporting status, similar to the separate bidder application incorporated in the uniform offering circular, recommended that Appendix A of the rules be changed to encompass organizational components previously recognized under the uniform offering circular's definition. The fourth commenter expressed concern with the various distinctions being drawn among reporting entities, aggregating entities and separate reporting entities, stating that this will cause a myriad of problems for complex and changing financial services businesses. The commenter proposed that a narrower reporting population be defined, such as those business units which are the primary bidders for, and proprietary traders in, U.S. government securities. Within these groups, the commenter suggested excluding those securities that are not held for proprietary trading. This commenter further suggested an alternative approach which would not require the aggregation of positions, where the different business units within a firm are clearly independent,

[8] Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds; 31 CFR Chapter II, Subchapter B, Part 356.

[9] 5 U.S.C. 552(b)(3)(B).

[10] See *supra* note 4.

[11] See *supra* note 6.

[12] Public Securities Association (two letters); Investment Company Institute; British Bankers' Association; London Investment Banking Association; Goldman, Sachs & Co.; J.P. Morgan Securities, Inc.; HSBC Securities, Inc.; Bank of America; Chemical Banking Corporation; Norwest Corporation; BANC ONE Corporation; and Fidelity Management & Research Co., respectively.

while excluding all business units where securities are held as long-term investments.

B. Reporting Threshold

Seven letters directly addressed the proposed $2 billion minimum large position threshold. Two of the seven commenters believed this threshold to be an appropriate level, with one of these commenters suggesting that the rules specifically provide that the threshold be raised from time to time based on market developments. Three other commenters stated that by including gross financing positions in the total reportable position, all primary dealers and large market participants would trigger the $2 billion threshold and effectively be required to report their positions in all instances, due to their matched repo book and other financing activity, thereby resulting in numerous reports. Given these large matched book positions, one of the three commenters advocated that this threshold be increased to $5 billion, while another suggested that the reportable position be based on the participant's net financing position. The third commenter, while also advocating a significant increase in the threshold, went further by recommending two other alternative approaches. In the first approach, the $2 billion threshold would be triggered by the aggregate of the net trading position and the net fails position, excluding the gross financing position. The second alternative approach would provide participants with the option of netting the gross par amounts of securities received in financing transactions against the gross par amount of securities delivered with the same term to the same counterparty. In both approaches, the commenter stated that this would only be to determine if a firm had crossed the threshold. Once it was determined that the firm was subject to reporting, then its gross financing positions would be reported to provide for a full range of large position information.

The sixth letter, focusing on those large firms that operate in foreign markets, represented that even if the normal activity of a participant was below the threshold, if the participant was a part of a group of affiliates, it may be subject to the reporting rules. The commenter went on to state that foreign affiliates, however minimal their activity, would need to report information to the designated filing entity unless they qualified for, and received, separate reporting status. This commenter, and a seventh commenter which supported increasing the minimum threshold, suggested that the process could be simplified by setting a minimum threshold for each aggregating entity below which the entity's position would not need to be included in the reporting entity's report.

C. Time Frame for Submitting Reports

Only one of the thirteen comment letters did not specifically address the subject of the proposed reporting time frame in which reports must be submitted once an announcement for large position information on a particular security is made by the Treasury. All twelve letters basically stated that the proposed one and one-half business day time frame was too short given the enormity of the data that would need to be gathered, reviewed and aggregated. These letters suggested that a longer period would seem more appropriate based on the effort required to compile the information, the fact that current requirements do not require holdings to be aggregated at a reporting level, and the time needed for participants with large international presences to gather the data from worldwide affiliates, especially given the different time zones. One commenter recommended extending this turnaround time to at least three business days. Others suggested four or five business days while several commenters recommended that a minimum of ten business days would be appropriate. Commenters noted that a turnaround time frame of ten business days is the same as that for large position rules in place for the equities securities market (i.e., 13d filings) and is the same as that for the SEC's proposed large trader reporting rules.

One of the commenters, while not recommending a specific time frame, suggested that even a ten business day turnaround would be insufficient. This letter proposed several alternatives to balance the need to collect information quickly and the burdens on the reporting entity. The commenter suggested that an initial or ''first cut'' report of summary positions be prepared which would contain less precise information. Possible alternatives would be to subsequently provide a breakdown of the various components upon request; or, accept an initial report with only trading, reverse repo, and securities borrowed positions, with additional information to follow in a longer time frame; or, permit U.S.-based entities to report first, with information regarding foreign holdings to follow upon request; or, permit filing of partial reports to address situations where an aggregating entity does not have its reportable position ready in time.

Another commenter, while recommending a time frame of not less than ten business days if the reportable position includes all securities received in pledge and in other collateralized transactions, also advocated the implementation of a phased reporting system where participants would provide certain information in less than ten business days, with the balance of the required information to be provided by the tenth business day. This commenter went on to state that many participants would be able to report their net trading positions for all aggregating entities within five to seven business days. One commenter requested that the final rule specifically provide that the reporting entities could amend a filing if the original reported information was inaccurate.

D. Reportable Position Components

Eleven of the thirteen comment letters addressed the subject of the composition of a reportable position. Certain commenters generally supported including in the total reportable position the selected components as proposed, such as net forward and net fails positions. However, the majority of commenters objected to how certain aspects of the net trading and gross financing positions were to be included or whether they should even be included in the total reportable position. For example, two commenters specifically objected to a separate reporting of the net trading position components since, as stated by one of these commenters, separate reporting serves no useful purpose because all these positions represent control. Both commenters stated that the positions should be reported as of trade date, not settlement date. These same commenters stated that those securities received under overnight repos should be excluded from the reporting and recordkeeping obligations since investment advisers do not exercise effective control over them, they are not rehypothecated, and a significant portion of these transactions are tri-party repos where the counterparties typically have the right of substitution.

The inclusion of securities received in pledge as collateral for margin loans, swap transactions, and other collateralized credit extended in the gross financing position generated the most comments from those that addressed the reportable position's components. Nine comment letters responded similarly that these pledged securities should be excluded from being reported in the gross financing position. The commenters stressed there are minimal policy benefits to be

derived by including them and that this information would be of marginal utility. The inclusion of these securities is based on the premise that the pledgee maintains control. However, the commenters stated that firms do not control those securities received in pledge since the pledgor often has the right to substitute them in accordance with the market practice of pledging general collateral rather than specific securities identified by particular CUSIPs (i.e., a unique identifying number assigned to each separate security issue and separate STRIPS component). The letters also stressed that most firms or market participants do not have a systematic method for aggregating these positions firm-wide and do not possess the operational capacity or systems to track those securities pledged by CUSIP. It was argued that it would be prohibitively expensive to design and implement systems and procedures to track these pledged securities by CUSIP. Two letters, in particular, stressed that if these securities received in pledge and securities in other collateralized transactions were to be included in the final rules then market participants should continue to be provided the option to exclude the securities collateral over which the pledgor retains the right to substitute or which is subject to third party custodial relationships. Further, the amount of such exclusions should not be required to be reported separately in a memorandum entry in the report. One letter stated that the rules should allow for the netting of repos and reverse repos when the counterparty is a primary government securities dealer.

Two commenters requested further clarification on different position components. One of the letters stated that while fails should be included in a reportable position, the rules should clarify that fails are not included in the calculation for the cash/immediate net settled position. The second letter requested clarification on the treatment of forward start repos and reverse repos, believing that they should be included in the gross financing position. This commenter also requested clarification that fails to receive or fails to deliver would not be included in the cash/immediate net settled position since this would avoid double counting in the reports. This letter suggested that fails be treated similarly to forwards and that fails should be able to be netted with other components as either a positive or negative number. This commenter suggested amending the proposed rules to permit net fails to be less than zero.

E. Report and Recordkeeping Certifications

Six letters specifically commented on the proposed report and recordkeeping certifications and essentially objected to, or would find problematic, the requirement that only certain senior executives would be permitted to sign the report and certify the adequacy of the reporting entity's recordkeeping system. It was recommended that the rules be broadened to provide that others, such as the chief legal or compliance officers, or individuals authorized by the designated filing entity, be able to sign the reports and recordkeeping certifications. This approach would be consistent with the requirement under Section 13 of the Securities Exchange Act of 1934.

Three letters, in particular, expressed concern about the obligations and responsibilities with respect to the certifications that must be given by the designated filing entity on behalf of the reporting entity and its aggregating entities. It was recommended that the certifications in the final rules specifically permit the designated filing entity to rely on certifications or other reasonable bases of evidence of the accuracy of the information as provided by the aggregating entities.

F. Recordkeeping

Five letters directly addressed the proposed recordkeeping requirements. Two of these letters objected to applying the rules to those entities that had a large position at any time during the two-year period ending ninety days after publication of the final rules since the reviews of records to determine whether a large position was held would be an extensive, time consuming, and very costly process and would amount to a retroactive application of a new requirement. It was recommended that if this requirement were retained, entities be given the option of certifying or notifying the FRBNY that the holding of a large position is based on the entity's general knowledge of past investment and trading activities, without actually reviewing their records to document this fact. Another two letters specifically commented on the imposition of a significant recordkeeping burden on unregulated aggregating entities. Both letters stressed the view that this additional compliance burden, with these unregulated firms having to design and implement recordkeeping systems, may cause certain entities to either re-evaluate or curtail their participation in the Treasury market. One letter suggested that these unregulated entities be excluded from these requirements.

G. Announcement of a Request for Reports

Five letters addressed the issue that the Treasury would annually test the reporting of large positions by requesting reports. Four letters recommended that when this request for large position information is made, the Treasury should notify market participants that it is a test. This is because some participants will assume that all such requests are real and their reactions may create price anomalies where none existed. One letter, in particular, stressed that advising market participants that the request is a test would not cause firms to be less diligent in complying with the rules and that firms would in every case have a legal obligation to submit the required information in a timely and accurate manner.

One letter recommended that the start of the response period, in which the reports would be required to be submitted, should be triggered by publication of the announcement in the Federal Register, which would provide more certainty than a press release, that the notice was received. Another letter, from a trade association, suggested that while they support the issuance of a press release and publication in the Federal Register, they would also like to be immediately notified when the release is provided to third party wire services so that they can redistribute the notice to their members.

H. General Commentary

Nine of the thirteen comment letters expressed general support for the proposed rules and the desired effect to prevent and detect market manipulation. Specifically, the letters supported the approach taken in providing for a $2 billion reporting threshold, an on-demand reporting system where reports are required to be submitted in response to infrequent requests, and relying on records that are already required to be maintained. Three of the nine letters stated that certain features of the proposed rules would be overly burdensome and pose compliance problems.

One commenter agreed that the proposed rules strike the appropriate balance between achieving the purposes of the statute and minimizing the costs to the affected entities. Another commenter, while generally supportive, strongly objected to the Treasury reserving the right to collect information on securities issues that are older than those specified, since accommodating

historical information requests would impose significant cost burdens and business disruptions. A third commenter suggested that the FRBNY adopt an appendix to the final rules that would identify acceptable submission methods. A fourth commenter reiterated the view it expressed in response to the ANPR that the particular features of the Treasury bill market make it difficult to accumulate a concentration in these issues. A fifth commenter stated that the final rules should explicitly include a provision providing that any information required to be kept or reported will be exempt from FOIA and provided confidential treatment given its concern that the Treasury, in following up on a report, would seek the names of its advisory clients. This same commenter also stated that it does not believe that the GSAA provides the Treasury with the authority to request information on securities issues older than those defined as recently-issued and, therefore, this provision should be eliminated.

Three commenters opposed the application of the large position rules to foreign firms. One letter expressed the commenter's belief that there are complications for those firms operating in foreign markets and that the proposed rules raise concerns about the potential effect on the liquidity of the government securities market. This commenter stated that the recordkeeping requirements and open-ended obligation to file large position reports could make Treasury securities less attractive to foreign participants, many of whom structure their business so as not to bring themselves under direct U.S. regulation. This letter further urged that the issuance of the final rules be delayed until the Treasury is absolutely certain that these rules meet the stated goal. Another commenter, in addition to expressing concerns with compliance costs (particularly for major European financial conglomerates), raised the issue of the extension of extra-territorial regulation by U.S. authorities. It was this commenter's belief that the extra-territorial application of the rules would be unwarranted in principle and unworkable in practice and would ''aggravate problems over the trade in services.'' The commenter suggested that an alternative approach would be to rely more on memoranda of understanding (MOUs) with European supervisors and less on regulations. This letter further questioned the enforcement capacity with which U.S. authorities would have to enforce the regulations outside national jurisdiction, in the context of large foreign conglomerates. To this extent, the commenter recommended a narrower definition of the reporting population.

A third commenter stated that the extra-territorial scope of the large position rules should be modified, particularly with respect to firms domiciled in countries where foreign regulators have MOUs with U.S. authorities. This commenter stated that the Treasury should explore the possibility of obtaining large position information from the foreign regulatory authorities rather than directly from the firms. It was represented that this process would ''build on * * * the increasing and important trend of enhancing cooperation between regulators in the securities markets * * *.'' This commenter further stated that large position reporting may not be needed at all for firms based in foreign jurisdictions which have rules in place to prohibit market manipulation.

III. Section-by-Section Analysis of Changes in Response to Comments

A. Section 420.1—Applicability

In preparing the applicability section of the final rules, one change was made from the proposed rules. The change provides a total exemption from the large position rules to foreign central banks, foreign governments and international monetary authorities (e.g., World Bank) (collectively, foreign official organizations). The proposed rules had provided these entities a partial exemption from the rules limited to the portion of their positions maintained at the FRBNY. In response to the ANPR, the Treasury had received comments (from the FRBNY and the Investment Company Institute) on the regulatory treatment of these organizations and public comment was specifically requested on the approach taken in the proposed rules. No further comments were received.

The Department has determined to grant the foreign official organizations a total exemption after careful consideration of the costs and benefits resulting from subjecting them to large position rules. The Treasury believes that attempting to regulate these entities would create significant potential legal and practical problems. Additionally, for the infrequent occasion when foreign official organizations may control a large position in a Treasury security, this information is likely to be available from other sources. Accordingly, the Treasury perceives very little benefit to be obtained from regulating the foreign official organizations in relation to the costs that would be incurred. It is for this reason that they are being granted a full exemption.

The exemption provided to foreign official organizations does have one limitation. To the extent that such an organization has an ownership interest in an entity that engages primarily in commercial transactions (e.g., a nationalized commercial bank), the exemption does not extend to that entity. This limitation is designed to provide equivalent treatment to all commercial market participants regardless of their ownership structure.

Three commenters objected to the applicability of the rules to foreign firms (i.e., foreign private financial enterprises). Two argued that the extra-territorial application of the rules by U.S. regulators would be either unwarranted in principle and unworkable in practice or unnecessary for many foreign firms since they are already subject to the rules of their domestic supervisor prohibiting market manipulation. The commenters recommended that, in lieu of an extra-territorial application of the rules, Treasury: (1) Rely more on MOUs with foreign regulators to obtain needed information, and (2) define a narrower reporting population for the rules (e.g., only business units that are primary bidders for, and proprietary traders in, Treasury securities).

Treasury has considered the problems related to the ability of U.S. regulators to obtain large position information from foreign investors. As a result, Treasury expects that U.S. regulators will continue to cooperate with foreign securities regulators through MOUs and other means when and if such actions become necessary. It is impractical to exempt foreign investors from the large position rules since the potential exists for these entities to amass large positions in Treasury securities, and further, the granting of such an exemption could cause U.S.-based entities to move their securities holdings overseas to foreign firms. Accordingly, the Treasury has decided to retain the requirement that foreign private financial enterprises be subject to the large position rules.

The commenters also asserted that compliance costs for foreign firms—especially European financial conglomerates—would be considerable. The Treasury believes that the changes made to the proposed rules, as explained in the remainder of this section of the preamble, together with the fact that the on-demand reporting system does not require aggregation of positions on a daily basis, will facilitate the ability of affected firms, including foreign firms, to comply with the rules

without incurring substantial compliance costs.

B. Section 420.2—Definitions

Comments were received on paragraph 420.1(d) of the proposed rules, which reserves the Treasury's right to collect information on certain Treasury securities which do not meet the regulatory definition of ''recently-issued'' but reporting on them would be consistent with the purposes of the GSAA. The commenters believed that such a reservation of rights was beyond the scope of the Treasury's authority. The purpose of the provision was to provide notice to market participants that, while the definition of ''recently-issued'' narrowed the routine coverage of the large position rules to a small universe of securities, the authority provided to the Treasury by the GSAA is broad enough to be applied to a larger group of securities and that, in certain rare circumstances, the Treasury may choose to invoke this broader authority. Treasury continues to hold this view.

After consideration of these comments, and to make clear that ''recently-issued'' is not limited by statute to the two or three most recent issues of a security, the Department has removed paragraph 420.1(d) but revised the definition of ''recently-issued'' in paragraph 420.2(g) of the final rules. The revision adds a new subparagraph (5) to the definition of ''recently-issued'' to include Treasury security issues older than those specified in subparagraphs 420.2(g)(1) and (2) where the large position information is necessary and appropriate for monitoring the impact of concentrations of positions in Treasury securities. As discussed in the preamble to the proposed rule,[13] the Treasury believes that this authority to request large position information on older security issues would only be used in exceptional circumstances. One example is the April and May 1991 two-year Treasury note squeeze situations in which these securities remained of concern to the Treasury beyond the time that would otherwise have been covered by the definition of ''recently-issued'' in subparagraphs 420.2(g) (1) and (2). It is not the Department's intention to gather information on securities that have been outstanding for an extended period of time.

The definition of gross financing position, paragraph 420.2(c), was the subject of a number of comments principally on two different aspects of the proposed definition; the inclusion of securities collateral and the scope of the optional exclusion. As previously described in Section II.D., many commenters were particularly concerned about the broad scope of the definition of the gross financing position. As proposed, the gross financing position included amounts of a security received from any financing transaction, including collateral for commercial loans or financial derivatives. Commenters represented that compliance with the extensive reach of this position component would be unduly burdensome and for a large, diversified reporting entity could not be calculated within the provided reporting time frame. Some of the commenters stated that in order to calculate the gross financing position they would have to develop automated systems at substantial cost. The commenters did not object to the treatment of security financing transactions such as reverse repurchase agreements and bonds borrowed.

After reviewing the comments, the Department has determined to limit the scope of the gross financing position. Specifically, all commercial lending transactions that include Treasury securities as collateral will be excluded from the gross financing position. These transactions include financings such as lines of credit, general purpose business loans and other securitized loans unrelated to activities in the financial markets. This change should greatly simplify the computation of the gross financing position for entities such as large commercial banks that extend secured commercial credit from a large number of locations and do not maintain a centralized register of the specific collateral for these transactions.

In preparing the final rules, the Treasury carefully considered the commenters' further objections to the inclusion of securities received as collateral for financial derivatives such as swap agreements. The commenters represented that since these activities are generally conducted in unregulated affiliates of regulated entities, there are few standardized systems for tracking the specific collateral obtained and that creating an obligation to determine whether a specific security is held as collateral in a very short time frame, even on an on-demand basis, would require the development of extremely expensive automated systems. The Department weighed these arguments against the potential importance of this information in ascertaining control of a particular security and decided that the benefits of including them were greater than the burdens to market participants. Factors affecting this decision were the growing popularity of collateral structures for financial derivatives, the practical similarities between these structures and reverse repos and bonds borrowed transactions, as well as the fact that large market participants that would be affected by the large position rules already have non-integrated systems for tracking this collateral to conduct daily mark-to-market calculations and to determine the sufficiency of the collateral. Additionally, as is discussed later in the preamble, the Department has also determined to extend the reporting time frame. Accordingly, a Treasury security that has been received as collateral for a financial derivative transaction or other securities transaction (e.g., margin loan) must be included in the gross financing position.

In response to the proposed rules, commenters also noted that the optional exclusion provided in the definition of gross financing position for transactions in which securities were transferred without effective control was restricted to only some financing transactions. The Department is sympathetic to this concern and is revising the definition in paragraph 420.2(c) in the final rules to permit the optional exclusion to be available on the same terms for any collateral transaction in which securities are received. The circumstances in which control is deemed to not exist—the right to substitute securities, a third party custodial relationship or hold-in-custody agreements—remain unchanged from the proposal. Extension of the exclusion to all components of the gross financing position should further mitigate the impact of including financial derivatives collateral in the definition since many of these agreements provide for the right to substitute securities.

As a clarifying point in response to one commenter, the Department notes that forward start reverse repo transactions are to be included in the gross financing position just as forward settling trades are in the net trading position.

While the Department is not revising the definition in paragraph 420.2(d) of large position threshold, it emphasizes that the $2 billion level is only an absolute minimum reporting level. The Treasury wishes to reiterate that, while the $2 billion threshold triggers the recordkeeping requirements pursuant to section 420.4, no reporting burden is created until the Treasury issues a notice for information on a specific security. The Treasury envisions that the level specified in any actual request for large position information would most likely be significantly in excess of $2 billion and would, therefore, affect

[13] 60 FR 65214, 65217 (December 18, 1995).

only a small number of entities. Accordingly, no change is being made to the definition.

Comments were specifically requested on the treatment of fails in the composition of a reportable position. The only negative comments received on this component suggested that the net fails position be permitted to be a negative number. The Department has decided to retain the current restriction that the net fails position should be reported as zero if it is negative. Fails to deliver that exceed fails to receive should not be used to reduce the size of a reportable position because their size is, to a great extent, controllable by the reporting entity. The Department also wishes to clarify that fails are not to be included in the net trading position and, therefore, are not double counted in computing a reportable position.

In paragraph 420.2(f), the definition of net trading position, the Department requested comment on the proposed treatment of forward settling positions. The comments that were received on this issue were supportive of the proposed treatment. Accordingly, no change has been made to the treatment of forward settling positions in the net trading position. As a reminder, all the components of a reportable position are to be computed on a trade date basis.

One commenter requested that the criteria for designation of a separate reporting entity within the definition of a reporting entity, paragraph 420.2(i) and Appendix A, be modified to parallel more closely the criteria for designation as a separate bidder in the uniform offering circular. [14] Specifically, the commenter asked that organizational components within an entity be permitted to establish themselves as separate reporting entities as they are permitted to be separate bidders in the uniform offering circular. To ensure consistency between the uniform offering circular and the large position rules, the Department has made a clarifying change to the term aggregating entity as defined in paragraph 420.2(a) and as used in Appendix A of the large position rules. These revisions clarify that an organizational component (e.g., a bank trust department) falls within the definition of aggregating entity and may be recognized as a separate reporting entity. Appendix A has been further revised to clarify that any entity, including an organizational component thereof, that has already received recognition from the Treasury as a separate bidder in Treasury auctions pursuant to the uniform offering circular is also recognized as a separate reporting entity without requesting such status. However, the separate reporting entity must continue to abide by the conditions set out in the uniform offering circular that are required for recognition as a single bidder, which parallel the conditions set out in Appendix A of the large position rules for recognition as a separate reporting entity.

C. Section 420.3—Reporting

1. On-Demand Reporting System

The on-demand reporting system approach that the Treasury proposed for filing large position reports received overwhelming support from the commenters. In an on-demand reporting system, large position reports are required to be prepared and filed only in response to a notice from the Treasury requesting large position information on a specific issue of a Treasury security by those reporting entities whose positions exceeded the large position reporting threshold specified in the notice.

Nine of the twelve organizations that submitted comment letters addressed the on-demand reporting requirement and all of them supported the proposed reporting method in which large position reports would be submitted only in response to a specific, infrequent request by the Treasury. The commenters agreed with the Treasury's assessment that an on-demand reporting system would be significantly less costly and burdensome than a regular reporting system. An on-demand system would target the reporting to a specific issue of a Treasury security in response to price distortions or market anomalies, while still achieving the legislative and policy goals of strengthening the ability of the regulatory agencies to deter possible manipulation of the Treasury securities market. Thus, the on-demand approach is essential to the Treasury's overall commitment to design rules that strike an appropriate balance between achieving the purposes and objectives of the statute and minimizing costs and burdens to those entities affected by the regulations. Accordingly, the on-demand reporting requirement in paragraph 420.3(a) is being adopted without change from the proposed rules.

2. Notice Requesting Large Position Reports

Another of the provisions of paragraph 420.3(a) identifies the information that will be provided in the notice that will be issued by the Treasury (i.e., press release and subsequent Federal Register notice) requesting the preparation and submission of large position reports. Paragraph 420.3(a) is being modified to indicate that the notice will also contain, where applicable, identification of the STRIPS principal component that is related to the specific Treasury security issue for which large position information is being requested. This information is being added because the STRIPS principal component, which must be reported as part of the net trading position, has a different security description and CUSIP number from the related Treasury note or bond that would be the subject of the Treasury's request for information.

The preamble discussion to the proposed rules indicated that the Treasury notice requesting large position information would be provided to major news and financial publications and electronic financial wire services for subsequent dissemination, and published in the Federal Register.[15] This procedure was proposed because we believe that the press release requesting large position information would be given wide and timely distribution without undue delay in the same manner as Treasury offering announcements and auction results. However, the Public Securities Association (PSA) has expressed concern about relying on the press for notification of the large position information request and that some entities may not have access to the particular wire service carrying the notice. For these reasons, the PSA has requested that the Treasury provide it with a facsimile copy of the notice so that the PSA can immediately notify its members of the reporting obligation. To facilitate broad and timely dissemination of the notice, Treasury will provide the PSA with a copy of the press release at the time it is issued. The Treasury will similarly make a copy of the notice available to other industry or trade associations at their request.

3. Information Required in Large Position Reports

—Net Trading Position

Paragraph 420.3(c), together with Appendix B, details the specific information that must be provided in the large position information reports. In the proposed rules, paragraph 420.3(c)(1) identified the specific component positions of the total reportable position that must be reported by the reporting entity. For the

[14] 31 CFR 356 Appendix A.

[15] Since the Federal Register is the designated federal publication for providing official notice, publishing the Treasury notice in that publication is legally sufficient for ''constructive notice'' of the request.

net trading position, which is one of three positions that constitute the total reportable position, the proposed rules required each of the following five components to be listed in the large position report: (1) Cash/immediate net settled positions; (2) net when-issued positions for to-be-issued and reopened issues; (3) net forward settling positions, including next day settling positions; (4) net positions in futures contracts that require delivery of the specific security; and (5) net holdings of STRIPS principal components of the security.

Two commenters objected to the requirement that each of the five components of the net trading position be reported separately since the only difference among these items is their settlement date. One of these commenters also stated that the separate reporting of the net holdings of STRIPS principal components of a security does not appear to be necessary. In response to the comments and also to reduce the amount of information that must be included in the large position report, we are revising the final rules to eliminate the separate reporting of the five components that comprise the net trading position. Reporting only the total net trading position, rather than each of the five components, is also consistent with the way the net long position is reported under the Treasury's auction rules.[16] Accordingly, paragraph 420.3(c)(1) has been revised to require a reporting entity to report only its net trading position, gross financing position, net fails position and the total reportable position, which is the sum of the three positions. However, Treasury or FRBNY staff may require, as a follow-up inquiry pursuant to paragraph 420.3(e), a reporting entity to provide the amount of each component that constitutes the net trading position. Reporting entities must make good faith efforts to respond to such inquiries and provide any additional information requested in a timely manner.

—Gross Financing Position

The gross financing position is the second of three positions constituting the total reportable position that must be included in the large position report pursuant to paragraph 420.3(c)(1) of the final rules. As discussed at length in Sections II.D. and III.B. of this preamble, the gross financing position was the subject of extensive comments regarding the inclusion of securities collateral in the position, the scope of the voluntary exclusion that permitted firms to reduce the gross financing position by the amount of securities received over which they did not have effective control, and the requirement to report the amount of the voluntary exclusion as a memorandum entry. Section III.B. discusses how the definition of gross financing position is being modified to narrow the scope of transactions that are covered and how the voluntary exclusion is being expanded to cover all components in the gross financing position. No changes to paragraph 420.3(c)(1) are necessary to address these issues.

However, the Treasury has changed the provision in paragraph 420.3(c)(2) of the proposed rules that would have required the amount of the voluntary exclusion to be reported. Entities that would have taken advantage of the voluntary exclusion would have been required to report the amount of the exclusion in Memorandum #2. The Treasury agrees with the commenters who stated that requiring this memorandum entry would impose additional burdens, thus negating the benefits that would be derived from exercising the voluntary exclusion. As a result, the Treasury is revising paragraph 420.3(c)(2) in the final rules by deleting the requirement to report Memorandum #2—the amount excluded from the gross financing position—in the large position report.

—Net Fails Position

Regarding the net fails position, which is the third component of the total reportable position, two commenters requested clarification that fails should not be included in the cash/immediate net settled position component of the net trading position. The Department concurs with the views expressed by the commenters and reiterates the clarification it made in the preamble to the proposed rules that positions remaining unsettled after their scheduled settlement date are not to be included in the computation of the net trading position. As discussed earlier, the final rules adopt without change the treatment of the net fails position as proposed, i.e., net fails must be reported either as a positive number or zero.

—Trade Date Reporting

Paragraph 420.3(c)(3) has been revised with technical and conforming changes. Language has been added to this provision to state explicitly that all position amounts on the large position report should be reported on a trade date basis. Since two commenters stated that positions should be reported as of trade date rather than settlement date, we believe this revision to the final rules will eliminate any confusion or misunderstanding regarding this issue.

A conforming change is also being made to paragraph 420.3(c)(3) to reflect that the net trading position should be reported as one net number rather than reporting each of the five net trading position elements. See the discussion above in the section entitled Net Trading Position.

—Supplemental Information

As described in the proposed rules, paragraph 420.3(e) requires that a reporting entity provide, in response to a request from the FRBNY or the Treasury, information in support of its large position report. Such a request could include the detail on the five components of a net trading position. Examples of other information that may be requested include the terms of repurchase agreements involving the security, such as rate and maturity, as well as transaction volume for the reported security.

4. Report Signatories and Certifications

In the proposed rules, paragraph 420.3(c)(5) provided a listing of the administrative information that must be included in the large position report, the individuals authorized to sign the report, and the required certification language attesting to the accuracy and completeness of the report and to compliance by the reporting entity with the large position rules under this part. A number of commenters recommended that the list of those individuals authorized to sign the large position reports be expanded to include other officials and further that authority to sign be permitted to be delegated to other individuals. Additionally, many commenters requested that the certification language be changed to permit the designated filing entity to rely on certifications or other reasonable bases of evidence received from the aggregating entities regarding the accuracy and completeness of the large position information provided by the aggregating entities.

In response to these comments, the Department is liberalizing and providing greater flexibility for the signatory and certification requirements. Paragraph 420.3(c)(5) as it appeared in the proposed rules is being separated into two paragraphs. New paragraph 420.3(c)(5) lists the specific administrative information that must be provided in the large position report without any substantive change from the proposal.

New paragraph 420.3(c)(6) lists the individuals authorized to sign the large position reports and provides the specific certification language that must be included in each report. This

[16] 31 CFR 356.13(b).

provision is being revised in the final rules by adding the chief compliance officer and chief legal officer to the list of officials authorized to sign the large position reports. In broadening the list of authorizing officials, the Department believes affected firms will have greater flexibility to determine the appropriate signatory for a particular report.

New paragraph 420.3(c)(6) also contains a provision requiring two certification statements. The first certification statement requires the person signing the large position report to certify that the information contained in the report with respect to the designated filing entity is accurate and complete. This is consistent with the certification in the proposed rules. However, the certification language regarding (i) the accuracy and completeness of the large position information related to the other aggregating entities and (ii) compliance by the reporting entity, including all aggregating entities, with the large position recordkeeping and reporting rules has been modified to permit such certifications based on lesser standards of assurance. The final rule language will enable the signatories to make the required certifications based on a standard of reasonable inquiry and best knowledge and belief. Such an approach permits the authorized official to rely on certifications, schedules or other reasonable bases of evidence that the aggregating entities provide to the designated filing entity pertaining to their holdings of large positions and compliance with the rules.

This certification approach adopted in the final rules is similar to that used by the SEC regarding reports filed under Sections 13(d) and 13(g) of the Securities Exchange Act of 1934.[17]

5. Reporting Time Frame

Twelve of the thirteen comment letters objected to the one and one-half business day reporting time frame in the proposed rules and recommended longer time frames ranging from three to ten business days. In addition, two commenters recommended a phased reporting approach with staggered deadlines for different types of positions.

The Department is extending the time frame for filing the large position reports from one and one-half to three and one-half business days as prescribed in new paragraph 420.3(c)(7). Accordingly, reports must be received by 12:00 noon Eastern time at the FRBNY, Market Reports Division, on the fourth business day after the issuance of the Treasury press release requesting large position information.

The Department is sympathetic to the concerns expressed by the commenters regarding the time and effort that will be needed to compile, aggregate and file the large position reports, particularly where reporting entities have a large number of aggregating entities, including foreign affiliates. To be weighed against these concerns is the need that the report be filed relatively quickly in order to accomplish its purpose. However, we believe that the significant changes that have been made in the final rules—revising the definition of gross financing position to exclude securities received as collateral for commercial loans; expanding the voluntary exclusion for the gross financing position to cover securities received on any component of the position; eliminating the requirement to report as a memorandum entry the amount of the voluntary exclusion; eliminating the need to report separately each of the five components of the net trading position; and expanding the flexibility regarding the signatory and certification requirements—will reduce the burdens associated with meeting the three and one-half business day reporting requirement.

The Department also wants to clarify a misunderstanding on the part of some commenters that the large position rules impose an on-going aggregation requirement. Neither the proposed rules nor these final rules impose a daily aggregation requirement for large position information. The Department adopted the on-demand method of reporting specifically to avoid requiring entities to redesign or develop systems that would summarize, compile and aggregate large position information on a daily basis. While all aggregating entities subject to the rules must make records of their transactions on a daily basis, only the designated filing entities are required to have a process to aggregate the large position information on behalf of the reporting entity, and then only in response to a specific request from the Treasury for large position reports. The Department is not persuaded that the rules require firms to develop system interfaces or integrated systems to compile and aggregate the required large position information.

The Department did not adopt the recommendation for a phased reporting system. We believe such a system would impose unnecessary administrative burdens and add unneeded complexity to the reporting process.

6. Report Media

In response to a request for clarification, paragraph 420.3(d) has been revised to indicate that facsimile and delivered hard copy reports are the acceptable media for the large position reports. Reporting entities should contact the FRBNY staff to work out arrangements if they wish to submit the reports in a different type of media.

7. Testing of Large Position Reporting System

The Department reiterates its intention to test the accuracy and reliability of the large position reporting system by requesting large position reports at least annually, regardless of market conditions for a particular security. Many commenters expressed concerns that, by the Treasury not disclosing that a request for large position information is a test, the market will assume the request is real and may react negatively, thus creating price anomalies where none existed. While the Department may announce a test as such, we intend to preserve our policy prerogative to request large position information without stating that the request is a test. The Department appreciates and understands these concerns but believes that the market should be able to discern, based on the market prices for the security issue selected for the test, that the request for large position information is only a test.

D. Section 420.4—Recordkeeping

The recordkeeping rules require large position holders to make and preserve records related to large position reporting requirements. The final recordkeeping rules contain minor modifications to the proposed rules, reflecting the Treasury's review of issues raised in the comment letters.

The proposed recordkeeping rules required, among other things, that each designated filing entity, in instances where its reporting entity controlled a reportable position of at least $2 billion in any Treasury security during the prior two-year period ending 90 days after publication of the final rule, submit a letter to the FRBNY ''certifying'' that the designated filing entity had or would have by the effective date a recordkeeping system capable of making, verifying the accuracy of, and preserving the requisite records. (A technical change has been made in these final rules regarding this letter. Pursuant to section 420.4(a)(2) of the final large position rules, the letter must now be submitted to the Treasury's Bureau of the Public Debt, rather than to the FRBNY.)

[17] 17 CFR 240.13d-1; 240.13d-101; 240.13d-102, item 10; 15 U.S.C. 78m(d), 78m(g).

Four commenters objected to this requirement. Three commenters asserted that the provision, which effectively required certain firms to review positions dating back two years, was unduly time-consuming and costly since such information could not be readily collected and aggregated. The third commenter objected on the grounds that certain entities, particularly banks, are not required to maintain securities-related records that cover all Treasury securities held as collateral (e.g., collateral received to secure extensions of credit) and are not required to maintain records by CUSIP. In addition, three commenters stated that the designated filing entity should not be expected to certify the accuracy of the records of other aggregating entities within the reporting entity.

The Treasury believes that relatively few entities will be subject to the recordkeeping rules because few entities hold, have held, or expect to hold reportable positions equal to or greater than $2 billion. Nevertheless, in order to ease the burden on, and costs to, the firms that will be subject to the rules when they become effective, the final recordkeeping rules eliminate the requirement that an affected designated filing entity make a certification in its letter to the Bureau of the Public Debt. Instead, paragraph 420.4(a)(2) of the final rules requires the designated filing entity to ''state'' in its letter that it has in place or will have in place a recordkeeping system to meet the requirements of the rules. Further, the final rules clarify the distinction between the designated filing entity's recordkeeping system requirements and those of the other aggregating entities in the reporting entity; each letter to the Bureau of the Public Debt now must also contain a statement that, after reasonable inquiry and to the best of its knowledge and belief, the designated filing entity ''represents'' that its aggregating entities also have in place or will have in place specified recordkeeping systems. In determining whether to submit a letter and to have the required recordkeeping systems in place by the effective date, a designated filing entity can now make such determinations as a result of a reasonable bases of evidence, or its general knowledge, of the magnitude of its own positions and those of its aggregating entities over the two-year time frame. These changes allow firms to avoid the time and cost of conducting a detailed review of their positions covering the prior two-year time period.

Further, as described in Section III.C. of this preamble, the final rules substantially reduce the amount of information required to be reported pertaining to certain kinds of collateral received to secure extensions of credit (e.g., collateral for commercial loans). This change obviates the need to maintain information on some of the securities collateral about which one commenter expressed concerns.

Section III.C. also discussed the reasons for incorporating into the final reporting rules an expansion of categories of officials who are authorized to sign and certify the reports. Using the same rationale, the final recordkeeping rules in paragraph 420.4(a)(3) provide that the same expanded list of officials of the designated filing entity are authorized to sign the letter to the Bureau of the Public Debt.

The final recordkeeping rules include two additional changes from the proposed rules. In the event that a designated filing entity obtains any certifications or schedules from its aggregating entities pertaining to their holdings of a reportable position, paragraphs 420.4(b)(2) and 420.4(c)(2)(ii) require the designated filing entity to maintain copies of such certifications or schedules.

The Treasury emphasizes that, although the final recordkeeping rules impose a modest amount of new requirements, particularly with regard to entities that are not currently subject to federal securities recordkeeping rules, the new requirements are not expected to necessitate significant automation or administrative expenses for the affected firms. As discussed in the preamble to the proposed rules, Treasury places a great deal of importance on minimizing the compliance burden on all affected entities, including unregulated ones. As a result, Treasury intentionally avoided imposing the vast majority of the requirements contained in SEC Rule 17a–3 [18] on the unregulated entities. Instead, Treasury selected the most basic record (similar to the blotter requirement of SEC Rule 17a–3) that would be crucial to documenting and preparing large position reports without imposing a burden on the few unregulated firms that are likely to be subject to the recordkeeping requirements. It is our understanding that such investors already maintain records capturing most or all of the information required by the recordkeeping rules.

E. Section 420.5—Effective Date

Section 420.5 sets out the effective date for both the recordkeeping and reporting provisions of the large position rules. The rules provide for a delayed effective date approximately six months after the date of this publication. This period of time is provided to give affected entities sufficient time to make the necessary preparations for compliance. Only paragraph 420.4(a) is not subject to this date but instead contains its own specific dates for compliance.

F. Appendix B to Part 420—Sample Large Position Report

The sample large position report in Appendix B has been shortened to conform to the changes in paragraph 420.3(c) of the final reporting rules. Refer to Section III.C. of this preamble for an explanation of the changes.

IV. Special Analysis

The rules do not meet the criteria for a ''significant regulatory action'' pursuant to Executive Order 12866.

In the preamble to the proposed rules, pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Department certified that these amendments, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis was not prepared. The proposed and final rules establish a minimum large position threshold of $2 billion which assures market participants that the Treasury would not request large position reports below that minimum amount. The Department continues to believe that there are no small entities that will control positions of $2 billion or greater in any Treasury security. Based on this fact and its review of the final rules being adopted herein, and since no comments were received related to this particular issue, the Department has concluded there is no reason to alter the previous certification.

The collections of information contained in the final regulations have been reviewed and approved by the Office of Management and Budget under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) under Control Number 1535–0089. Under the Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

The information is being collected by the Department to enable the Treasury and other regulators to understand better the possible reasons for any apparent significant price distortions and the possible causes of market shortages in certain Treasury securities. The collection of information will help

[18] 17 CFR 240.17a–3.

ensure that the Treasury securities market remains liquid and efficient, and is not viewed as subject to manipulation. The final rules apply to nearly all market participants controlling large positions as defined in the rules. Per paragraph 420.3(c), it is a mandatory requirement that reporting entities with reportable positions that equal or exceed the specified threshold in a Treasury notice respond through their designated filing entities by filing a report in the required format and within the specified reporting time frame. The GSAA provides that the Department shall not be compelled to disclose publicly any information required to be kept or reported for large position reporting. Such information is exempt from disclosure under FOIA.[19]

Estimated total annual reporting and recordkeeping burden: 4,940 hours.

Estimated annual number of recordkeepers: 100.

Estimated annual number of respondents: 10.

Estimated annual frequency of response: On occasion.

Comments on the accuracy of the estimate for this collection of information or suggestions to reduce the burden should be sent to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Department of the Treasury, Washington, D.C., 20503; with copies to the Government Securities Regulations Staff, Bureau of the Public Debt, Room 515, 999 E Street, NW., Washington, D.C. 20239–0001.

List of Subjects

17 CFR Part 400

Administrative practice and procedure, Banks, banking, Brokers, Government securities, Reporting and recordkeeping requirements.

17 CFR Part 420

Foreign investments in U.S., Government securities, Investments, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 17 CFR Chapter IV, subchapter A is amended as follows:

PART 400—RULES OF GENERAL APPLICATION

1. The authority citation for part 400 is revised to read as follows:

Authority: 15 U.S.C. 78*o*–5.

2. In § 400.1, paragraph (e) is added as follows:

§ 400.1 Scope of regulations.

* * * * *

(e) Section 104 of the Government Securities Act Amendments of 1993 (Pub. L. 103–202, 107 Stat. 2344) amended Section 15C of the Act (15 U.S.C. 78*o*–5) by adding a new subsection (f), authorizing the Secretary of the Treasury to adopt rules to require specified persons holding, maintaining or controlling a large position in to-be-issued or recently-issued Treasury securities to report such a position and make and keep records related to such a position. Part 420 of this subchapter contains the rules governing large position reporting.

3. Part 420 is added to read as follows:

PART 420—LARGE POSITION REPORTING

Sec.
420.1 Applicability.
420.2 Definitions.
420.3 Reporting.
420.4 Recordkeeping.
420.5 Effective Date.
Appendix A to Part 420—Separate Reporting Entity.
Appendix B to Part 420—Sample Large Position Report.

Authority: 15 U.S.C. 78*o*–5(f).

§ 420.1 Applicability.

(a) This part, including the Appendices, is applicable to all persons that participate in the government securities market, including, but not limited to: government securities brokers and dealers, depository institutions that exercise investment discretion, registered investment companies, registered investment advisers, pension funds, hedge funds and insurance companies that may control a reportable position in a recently-issued marketable Treasury bill, note or bond as those terms are defined in § 420.2.

(b) Notwithstanding paragraph (a) of this section, foreign central banks, foreign governments and international monetary authorities are exempt from this part. This exemption is not applicable to a broker, dealer, financial institution or other entity that engages primarily in commercial transactions and that may be owned in whole or in part by a foreign government.

(c) Notwithstanding paragraph (a) of this section, Federal Reserve Banks are exempt from this part for the portion of any reportable position they control for their own account.

§ 420.2 Definitions.

For the purposes of this part:

(a) ''Aggregating entity'' means a single entity (e.g., a parent company, affiliate, or organizational component) that is combined with other entities, as specified in paragraph (i) of this section, to form a reporting entity. In those cases where an entity has no affiliates, the aggregating entity is the same as the reporting entity.

(b) ''Control'' means having the authority to exercise investment discretion over the purchase, sale, retention or financing of specific Treasury securities. Only one entity should be considered to have investment discretion over a particular position.

(c) ''Gross financing position'' is the sum of the gross par amounts of a security issue received from financing transactions, including reverse repurchase transactions and bonds borrowed, and as collateral for financial derivatives and other securities transactions (e.g., margin loans). In calculating the gross financing position, a reporting entity may not net its positions against repurchase transactions, securities loaned, or securities pledged as collateral for financial derivatives and other securities transactions. However, a reporting entity may elect to reduce its gross financing position by the par amount of the security received in transactions: in which the counterparty retains the right to substitute securities; that are subject to third party custodial relationships; or that are hold-in-custody agreements.

(d) ''Large position threshold'' means, with respect to a reportable position, the dollar par amount such position must equal or exceed in order for a reporting entity to be required to submit a large position report. The large position threshold will be announced by the Department and may vary with each notice of request to report large position information and with each specified Treasury security. However, under no circumstances will a large position threshold be less than $2 billion.

(e) ''Net fails position'' is the net par amount of ''fails to receive'' less ''fails to deliver'' in the same security. The net fails position, as reported, may not be less than zero.

(f) ''Net trading position'' is the net sum of the following respective positions in the specific security issue:

(1) Cash/immediate net settled positions;

(2) Net when-issued positions;

(3) Net forward positions, including next-day settling;

(4) Net futures contract positions that require delivery of the specific security; and

(5) Net holdings of STRIPS principal components of the security.

[19] *See supra* note 9.

(g) ''Recently-issued'' means:

(1) With respect to Treasury securities that are issued quarterly or more frequently, the three most recent issues of the security (e.g., in early April, the January, February, and March 2-year notes).

(2) With respect to Treasury securities that are issued less frequently than quarterly, the two most recent issues of the security.

(3) With respect to a reopened security, the entire issue of a reopened security (older and newer portions) based on the date the new portion of the reopened security is issued by the Department (or for when-issued securities, the scheduled issue date).

(4) For all Treasury securities, a security announced to be issued or auctioned but unissued (when-issued), starting from the date of the issuance announcement. The most recent issue of the security is the one most recently announced.

(5) Treasury security issues other than those specified in paragraphs (g)(1) and (2) of this section, provided that such large position information is necessary and appropriate for monitoring the impact of concentrations of positions in Treasury securities.

(h) ''Reportable position'' is the sum of the net trading positions, gross financing positions and net fails positions in a specified issue of Treasury securities collectively controlled by a reporting entity.

(i) ''Reporting entity'' means any corporation, partnership, person or other entity and its affiliates, as further provided herein. For the purposes of this definition, an affiliate is any: entity that is more than 50% owned, directly or indirectly, by the aggregating entity or by any other affiliate of the aggregating entity; person or entity that owns, directly or indirectly, more than 50% of the aggregating entity; person or entity that owns, directly or indirectly, more than 50% of any other affiliate of the aggregating entity; or entity, a majority of whose board of directors or a majority of whose general partners are directors or officers of the aggregating entity or any affiliate of the aggregating entity.

(1) Subject to the conditions prescribed in Appendix A, one or more aggregating entities, either separately or together with one or more other aggregating entities, may be recognized as a separate reporting entity.

(2) Notwithstanding this definition, any persons or entities that intentionally act together with respect to the investing in, retention of, or financing of, Treasury securities are considered, collectively, to be one reporting entity.

§ 420.3 Reporting.

(a) A reporting entity is subject to the reporting requirements of this section only when its reportable position equals or exceeds the large position threshold specified by the Department for a specific Treasury security issue. The Department shall provide notice of such threshold by issuance of a press release and subsequent publication of the notice in the Federal Register. Such notice will identify the Treasury security issue to be reported (including, where applicable, identification of the related STRIPS principal component); the date or dates (as of close of business) for which the large position information must be reported; and the applicable large position threshold for that issue. It is the responsibility of a reporting entity to take reasonable actions to be aware of such a notice.

(b) A reporting entity shall select one entity from among its aggregating entities (i.e., the designated filing entity) as the entity designated to compile and file a report on behalf of the reporting entity. The designated filing entity shall be responsible for filing any large position reports in response to a notice issued by the Department and for maintaining the additional records prescribed in the applicable paragraph of § 420.4.

(c)(1) In response to a notice issued under paragraph (a) of this section requesting large position information, a reporting entity with a reportable position that equals or exceeds the specified large position threshold stated in the notice shall compile and report the amounts of the reporting entity's reportable position in the order specified, as follows:

(i) net trading position;

(ii) gross financing position;

(iii) net fails position; and

(iv) total reportable position.

(2) The large position report should include the following additional memorandum item: a total that includes the amounts of securities delivered through repurchase agreements, securities loaned, and as collateral for financial derivatives and other securities transactions. This total should not be reflected in the gross financing position.

(3) An illustration of a sample report is contained in Appendix B. The net trading position shall be one net number and reported as the applicable positive or negative number (or zero). The gross financing position and net fails position should each be reported as a single entry. If the amount of the net fails position is zero or less, report zero. All position amounts should be reported on a trade date basis and at par in millions of dollars.

(4) All positions must be reported as of the close of business of the reporting date(s) specified in the notice.

(5) Each submitted large position report must include the following administrative information in addition to the reportable position: the name of the reporting entity, the address of the principal place of business, the name and address of the designated filing entity, the Treasury security that is being reported, the CUSIP number for the security being reported, the report date or dates for which information is being reported, the date the report was submitted, the name and telephone number of the person to contact regarding information reported, and the name and position of the authorized individual submitting this report.

(6) The large position report must be signed by one of the following: the chief compliance officer; chief legal officer; chief financial officer; chief operating officer; chief executive officer; or managing partner or equivalent. The designated filing entity must also include in the report, immediately preceding the signature, a statement of certification as follows:

By signing below, I certify that the information contained in this report with regard to the designated filing entity is accurate and complete. Further, after reasonable inquiry and to the best of my knowledge and belief, I certify: (i) That the information contained in this report with regard to any other aggregating entities is accurate and complete; and (ii) that the reporting entity, including all aggregating entities, is in compliance with the requirements of 17 CFR Part 420.

(7) The report must be filed before noon Eastern time on the fourth business day following issuance of the press release.

(d) A report to be filed pursuant to paragraph (c) of this section will be considered filed when received by the Federal Reserve Bank of New York, Market Reports Division. The report may be filed with the Federal Reserve Bank of New York by facsimile or delivered hard copy. The Federal Reserve Bank of New York may in its discretion also authorize additional means of reporting.

(e) A reporting entity that has filed a report pursuant to paragraph (c) of this section shall, at the request of the Department or the Federal Reserve Bank of New York, timely provide any supplemental information pertaining to such report.

(Approved by the Office of Management and Budget under control number 1535–0089)

§ 420.4 Recordkeeping.

(a)(1) Notwithstanding the provisions of paragraphs (b) and (c) of this section, an aggregating entity must make and maintain records pursuant to this part as of its effective date, but only if the aggregating entity has controlled a portion of its reporting entity's reportable position in any Treasury security when such reportable position of the reporting entity has equaled or exceeded the minimum large position threshold specified in § 420.2(d) (i.e., $2 billion) during the prior two-year period ending December 11, 1996. Subsequent to the effective date, an aggregating entity that controls a portion of its reporting entity's reportable position in a recently-issued Treasury security, when such reportable position of the reporting entity equals or exceeds the minimum large position threshold, shall be responsible for making and maintaining the records prescribed in this section.

(2) In the case of a reporting entity whose reportable position in any Treasury security has equaled or exceeded the minimum large position threshold during the prior two-year period ending December 11, 1996, each such reporting entity's designated filing entity shall submit a letter to the Government Securities Regulations Staff, Bureau of the Public Debt, 999 E Street, N.W., Room 515, Washington, DC 20239, stating that the designated filing entity has in place, or will have in place by the effective date, a recordkeeping system (including policies and procedures) capable of making, verifying the accuracy of, and preserving the records required pursuant to this section. The letter shall further state that, after reasonable inquiry and to the best of its knowledge and belief, the designated filing entity represents that all other aggregating entities have in place, or will have in place by the effective date, a system (including policies and procedures) capable of making, verifying the accuracy of, and preserving the records required pursuant to this section.

(3) The letter specified in paragraph (a)(2) of this section must be signed by one of the following: the chief compliance officer; chief legal officer; chief financial officer; chief operating officer; chief executive officer; or managing partner or equivalent. The letter must be received by the Bureau of the Public Debt no later than January 21, 1997.

(b) *Records to be made and preserved by entities that are subject to the recordkeeping provisions of the Commission, the Department, or the appropriate regulatory agencies for financial institutions.* As an aggregating entity, compliance by a registered broker or dealer, registered government securities broker or dealer, noticed financial institution, depository institution that exercises investment discretion, registered investment adviser, or registered investment company with the applicable recordkeeping provisions of the Commission, the Department, or the appropriate regulatory agencies for financial institutions shall constitute compliance with this section, provided that if such entity is also the designated filing entity it:

(1) Makes and keeps copies of all large position reports filed pursuant to this part;

(2) Makes and keeps supporting documents or schedules used to compute data for the large position reports filed pursuant to this part, including any certifications or schedules it receives from aggregating entities pertaining to their holdings of a reportable position;

(3) Makes and keeps a chart showing the organizational entities that are aggregated (if applicable) in determining a reportable position; and

(4) With respect to recordkeeping preservation requirements that contain more than one retention period, preserves records required by paragraphs (b)(1)-(3) of this section for the longest record retention period of applicable recordkeeping provisions.

(c) *Records to be made and kept by other entities.* (1) An aggregating entity that is not subject to the provisions of paragraph (b) of this section shall make and preserve a journal, blotter, or other record of original entry containing an itemized record of all transactions that fall within the definition of a reportable position, including information showing the account for which such transactions were effected and the following information pertaining to the identification of each instrument: the type of security, the par amount, the CUSIP number, the trade date, the maturity date, the type of transaction (e.g., a reverse repurchase agreement), and the name or other designation of the person from whom sold or purchased.

(2) If such aggregating entity is also the designated filing entity, then in addition, it shall make and preserve the following records:

(i) Copies of all large position reports filed pursuant to this part;

(ii) Supporting documents or schedules used to compute data for the large position reports filed pursuant to this part, including any certifications or schedules it receives from aggregating entities pertaining to their holdings of a reportable position; and

(iii) A chart showing the organizational entities that are aggregated (if applicable) in determining a reportable position.

(3) With respect to the records required by paragraphs (c) (1) and (2) of this section, each such aggregating entity shall preserve such records for a period of not less than six years, the first two years in an easily accessible place. If an aggregating entity maintains its records at a location other than its principal place of business, the aggregating entity must maintain an index that states the location of the records, and such index must be easily accessible at all times.

(Approved by the Office of Management and Budget under control number 1535–0089)

§ 420.5 Effective Date.

The provisions of this part, except for § 420.4(a), shall be first effective on March 31, 1997.

Appendix A to Part 420—Separate Reporting Entity

Subject to the following conditions, one or more aggregating entity(ies) (e.g., parent, subsidiary, or organizational component) in a reporting entity, either separately or together with one or more other aggregating entity(ies), may be recognized as a separate reporting entity. All of the following conditions must be met for such entity(ies) to qualify for recognition as a separate reporting entity:

(1) Such entity(ies) must be prohibited by law or regulation from exchanging, or must have established written internal procedures (i.e., Chinese walls) designed to prevent the exchange of information related to transactions in Treasury securities with any other aggregating entity;

(2) Such entity(ies) must not be created for the purpose of circumventing these large position reporting rules;

(3) Decisions related to the purchase, sale or retention of Treasury securities must be made by employees of such entity(ies). Employees of such entity(ies) who make decisions to purchase or dispose of Treasury securities must not perform the same function for other aggregating entities; and

(4) The records of such entity(ies) related to the ownership, financing, purchase and sale of Treasury securities must be maintained by such entity(ies). Those records must be identifiable—separate and apart from similar records for other aggregating entities.

To obtain recognition as a separate reporting entity, each aggregating entity or group of aggregating entities must request such recognition from the Department pursuant to the procedures outlined in paragraph 400.2(c) of this title. Such request must provide a description of the entity or group and its position within the reporting entity, and provide the following certification:

''[Name of the entity(ies)] hereby certifies that to the best of its knowledge and belief it meets the conditions for a separate reporting entity as described in Appendix A to 17 CFR Part 420. The above named entity also certifies that it has established written policies or procedures, including ongoing compliance monitoring processes, that are designed to prevent the entity or group of entities from:

''(1) Exchanging any of the following information with any other aggregating entity (a) positions that it holds or plans to trade in a Treasury security; (b) investment strategies that it plans to follow regarding Treasury securities; and (c) financing strategies that it plans to follow regarding Treasury securities, or

''(2) In any way intentionally acting together with any other aggregating entity with respect to the purchase, sale, retention or financing of Treasury securities.

''The above-named entity agrees that it will promptly notify the Department in writing when any of the information provided to obtain separate reporting entity status changes or when this certification is no longer valid.''

Any entity, including any organizational component thereof, that previously has received recognition as a separate bidder in Treasury auctions from the Department pursuant to 31 CFR Part 356 is also recognized as a separate reporting entity without the need to request such status, provided such entity continues to be in compliance with the conditions set forth in Appendix A of 31 CFR Part 356.

Appendix B to Part 420—Sample Large Position Report

Formula for Determining a Reportable Position

[$ Amounts in millions at par value as of trade date]

Security Being Reported	_____
Date For Which Information is Being Reported	_____
1. Net Trading Position (Total of cash/immediate net settled positions; net when-issued positions; net forward positions, including next day settling; net futures contracts that require delivery of the specific security; and net holdings of STRIPS principal components of the security.)	_____
2. Gross Financing Position (Total of securities received through reverse repos (including forward settling reverse repos), bonds borrowed, financial derivative transactions and as collateral for other securities transactions which total may be reduced by the optional exclusion described in § 420.2(c).)	+ $ _____
3. Net Fails Position (Fails to receive less fails to deliver. If equal to or less than zero, report 0.)	+ $ _____
4. Total Reportable Position	= $ _____

Memorandum: Report one total which includes the gross par amounts of securities delivered through repurchase agreements, securities loaned, and as collateral for financial derivatives and other securities transactions. Not to be included in item #2 (Gross Financing Position) as reported above.

$ _____

Administrative Information To Be Provided in the Report

Name of Reporting Entity:
Address of Principal Place of Business:
Name and Address of the Designated Filing Entity:
Treasury Security Reported on:
CUSIP Number:
Date or Dates for Which Information Is Being Reported:
Date Report Submitted:
Name and Telephone Number of Person to Contact Regarding Information Reported:
Name and Position of Authorized Individual Submitting this Report (Chief Compliance Officer; Chief Legal Officer; Chief Financial Officer; Chief Operating Officer; Chief Executive Officer; or Managing Partner or Equivalent of the Designated Filing Entity Authorized to Sign Such Report on Behalf of the Entity):
Statement of Certification: ''By signing below, I certify that the information contained in this report with regard to the designated filing entity is accurate and complete. Further, after reasonable inquiry and to the best of my knowledge and belief, I certify: (i) that the information contained in this report with regard to any other aggregating entities is accurate and complete; and (ii) that the reporting entity, including all aggregating entities, is in compliance with the requirements of 17 CFR Part 420.''
Signature of Authorized Person Named Above:

Dated: August 14, 1996.

Darcy Bradbury,

Assistant Secretary (Financial Markets).

[FR Doc. 96–23331 Filed 9–11–96; 8:45 am]

BILLING CODE 4810–39–P

federal register

Thursday
September 12, 1996

Part V

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 1, et al.

Federal Acquisition Regulation; Certification Requirements; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 3, 4, 6, 8, 9, 12, 14, 16, 19, 22, 23, 25, 27, 29, 31, 32, 36, 37, 42, 45, 47, 49, 52 and 53

[FAR Case 96–312]

RIN 9000–AH23

Federal Acquisition Regulation; Certification Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Administrator of the Office of Federal Procurement Policy has requested that the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council issue a proposal to amend the Federal Acquisition Regulation (FAR) to remove particular certification requirements for contractors and offerors. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before November 12, 1996 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 18th and F Streets, NW., Room 4037 Washington, DC 20405.

Please cite FAR case 96–312 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 96–312.

SUPPLEMENTARY INFORMATION:

A. Background

The Administrator of the Office of Federal Procurement Policy has reviewed the certifications in the FAR. The Federal Acquisition Regulatory Council (FARC) has made recommendations as to the retention of certain certifications and the Administrator has approved the retention of certifications discussed herein. As a result, the Administrator has issued a proposal which we are now publishing on behalf of the Administrator of Federal Procurement Policy as a proposed rule.

This proposed rule amends FAR Parts 1, 3, 4, 6, 8, 9, 12, 14, 16, 19, 22, 23, 25, 27, 29, 31, 32, 36, 37, 42, 45, 47, 49, 52 and 53 to remove particular certification requirements for contractors and offerors. The proposed rule implements Section 4301b of the National Defense Authorization Act for Fiscal Year 1996 (Pub. L. 104–106). Section 4301b requires the Administrator, Office of Federal Procurement Policy, to issue for public comment a proposal to remove from the FAR those certification requirements for contractors and offerors that are not specifically imposed by statute. The Administrator may omit such a certification only if (1) The FAR Council provides the Administrator with a written justification for the requirement and a determination that there is no less burdensome means for administering and enforcing the particular regulation that contains the certification requirement; and (2) the Administrator approves in writing the retention of the certification requirement.

The proposed rule implements Section 4301b by removing certification requirements for contractors and offerors not specifically imposed by statute. A separate FAR case 96–013 has been initiated to identify and delete any representations that place an unnecessary burden on contractors and offerors.

Review of certifications imposed by the Small Business Administration revealed that representations, not certifications, were imposed by the Small Business Act (15 U.S.C. 645(d)). Therefore, in the FAR text at 19.001, 19.301, 19.703 and the provisions at 52.219–1, 52.219–15, 52.219–18, 52–219–19, and 52–219–21, representations have been substituted for certifications. These representations will be reviewed under FAR case 96–013.

Review of certifications contained in the FAR, revealed that several certifications are required by outside source documents. For example, the following certifications are required by Department of Labor regulations: FAR 52.222–8, Payrolls and Basic Records; FAR 52.222–15, Eligibility under the Davis Bacon Act; FAR 52.222–41 (n) and (p), Service Contract Act; FAR 52.222–48 Exemption from the Service Contract Act for ADP services; and FAR 52.222–21, Certification of Nonsegregated Facilities. Also, the following certifications are required by Executive order: FAR 22.1020, Seniority Lists; and FAR 52.223–13, Toxic Chemical Release Reporting. The following certifications are required by regulations issued by the Cost Accounting Standards Board: FAR Provision 52.230–1, Appendix B; FAR 30.201–3, 30.201–4, 30.202–6, and 30.602–1. The disposition of these certifications will not be covered by this proposal, but in accordance with section 4301(b)(1)(B) of the Federal Acquisition Reform Act, and under the authority of the Department of Labor with regard to the labor certifications; and by the Office of Management and Budget, with regard to those required by Executive order and the Cost Accounting Standards Board.

The FAR certifications for contractors and offerors proposed for elimination are summarized below:

FAR CERTIFICATION REQUIREMENTS RECOMMENDED FOR DELETION

FAR cite	Clause/provision No.	Title	Remarks
3.502–2(i)(1)		Subcontractor kickbacks	Revise language to delete certification.
4.102(d)		Joint ventures	Revise language to delete certification.
1.106 6.302–3(b)(1)(viii)	52.208–1	Required Sources for Jewel Bearings and Related Items.	Delete clause.
8.002 8.2 12.504(a)(16)	52.208–2	Jewel Bearing and Related Items Certificate.	Delete provision.
9.505–4(c)	52.209–7	Organizational Conflicts of Interest Certificate—Marketing Consultants.	Revise language to delete certification.
9.506(a)		Procedures (Organizational Conflict of Interest).	Revise language to delete certification.

FAR CERTIFICATION REQUIREMENTS RECOMMENDED FOR DELETION—Continued

FAR cite	Clause/provision No.	Title	Remarks
9.506(d)(4)		Procedures (Organizational Conflict of Interest).	Revise language to delete certificate.
1.106 9.507–1	52.209–7	Organizational Conflict of Interest—Marketing Consultant.	Delete provision.
1.106 9.507–1	52.209–8	Organizational Conflict of Interest—Advisory/Assistance Services.	Delete provision.
9.507–1(d)		Organizational Conflict of Interest	Delete language—Language refers to FAR clauses 52.209–7 and –8.
12.503	52.212–3	Offeror Representations and Certifications—Commercial Items Minor informalities or irregularities in bids.	Revised language to reflect revisions in this proposal.
14.405(f)			Revise language to specify representations in lieu of certifications. FAR 52.222–22 and 52.222–25 are representations as required by statute, not certifications.
16.306(d)(2)		Level of effort	Revise language to delete certification requirement.
19.001 19.301	52.219–1	Small Business Program Representation	Revise language to delete certification requirement and substitute representations as required by law.
19.703	52.219–18	Notification of Competition Limited to Eligible 8a Concerns.	
	52.219–19	SB Concern Representation for SB Competitiveness Demonstration Program.	
	52.219–21	SB Size Representation for Targeted Industry Categories Under the SB Competitiveness Demonstration Program.	
19.303(c)(2) 19.303(c)(3)		Determining Product or Service Classifications.	Revise language to delete certification requirement.
9.501(h)(1)		General (self-certification)	Revise language to delete certification requirement.
	152.219–15 (b) & (c)	Notice of Participation by Organizations for the Handicapped.	Delete clause.
23.105 23.106	52.223–1	Clean Air and Water Certification	Revise language to delete certification requirement.
23.302(d)(1)		Policy—Hazardous material	Revise language to delete certification requirement.
	52.223–3	Hazardous Material Identification and Material Safety Data.	Revise language to delete certification requirement.
23.601(c)	52.223–7	Notice of Radioactive Materials	Revise language to delete certification if prior conditions are not changed.
25.109(a)	52.225–1	Buy American Certificate	Revise language to delete certification requirement.
25.305	52.225–6	Balance of Payments Program Certificate.	Revise language to delete certification requirement.
	52.225–7	Balance of Payment Program.	
25.408(a)(1)	52.225–8	Buy American Act—Trade Agreements—Balance of Payments Program Certificate.	Revise language to delete certification requirement.
25.408(a)(2)	52.225–9	Buy American Act—Trade Agreements—Balance of Payments Program.	Revise language to delete certificate requirement.
25.408(a)(4)	52.225–21	Buy American Act—North American Free Trade Agreement (NAFTA) Implementation Act—Balance of Payments Program.	Revise language to delete certification requirement.
25.408(b)		Solicitation provisions and contract clauses.	Revise language to delete certification requirement.
27.303(e)		Patent Rights—Retention by the Contractor (Short form).	Revise language to delete certification requirement.
27.406 27.409(q)	52.227–12	Patent Rights—Retention by the Contractor.	Revise language to require declaration in lieu of certification, as required by statute.
	52.227–13	Patent Rights—Acquisition by the Government.	
	52.227–21	Technical Data Certification, Revision, and Withholding of Payment—Major Systems.	
29.305(b)(3)		State and local tax exemptions	Revise language to delete certification requirement.
31.110 42.703–2	52.242–4	Certification of Indirect Costs	Revise language to delete nonstatutory certification.

FAR CERTIFICATION REQUIREMENTS RECOMMENDED FOR DELETION—Continued

FAR cite	Clause/provision No.	Title	Remarks
31.205–22(d) and (e)		Legislative Lobbying costs	Revise language to delete certification requirement.
32.805		Procedures (Assignments)	Revise language to delete certification requirement.
36.205(b)(3)		Statutory cost limitations	Revise language to delete certification requirement.
37.402	52.237–7	Indemnification and Medical Liability Insurance.	Revise language to require evidence in lieu of certification.
45.606–1		Submission	Revise language to delete certification requirement.
	52.245–8	Liability for the Facilities	Revise language to delete certification requirement.
47.303–17(d)(3)(ii)		Contractor-prepaid commercial bills of lading, small package shipments.	Revise language to delete certification requirement.
47.305–11(b)	52.247–54	Diversion of Shipment under F.o.b. Destination Contracts.	Delete clause.
47.403–3		Disallowance of expenditures	Revise language to delete certification requirement.
	52.247–2	Permits, Authorities, or Franchises	Revise language to delete certification requirement.
47.404	52.247–63	Preference for U.S.-Flag Air Carriers	Revise language to delete certification requirement. 49 U.S.C. 40118 directs agencies to ensure transportation is by U.S. carriers.
49.108–3(b)		Settlement procedures	Revise language to delete certification requirement.
	52.209–3	First Article Approval (Alt I)	Revise language to delete certification requirement.
	52.209–4	First Article Approval (Alt I)	Revise language to delete certification requirement.
	52.215–35	Annual Representations and Certifications—Negotiation.	Revise language to require acknowledgment in lieu of certification.
	52.216–2	Economic Price Adjustment—Standard Supplies.	Revise language to delete certification requirement.
	52.216–3	Economic Price Adjustment—Semistandard—Supplies.	Revise language to delete certification requirement.
	52.216–4	Economic Price Adjustment—Labor/Material.	Revise language to delete certification requirement.
	52.228–5	Insurance—Work on a Government Installation.	Revise language to delete certification requirement.
	52.228–8	Liability and Insurance—Leased Motor Vehicles.	Revise language to delete certification requirement.
	52.228–9	Cargo Insurance	Revise language to delete certification requirement.
Part 53		SF 129	Revise form to delete certification requirement.
		Part 22 Form—SF 1445	Revise form to delete certification requirement.
		Part 29 Form—SF 1094, SF 1094A	Revise forms to delete certification requirement.
		Part 45 Forms—SFs 1423, 1426, 1428, 1430, 1432, 1434.	Revise forms to delete certification requirement.

The FAR certifications specifically imposed by statute are summarized below:

FAR CERTIFICATION REQUIREMENTS REQUIRED BY STATUTE

FAR cite	Clause/provision No.	Title	Remarks
3.802(b)	52.203–11	Certification and Disclosure Regarding Payments to Influence Certain Federal Transactions.	Required by 31 USC 1352.
3.803 3.804 3.808	52.212–3(e)		
9.204(a)(2)		Certification for testing and evaluation costs.	Required by 10 USC 2319(d)(2) and 41 USC 253c(d)(2).
	52.214–27	Price Reduction for Defective Cost or Pricing Data—Modifications—Sealed Bidding.	Required by 10 USC 2306a(a)(2) and 41 USC 254b.

FAR CERTIFICATION REQUIREMENTS REQUIRED BY STATUTE—Continued

FAR cite	Clause/provision No.	Title	Remarks
	52.214–28	Subcontractor Cost or Pricing Data—Modifications—Sealed Bidding.	Required by 10 USC 2306a(a)(2) and 41 USC 254b.
15.804–4	52.215–22, –23, –24, –25	TINA	Required by 10 USC 2306a and 41 USC 254b.
22.407	52.222–8	Certified Payroll and Basic Records	Required by 40 USC 276.
23.404(b)(2)(iii)	52.223–8	Estimate of Percentage of Recovered Material for Designated Items to be Used in the Performance of the Contract.	Required by 42 USC 6962(c)(3).
23.405(a)	52.223–4	Recovered Material Certification	Required by 42 USC 6962(c)(3)(A)(i).
23.404(b)(4) 23.405(c)	52.223–9	Certification of Percentage of Recovered Material Content for EPA Designated Items Used in Performance of the Contract.	Required by 42 USC 6962(c)(3).
29.304(d)	52.229–2	North Carolina State and Local Sales and Use Tax.	Required by North Carolina State Law.
	52.232–33 52.232–34 (Optional)	Mandatory Information for Electronic Funds Transfer.	Required by 31 USC 3332
33.201 33.202 33.207 33.208 33.211(c)(2) 33.211(e) 33.214(a)(5)	52.233–1	Disputes	Required by 41 USC 605(c)(1).
42.703–2	52.242–4	Certificate of Indirect costs	Required by 10 USC 2324(h) and 41 USC 256(h).
50.303–2		Contractor certification	Required by 10 USC 2410 and 41 USC 605(c)(1).

The FAR certifications approved in writing for retention by the Administrator for Federal Procurement Policy are summarized below:

FAR CERTIFICATION REQUIREMENTS WHICH OFPP HAS GIVEN APPROVAL TO RETAIN

FAR cite	Clause/provision No.	Title	Remarks
3.103	52.203–2	Certificate of Independent Price Determination.	See following justification.
9.408 9.409	52.209–5	Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters.	See following justification.
	52.213–1	Fast Payment Procedure	See following justification.
32.202–4(b)(3)		Security for Government financing	See following justification.
32.304–8		Other borrowing	See following justification.
32.503–4		Approval of progress payment requests	See following justification.
32.503–5		Administration of progress payments	See Justification under 32.503–9.
32.503–9(a)(9)		Liquidation rates-alternate method	See following Justification.
32.503–14 (a) and (c)		Protection of Government title (progress payment).	See following Justification.
	52.232–4	Payments under Transportation Contracts and Transportation Related Service Contracts.	See following Justification.
32.905(c)(1)	52.232–5	Payments Under Fixed-Price Construction Contracts.	See following Justification.
32.1009 (a) and (c) and 32.1010(c).	52.232.32	Performance-Based Payments	See following Justification.
	52.232–12 (a), (o)	Advance Payments	See following Justification.
	52.232–16(g)	Progress Payments	See following Justification.
42.1204		Agreement to recognize a successor in interest (novation agreement).	See following Justification.
42.1205		Agreement to recognize contractor's change of name.	See following Justification.
46.315 46.504	52.246–15	Certificate of Conformance	See following Justification.
49.108–4(a)(1)(iii) 49.602–1(a)		Authorization for subcontract settlements without approval or ratification.	See following Justification.
49.112–1(h)		Certification and approval of partial payments.	See following Justification.
49.302		Discontinuance of vouchers	See following Justification.

FAR CERTIFICATION REQUIREMENTS WHICH OFPP HAS GIVEN APPROVAL TO RETAIN—Continued

FAR cite	Clause/provision No.	Title	Remarks
49.304–2		Submission of settlement proposal (fee only).	See following Justification.
49.603–1		Fixed-price contracts-complete termination.	See following Justification.
49.603–2		Fixed-price contracts-partial termination	See following Justification.
49.603–3		Cost-reimbursement contracts-complete termination, if settlement includes cost.	See following Justification.
49.603–8		Fixed-price contracts-settlements with subcontractors only.	See following Justification.
	52.249–2 (c), (d)	Termination for Convenience of the Government (Fixed-Price).	See following Justification.
	52.249–3 (c), (d)	Termination for Convenience of the Government (Dismantling, Demolition, or Removal of Improvements).	See following Justification.
	52.249–5(c)	Termination for Convenience of the Government (Educational and Other Nonprofit Institutions).	See following Justification.
	52.249–6 (d), (e)	Termination (Cost-Reimbursement)	See following Justification.
	52.249–11 (c), (d)	Termination of Work (Consolidated Facilities or Facilities Acquisition).	See following Justification.
Part 53, Forms		Part 49 Forms-SFs 1435, 1436, 1437, 1438, 1439, and 1440.	See following Justification.

FAR Provision 52.203–2 and the prescription at 3.103 require that offerors certify that proposed prices were arrived at independently without, for the purpose of restricting competition, consultation with other competitors. This certification is required to continue to maintain the integrity of the Government procurement process by insuring fair access to all interested contractors. The requirement that Certificates of Independent Price Determination (CIPDs) be submitted by offerors for Government contracts is being retained. First, CIPDs require the disclosure, by offerors, of with whom prices were discussed or to whom prices were disclosed, so that contracting officers can determine whether offers have been prepared according to the bid requirements set out in Government Requests for Proposals. Unlike private contracting situations, important public policy concerns may dictate in some instances that only independently prepared bids are acceptable, while in other circumstances teaming agreements may be acceptable or even actively solicited. Second, certain types of pre-bid conduct or communications among competitors, such as attempting to induce another firm to submit, or not to submit, an offer or disclosing price information, may adversely affect the competitiveness of their offers and yet not constitute an unlawful ''agreement'' under Federal antitrust laws. With taxpayer dollars at stake, the public deserves the price and quality benefits of vigorous competition. CIPDs are necessary to preclude conduct and communications that diminish the competitiveness of the Federal contracting process. The Government must be able to hold those who seek to obtain public monies to the highest standards of conduct at all times, and public funds must be protected from unlawful collusion in the bidding process. These policy considerations justify retaining the requirement for the submission of CIPDs. The Department of Justice has concluded that this certification will not place a significant burden on most offerors. The continued preparation of CIPDs will not place a significant burden on most offerors. For many businesses, and particularly for small businesses, very few officials are responsible for determining the prices being offered on Government contracts. The Department relies on the certificate in trials of bid rigging conspiracies because the certificate demonstrates that the defendant was put on notice of antitrust prohibitions against collusive bidding and, in turn, responded fraudulently when asked to certify the independent and non-collusive nature of its bid.

FAR Provision 52.209–5 and the prescriptions at 9.408 and 9.409 require certified information from offerors regarding debarment, suspension, and other responsibility matters. This information is crucial to contracting officers in evaluating the responsibility of prospective contractors. Not all the information that an offeror submits under the provision at 52.209–5 is available from the General Services Administration's (GSA) List of Parties Excluded from Federal Procurement and Nonprocurement Programs. While the list is updated by GSA to reflect suspensions and reinstatements by other Federal agencies, the list can not be precisely correct at all times. Consequently, the certification required by this provision is necessary to afford protections to both the Government and contractors by providing contracting officers with accurate information at all times on which to evaluate contractor responsibility. The alternative is extensive preaward surveys.

FAR clause 52.213–1 provides for contractor payment prior to the Government's receipt, inspection and acceptance of supplies. This certification is being retained because it expedites payment to contractors without formal acceptance thereby improving cash flow. The alternative to the fast pay invoice certification would be to delay contractor payment until the Government actually received the supplies shipped.

FAR 32.202–4(b)(3) requires contractors to certify that, when the Government's security for contract financing is in the form of a lien on contractor assets, the assets subject to the lien are free from any prior encumbrances. This certification is being retained because it represents good business practice to ascertain that no other encumbrances have been attached to assets pledged by contractors to secure Government financing. The alternative to the use of a certification would be to conduct an exhaustive search of contractor records to ensure no other liens on pledged assets exist.

FAR 32.304–8 requires contractors to certify to the amount of their unliquidated unguaranteed borrowings. This certification is being retained because the Government must be aware of and have strong confidence in the amount of outstanding unguaranteed borrowing before it can prudently consent to contractor requests for additional borrowing during the guaranteed loan period. The alternative would be to obtain this financial information from the contractor's ledgers which is more burdensome. The contractor would still be required to submit status reports in writing regardless of the requirement for a certification. Thus, the underlying burden would not be removed even if the certificate were.

There are several certifications required when contractors are requesting progress payments. These certifications and associated documentation are required when the Government is providing payments without receiving goods or services. FAR clauses 52.232–5, 52.232–12, 52.232–32 and the prescriptions at 32.503–4, 32.503–5, 32.503–9, 32.503–14, 32.905, 32.1009, and 32.1010 require contractor certifications when submitting requests for progress payments. Progress payments are a form of contract financing which benefit contractors. For this benefit to accrue, the contracting officer relies on information submitted with the certification to establish the amount to be paid and to ensure that the contractor has met certain safeguards necessary to protect taxpayer funds. Because progress payments can involve large sums of money, requiring these certifications is a prudent business practice. Even if a certification were not required, the contractor must still submit written requests with appropriate documentation for payment. Elimination of the certification will not eliminate that underlying burden. The only alternative would be an audit of the contractor's records.

FAR 42.1204 and 42.1205 require contractors to certify that a novation or contractor change of name was authorized by the corporation's governing body and was within the scope of its corporate powers. These certifications are being retained because they are necessary to enable contracting officers to maintain and enforce contracts with entities that had their contractual interest transferred or assigned. The alternative to the use of certified statements would be to obtain this information by reviewing and analyzing the contractor's legal documentation in support of the name change or novation.

FAR clause 52.246–15 and the prescriptions at 46.315 and 46.504 require contractors to certify that supplies have met the requirements of the contract in lieu of Government source inspection, thereby allowing the Government to eliminate on-site inspections. This certification is being retained because it reduces administrative burden for both the Government and contractors. The alternative would be increased source inspections.

FAR clauses 52.249–2, 52.249–3, 52.249–5, 52.249–6, 52.249–11 and the prescriptions at 49.108–4, 49.112–1, 49.302, 49.304–2, 49.602–1, 49.603–1, 49.603–2, 49.603–3, and 49.603–8 contain procedures for settling contracts terminated for the convenience of the Government. Because these certifications apply to final settlement proposals, the indirect costs must be certified in accordance with 10 U.S.C. 2324(h). Strict application of only the statutorily mandated certification would leave areas in the overall settlement proposal that would not be certified. Requiring contractors to certify all claimed costs as a condition to settle a termination claim against the Government is a prudent safeguard of taxpayer funds and is less burdensome than requiring one settlement form for indirect costs that must be certified and one settlement form for all other costs.

B. Regulatory Flexibility Act

This proposed rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 602, *et seq.*, because it reduces the number of certifications that offerors and contractors must provide to the Government. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows: This rule proposes to amend the FAR to remove particular certification requirements for contractors and offerors that are not specifically imposed by statute, and which have not been approved for retention by the Administrator for Federal Procurement Policy. The objective of the rule is to implement the Federal Acquisition Reform Act of 1996 (Public Law 104–106). Section 4301b requires that all certifications not specifically required by statute be eliminated from the FAR unless otherwise approved for retention by the Administrator for Federal Procurement Policy. The rule will apply to all businesses, large and small, who are interested in receiving Government contracts. The rule imposes no reporting, recordkeeping, or other compliance requirements, but, rather, deletes existing certification requirements that are not required by statute and which have not been approved for retention by the Administrator for Federal Procurement Policy. The rule does not duplicate, overlap, or conflict with any other Federal rules. A copy of the IRFA may be obtained from the FAR Secretariat. A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration. Comments are invited from small business and other interested parties. Comments from small entities concerning the affected FAR parts will be considered in accordance with Section 610 of the Act. Such comments should be submitted separately and cite FAR case 96–312 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Public Law 96–511) is deemed to apply because the proposed rule eliminates certain information collection requirements found at FAR 52.208–2, 52.209–7, 52.209–8, and 52.222–21. Accordingly, a request for elimination of the information collection requirement concerning Certification Requirements will be submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1, 3, 4, 6, 8, 9, 12, 14, 16, 19, 22, 23, 25, 27, 29, 31, 32, 36, 37, 42, 45, 47, 49, 52 and 53

Government procurement.

Dated: September 5, 1996.

Edward C. Loeb,

Director, Office of Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 1, 3, 4, 6, 8, 9, 12, 14, 16, 19, 22, 23, 25, 27, 29, 31, 32, 36, 37, 42, 45, 47, 49, 52 and 53 be amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 3, 4, 6, 8, 9, 12, 14, 16, 19, 22, 23, 25, 27, 29, 31, 32, 36, 37, 42, 45, 47, 49, 52 and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. 2301 to 2331; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

2. Section 1.106 is amended in the table following the text by removing the following entries along with their control numbers: 8.203–2, 9.5, 52.208–1, and 52.222–21.

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Section 3.502–2(i)(1) is revised to read as follows:

3.502–2 General.

* * * * *

(i) * * *

(1) Have in place and follow reasonable procedures designed to prevent and detect violations of the Act in its own operations and direct business relationships (e.g., company ethics rules prohibiting kickbacks by employees, agents, or subcontractors; education programs for new employees and subcontractors, explaining policies about kickbacks, related company procedures and the consequences of detection; procurement procedures to minimize the opportunity for kickbacks; audit procedures designed to detect kickbacks; periodic surveys of subcontractors to elicit information about kickbacks; procedures to report kickbacks to law enforcement officials; annual declarations by employees of gifts or gratuities received from subcontractors; annual employee declarations that they have violated no company ethics rules; personnel practices that document unethical or illegal behavior and make such information available to prospective employers); and

* * * * *

PART 4—ADMINISTRATIVE MATTERS

4. Section 4.102 is amended by revising the last sentence of paragraph (d) to read as follows:

4.102 Contractor's signature.

* * * * *

(d) *Joint ventures.* * * * When a corporation is participating, the contracting officer shall verify that the corporation is authorized to participate in the joint venture.

* * * * *

PART 6—COMPETITION REQUIREMENTS

6.302–3 [Amended]

5. Section 6.302–3 is amended by removing paragraph (b)(1)(viii).

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.002 [Amended]

6. Section 8.002 is amended by removing paragraph (a), and redesignating paragraphs (b) through (f) as (a) through (e).

Subpart 8.2—[Removed and reserved]

7. Subpart 8.2 is removed and reserved.

PART 9—CONTRACTOR QUALIFICATIONS

9.505–4 [Amended]

8. Section 9.505–4(c) is amended by removing the last sentence.

9. Section 9.506 is amended in paragraph (a) by revising the first sentence; by adding ''and'' after the semicolon in (b)(1); by removing (b)(2); by redesignating (b)(3) as (b)(2); and by revising (c)(1) and (d). The revised text reads as follows:

9.506 Procedures.

(a) If information concerning prospective contractors is necessary to identify and evaluate potential organizational conflicts of interest or to develop recommended actions, contracting officers should first seek the information from within the Government or from other readily available sources. * * *

* * * * *

(c) * * *

(1) Review the contracting officer's analysis and recommended course of action, including any proposed clause.

* * * * *

(d) The contracting officer shall—

(1) Include any approved clause(s) in the solicitation or the contract;

(2) Consider additional information provided by prospective contractors in response to the solicitation or during negotiations;

(3) Before awarding the contract, resolve the conflict or the potential conflict in a manner consistent with the approval or other direction by the head of the contracting activity.

* * * * *

9.507–1 [Removed and reserved]

10. Section 9.507–1 is removed and reserved.

PART 12—ACQUISITION OF COMMERCIAL ITEMS

11. Section 12.503 is amended by revising paragraphs (b)(1) and (b)(5) to read as follows:

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

* * * * *

(b) * * *

(1) 33 U.S.C. 1368, Requirement for a clause under the Federal Water Pollution Control Act (see 23.105).

* * * * *

(5) 42 U.S.C. 7606, Requirements for a clause under the Clean Air Act (see 23.105).

12.504 [Amended]

12. Section 12.504 is amended by removing paragraph (a)(16).

PART 14—SEALED BIDDING

14.405 [Amended]

13. Section 14.405(f) is amended by removing ''certifications'' and inserting ''representations'' in its place.

PART 16—TYPES OF CONTRACTS

16.306 [Amended]

14. Section 16.306 is amended in paragraph (d)(2) by removing ''certification'' and inserting ''statement'' in its place.

PART 19—SMALL BUSINESS PROGRAMS

19.001 [Amended]

15. Section 19.001 is amended in the introductory text of paragraph (b) of the definition ''Small disadvantaged business concern'' by removing ''certify'' and inserting ''represent''.

16. Section 19.301 is amended by revising the first sentence of paragraph (a) to read as follows:

19.301 Representation by the offeror.

(a) To be eligible for award as a small business, an offeror must represent in good faith that it is a small business at the time of its written representation. * * *

* * * * *

17. Section 19.303 is amended by revising the introductory text of paragraph (c)(2); in paragraph (c)(2)(vi) by removing ''certifying'' and inserting ''acknowledging'' in its place; and by revising the second sentence of paragraph (c)(3) to read as follows:

19.303 Determining product or service classifications.

* * * * *

(c) * * *

(2) The appeal shall be in writing and shall be addressed to the Office of Hearings and Appeals, Small Business Administration, Washington, D.C. 20416. No particular form is prescribed for the appeal. However, time limits and procedures set forth in SBA's regulations at 13 CFR 121.11 are strictly enforced. The appellant shall submit an original and one legible copy of the appeal. In the case of telegraphic appeals, the telegraphic notice shall be confirmed by the next day mailing of a written appeal, in duplicate. By signing the submission, a party or its attorney

attests that the statements and allegations in the submission are true to the best of its knowledge, and that the submission is not being filed for the purpose of delay or harassment. The appeal shall include—

* * * * *

(3) * * * The contracting officer's response, if any, to the appeal must include appropriate argument and evidence, and must be filed with the Office of Hearings and Appeals no later than 5 business days after receipt of the appeal. * * *

19.501 [Amended]

18. Section 19.501 is amended by removing paragraph (h).

19.508 [Removed]

18a. Section 19.508 is removed.

19. Section 19.703 is amended in paragraph (a)(2) by revising the second and fourth sentences to read as follows:

19.703 Eligibility requirements for participating in the program.

(a) * * *

(2) * * * Individuals who represent that they are members of named groups (Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent-Asian Americans) may also represent themselves as socially and economically disadvantaged. * * * Concerns who are tribally-owned entities or Native Hawaiian Organizations may represent themselves as socially and economically disadvantaged if they qualify under the requirements of 13 CFR 124.112 or 13 CFR 124.113, respectively. * * *

* * * * *

PART 22—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

20. Section 22.810(a) is revised to read as follows:

22.810 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 52.222–22, Previous Contracts and Compliance Reports, in solicitations when a contract is contemplated that will include the clause at 52.222–26, Equal Opportunity.

* * * * *

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

23.102 [Amended]

21. Section 23.102 is amended in paragraph (d) by removing the reference ''40 CFR Part 15'' and inserting ''40 CFR Part 32'' in its place.

22. Section 23.105 is amended by revising paragraph (a) to read as follows:

23.105 Solicitation provision and contract clause.

(a) The contracting officer shall insert the solicitation provision at 52.223–1, Notification of Clean Air Act and/or Clean Water Act Convictions, in solicitations containing the clause at 52.223–2, Clean Air and Water (see paragraph (b) of this section).

* * * * *

23. Section 23.106 is amended by revising paragraph (a) to read as follows:

23.106 Delaying award.

(a) If an otherwise successful offeror informs the contracting officer that EPA is considering listing a facility proposed for contract performance (see the provision at 52.223–1, Notification of Clean Air Act and/or Clean Water Act Convictions), the contracting officer shall promptly notify the EPA Administrator or a designee, in writing, that the offeror is being considered for award.

* * * * *

24. Section 23.302 is amended by revising paragraph (d)(1) to read as follows:

23.302 Policy.

* * * * *

(d) * * *

(1) By the apparently successful offeror prior to contract award if hazardous materials are expected to be used during contract performance.

* * * * *

25. Section 23.601 is amended by revising paragraph (c) to read as follows:

23.601 Requirements.

* * * * *

(c) The clause permits the contracting officer to waive the notification if the contractor states that the notification on prior deliveries is still current. The contracting officer may waive the notice only after consultation with cognizant technical representatives.

* * * * *

PART 25—FOREIGN ACQUISITION

25.109, 25.305, and 25.408 [Amended]

26. Part 25 is amended in the following sections by removing ''Certificate'' and inserting ''Provision'' in its place: 25.109(a), 25.305(a); and 25.408(a)(1).

26b. In addition to the amendment set forth above, section 25.408 is further amended by revising paragraph (b) to read as follows:

25.408 Solicitation provision and contract clause.

* * * * *

(b) The contracting officer shall rely on the information submitted by the offeror.

* * * * *

PART 27—PATENT, DATA, AND COPYRIGHTS

27. Section 27.303(e) is amended by revising the first sentence to read as follows:

27.303 Contract clauses.

* * * * *

(e) For those agencies excepted under paragraph (a)(1)(i), only small business firms or non-profit organizations qualify for the clause at 52.227–11.

* * * * *

28. Section 27.406 is amended by revising paragraph (c); in paragraph (d)(1) and (d)(2), and twice in (d)(3) by removing (C) certification and inserting ''(D) declaration''; and in paragraph (d)(2) by removing certify and inserting ''declare'' in its place. The revised text reads as follows:

27.406 Acquisition of data.

* * * * *

(c) *Acceptance of data.* As required by 41 U.S.C. 418a(d)(7), acceptability of technical data delivered under a contract shall be in accordance with the appropriate contract clause as required by Subpart 46.3, and the clause at 52.227–21, Technical Data Declaration, Revision, and Withholding of Payment—Major Systems, when it is included in the contract. (See paragraph (d) of this section.)

* * * * *

27.409 [Amended]

29. Section 27.409 is amended in paragraph (q) by removing ''Certification'' and inserting ''Declaration'' in its place.

PART 29—TAXES

30. Section 29.305 is amended by revising paragraph (b)(3) to read as follows:

29.305 State and local tax exemptions.

* * * * *

(b) * * *

(3) Under a contract or purchase order that contains no tax provision, if:

(i) Requested by the contractor and approved by the contracting officer or at the discretion of the contracting officer; and

(ii) Either the contract price does not include the tax or, if the transaction or property is tax exempt, the contractor

consents to a reduction in the contract price.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

31. Section 31.110 is amended by revising the first sentence of paragraph (a) to read as follows:

31.110 Indirect cost rate certification and penalties on unallowable costs.

(a) Certain contracts require certification of the indirect cost rates proposed for final payment purposes.

* * * * *

31.205–22 Legislative lobbying costs.

32. Section 31.205–22 is amended by revising the section heading as set forth above; by removing paragraph (d) and redesignating paragraphs (e) and (f) as (d) and (e), respectively; and in the newly designated (d) by adding ''(See 42.703–2)'' after ''unallowable''.

PART 32—CONTRACT FINANCING

32.805 [Amended]

33. Section 32.805 is amended in paragraph (a)(1)(iii) by removing ''certified'' and inserting ''true''.

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

34. Section 36.205 is amended by revising paragraph (b)(3) to read as follows:

36.205 Statutory cost limitations.

* * * * *

(b)* * * (3) that the price on each schedule shall include an approximate apportionment of all estimated direct costs, allocable indirect costs, and profit.

* * * * *

PART 37—SERVICE CONTRACTING

35. Section 37.402 is revised to read as follows:

37.402 Contracting officer responsibilities.

Contracting officers shall obtain evidence of insurability concerning medical liability insurance from the apparently successful offeror prior to contract award and shall obtain evidence of insurance demonstrating the required coverage prior to commencement of performance.

PART 42—CONTRACT ADMINISTRATION

36. Section 42.703–2 is amended by revising paragraph (a); in paragraph (c)(1) by removing ''billing rates or'' and inserting ''final'' in its place; and by revising paragraph (f) to read as follows:

42.703–2 Certificate of indirect costs.

(a) *General.* In accordance with 10 U.S.C. 2324(h) and 41 U.S.C. 256(h), a proposal shall not be accepted and no agreement shall be made to establish final indirect cost rates unless the costs have been certified by the contractor.

* * * * *

(f) *Contract clause.* (1) Except as provided in paragraph (f)(2) of this subsection, the clause at 52.242–4, Certification of Indirect Costs, shall be incorporated into all solicitations and contracts which provide for establishment of final indirect cost rates.

(2) The Department of Energy may provide an alternate clause in is agency supplement for its management and operating contracts.

PART 45—GOVERNMENT PROPERTY

45.606–1 [Amended]

37. Section 45.606–1 is amended by removing the designation of paragraph (a); and by removing paragraph (b).

PART 47—TRANSPORTATION

38. Section 47.303–17 is amended by revising paragraph (d)(3)(ii) to read as follows:

47.303–17 Contractor-prepaid commercial bills of lading, small package shipments.

* * * * *

(d) * * *

(3) * * *

(ii) The contractor agrees to furnish evidence of payment when requested by the Government.

* * * * *

47.305–11 [Amended]

39. Section 47.305–11 is amended by removing the designation of paragraph (a) and adding the text to the end of the undesignated paragraph which precedes it; by removing paragraph (b); and redesignating paragraphs (a)(1) through (3) as (a) through (c).

40. Section 47.403–3 is amended in paragraph (a) by removing certificate or; and by revising paragraph (c) to read as follows:

47.403–3 Disallowance of expenditures.

* * * * *

(c) The justification requirement is satisfied by the contractor's use of a statement similar to one contained in the clause at 52.247–63, Preference for U.S.-Flag Air Carriers. (See 47.405.)

41. Section 47.404 is amended by revising paragraph (b)(2) to read as follows:

47.404 Air freight forwarders.

* * * * *

(b) * * * (2) justification for the use of foreign-flag air carriers similar to the one shown in the clause at 52.247–63, Preference for U.S.-Flag Air Carriers.

PART 49—TERMINATION OF CONTRACTS

42. Section 49.108–3 is amended by revising paragraph (b) to read as follows:

49.108–3 Settlement procedure.

* * * * *

(b) Except as provided in 49.108–4, the TCO shall require that:

(1) All subcontractor termination inventory be disposed of and accounted for in accordance with Part 45; and

(2) The prime contractor submit for approval or ratification, all termination settlements with subcontractors.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.208–1 and 52.208–2 [Removed and reserved]

43. Sections 52.208–1 and 52.208–2 are removed and reserved.

44. Section 52.209–3 is amended in Alternate I by revising the date and paragraph (i) to read as follows:

52.209–3 First Article Approval—Contractor Testing.

* * * * *

Alternate I (Date). * * *

(i) The Contractor shall produce both the first article and the production quantity at the same facility.

* * * * *

45. Section 52.209–4 is amended by revising the date and paragraph (j) of Alternate I to read as follows:

52.209–4 First Article Approval—Government Testing.

* * * * *

Alternate I (DATE). * * *

(j) The Contractor shall produce both the first article and the production quantity at the same facility.

* * * * *

52.209–7 and 52.209–8 [Removed]

47. Sections 52.209–7 and 52.209–8 are removed.

46. Section 52.212–3 is amended—

a. By revising the provision date, paragraph (c)(2), the introductory text of (c)(6), and the last sentence of the introductory text of (c)(6)(ii);

c. By revising the introductory text of (d), and by removing (d)(1) and the undesignated paragraph following it, and redesignating (d)(2) and (d)(3) as (d)(1) and (d)(2), respectively; and

c. In the introductory text of (f) by removing ''Certificate'' and inserting ''Provision'' in its place, and by revising (f)(1) and (f)(3). The revised text reads as follows:

52.212–3 Offeror Representations and Certifications—Commercial Items.

* * * * *

OFFEROR REPRESENTATIONS AND CERTIFICATIONS—COMMERCIAL ITEMS (DATE)

* * * * *

(c) * * *

(2) *Small disadvantaged business concern*. The offeror represents that it ☐ is, ☐ is not a small disadvantaged business concern.

* * * * *

(6) Small Business Size for the Small Business Competitiveness Demonstration Program and for the Targeted Industry Categories under the Small Business Competitiveness Demonstration Program. [*Complete only if the offeror has represented itself to be a small business concern under the size standards for this solicitation.*]

* * * * *

(ii) * * * Offeror represents as follows:

* * * * *

(d) Representations required to implement provisions of Executive Order 11246—

* * * * *

(f) * * *

(1) Each end product being offered, except those listed in paragraph (f)(2) of this provision, is a domestic end product (as defined in the clause entitled ''Buy American Act—Trade Agreements—Balance of Payments Program''). Components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States, a designated country, a North American Free Trade Agreement (NAFTA) country, or a Caribbean Basin country, as defined in section 25.401 of the Federal Acquisition Regulation.

* * * * *

(3) Offers will be evaluated by giving certain preferences to domestic end products, designated country end products, NAFTA country end products, and Caribbean Basin country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (f)(2) of this provision, offerors must identify and list below those excluded end products that are designated country end products or NAFTA country end products, or Caribbean Basin country end products. Products that are not identified and listed below will not be deemed designated country end products, NAFTA country end products, or Caribbean Basin country end products. Offerors must insert the applicable line item numbers in the following:

(i) The following supplies qualify as ''designated country end products'' or ''NAFTA country end products'' as those terms are defined in the clause entitled ''Buy American Act—Trade Agreements—Balance of Payments Program'':

_____

_____

_____

(Insert line item numbers)

(ii) The following supplies qualify as ''Caribbean Basin country end products'' as that term is defined in the clause entitled ''Buy American Act—Trade Agreements—Balance of Payments Program'':

_____

_____

_____

(Insert line item numbers)

* * * * *

48. Section 52.214–30 is revised to read as follows:

52.214–30 Annual Representations and Certifications—Sealed Bidding.

As prescribed in 14.201–6(u), insert the following provision:

ANNUAL REPRESENTATIONS AND CERTIFICATIONS—SEALED BIDDING (DATE)

The bidder has (check the appropriate block): ☐ (a) Submitted to the contracting office issuing this solicitation, annual representations and certifications dated _____ [*Insert date of signature of submission*], which are incorporated herein by reference, and are current, accurate, and complete as of the date of this bid, except as follows [*insert changes that affect only this solicitation; if ''none,'' so state*]: _____

☐ (b) Enclosed its annual representations and certifications.

(End of provision)

49. Section 52.215–35 is revised to read as follows:

52.215–35 Annual Representations and Certifications—Negotiation.

As prescribed in 15.407(i), insert the following provision:

ANNUAL REPRESENTATIONS AND CERTIFICATIONS—NEGOTIATION (DATE)

The offeror has (check the appropriate block):

☐ (a) Submitted to the contracting office issuing this solicitation, annual representations and certifications dated _____ [*insert date of signature on submission*] which are incorporated herein by reference and are current, accurate, and complete as of the date of this bid, except as follows [*insert changes that affect only this solicitation; if ''none,'' so state*]: _____

☐ (b) Enclosed its annual representations and certifications.

(End of provision)

52.216–2 [Amended]

50. Section 52.216–2 is amended by revising the clause date to read ''(DATE)''; and in paragraph (b) by removing the last sentence.

52.216–3 [Amended]

51. Section 52.216–3 is amended by revising the clause date to read ''(DATE)''; and in paragraph (b) by removing the last sentence.

52.216–4 [Amended]

52. Section 52.216–4 is amended by revising the clause date to read ''(DATE)''; and by removing paragraph (d) and redesignating paragraph (e) as (d).

52.219–1 [Amended]

53. Section 52.219–1 is amended by revising the provision date to read ''(DATE)''; and in paragraph (b)(1) by removing ''and certifies''.

52.219–15 [Removed and Reserved]

54. Section 52.219–15 is removed and reserved,

52.219–18 [Amended]

55. Section 52.219–18 is amended by revising the clause date to read ''(DATE)''; and in paragraph (b) by removing ''certifies'' and inserting ''represents''.

56. Section 52.219–19 is amended by revising the date and paragraph (b) of the provision to read as follows:

52.219–19 Small Business Concern Representation for the Small Business Competitiveness Demonstration Program.

* * * * *

SMALL BUSINESS CONCERN REPRESENTATION FOR THE SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM (DATE)

* * * * *

(b) [*Complete only if the Offeror has represented itself under the provision at 52.219–1 as a small business concern under the size standards of this solicitation.*]

The offeror ☐ is, ☐ is not an emerging small business.

* * * * *

52.219–21 [Amended]

57. Section 52.219–21 is amended by revising the clause date to read (XXX);

in the parenthetical following the provision heading by removing ''certified'' and inserting ''represented''; and in the first paragraph of the provision by removing ''and certifies''.

52.222–21 [Reserved]

58. Section 52.222–21 is removed and reserved.

59. Section 52.223–1 is revised to read as follows:

52.223–1 Notification of Clean Air Act and/or Clean Water Act Convictions.

As prescribed in 23.105(a), insert the following provision in solicitations containing the clause at 52.223–2, Clean Air and Water:

NOTIFICATION OF CLEAN AIR ACT AND/OR CLEAN WATER ACT CONVICTIONS (DATE)

(a) If a facility owned or leased by the offeror is proposed to be used in the performance of the contract, and the facility owner, lessee, or supervisor was convicted of a violation at that facility of Section 113 of the Clean Air Act (CAA), 42 U.S.C. 7413, or Section 309(c) of the Clean Water Act (CWA), 33 U.S.C. 1319(c), the offeror shall notify the Contracting Officer whether such facility is presently owned, leased or supervised by the convicted person. The notification shall be submitted with the offer; if the conviction occurs on or after the date the offer was submitted, the offeror shall promptly submit a separate notification to the Contracting Officer.

(b) After receiving notification of a CAA or a CWA conviction, the Contracting Officer may make award only if the Contracting Officer obtains confirmation that the Environmental Protection Agency has certified that the condition giving rise to the conviction has been corrected, or that the agency head has excepted the contract or subcontract from the CAA or CWA ineligibility.

(End of provision)

60. Section 52.223–3 is amended by revising the clause date and paragraphs (c) and (e) to read as follows:

52.223–3 Hazardous Material Identification and Material Safety Data.

* * * * *

HAZARDOUS MATERIAL IDENTIFICATION AND MATERIAL SAFETY DATA (DATE)

* * * * *

(c) This list must be updated during performance of the contract whenever the Contractor determines that any other material to be delivered under this contract is hazardous.

* * * * *

(e) If, after award, there is a change in the composition of the item(s) or a revision to Federal Standard No. 313, which renders incomplete or inaccurate the data submitted under paragraph (d) of this clause, the Contractor shall promptly notify the Contracting Officer and resubmit the data.

* * * * *

61. Section 52.223–7 is amended by revising the clause date and paragraph (b)(2) to read as follows:

52.223–7 Notice of Radioactive Materials.

NOTICE OF RADIOACTIVE MATERIALS (DATE)

* * * * *

(b) * * *

(2) State that the quantity of activity, characteristics, and composition of the radioactive material have not changed; and

* * * * *

62. Section 52.225–1 is amended by revising its heading; and by revising the provision heading and the first paragraph to read as follows:

52.225–1 Buy American Provision.

* * * * *

BUY AMERICAN PROVISION (DATE)

The offeror shall list below each end product that is not a domestic end product (as defined in the clause entitled ''Buy American Act-Supplies''). Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States.

Excluded end products	Country of origin

* * * * *

(End of provision)

63. Section 52.225–6 is amended by revising the heading; and by revising the heading and date and paragraph (a) of the provision to read as follows:

52.225–6 Balance of Payments Program Provision.

BALANCE OF PAYMENTS PROGRAM PROVISION (DATE)

(a) The offeror shall list below each end product or service that is not a domestic end product or service (as defined in the clause entitled ''Balance of Payments Program''). Components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

* * * * *

52.225–7 [Amended]

64. Section 52.225–7 is amended by revising the date of the provision heading to read ''(DATE)''; and in paragraph (b) by removing ''Certificate'' and inserting ''Provision''.

65. 52.225–8 is amended by revising the section and provision headings; and by revising paragraphs (a) and (c) of the provision to read as follows:

52.225–8 Buy American Act—Trade Agreements—Balance of Payments Program Provision.

* * * * *

BUY AMERICAN ACT—TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM PROVISION (DATE)

(a) Each end product being offered, except those listed in paragraph (b) of this provision, is a domestic end product (as defined in the clause entitled ''Buy American Act—Trade Agreements—Balance of Payments Program''). Components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States, a designated country, a North American Free Trade Agreement (NAFTA) country, or a Caribbean Basin country, as defined in section 25.401 of the Federal Acquisition Regulation.

* * * * *

(c) Offers will be evaluated by giving certain preferences to domestic end products, designated country end products, NAFTA country end products, and Caribbean Basin country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and list below those excluded end products that are designated country end products or NAFTA country end products, or Caribbean Basin country end products. Products that are not identified and listed below will not be deemed designated country end products, NAFTA country end products, or Caribbean Basin country end products. Offerors must insert the applicable line item numbers in the following:

(1) The following supplies qualify as ''designated country end products or NAFTA country end products'' as those terms are defined in the clause entitled ''Buy American Act—Trade Agreements—Balance of Payments Program:''

_____

[Insert line item numbers]

(2) The following supplies qualify as ''Caribbean Basin country end products'' as that term is defined in the

clause entitled ''Buy American Act—Trade Agreements—Balance of Payments Program'':

_____

[Insert line item numbers]

* * * * *

66. Section 52.225–9 is amended by revising the clause date to read ''(DATE)''; and by revising the third and fourth sentences of paragraph (b) to read as follows:

52.225–9 Buy American Act—Trade Agreements—Balance of Payments Program.

* * * * *

BUY AMERICAN ACT—TRADE AGREEMENTS—BALANCE OF PAYMENTS PROGRAM (DATE)

* * * * *

(b) * * * The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specifies delivery of foreign end products in the provision entitled ''Buy American Act—Trade Agreements—Balance of Payments Program Provision''. An offer stating that a designated, NAFTA, or Caribbean Basin country end product will be supplied requires the Contractor to supply a designated, NAFTA, or Caribbean Basin country end product or, at the Contractor's option, a domestic end product. * * *

* * * * *

52.225–21 [Amended]

67. Section 52.225–21 is amended by revising the clause date to read ''(XXX)''; in the third sentence of paragraph (c) by removing ''Certificate'' and inserting ''Provision'' in its place; in Alternate I by revising the date to read ''(XXX)''; and in paragraph (c) by removing ''Certificate'' and inserting ''Provision'' in its place.

52.227–12 [Amended]

68. Section 52.227–12 is amended by revising the clause date to read ''(DATE)''; and in paragraph (f)(7)(ii) by removing ''certifying'' wherever it appears and inserting ''stating''.

52.227–13 [Amended]

69. Section 52.227–13 is amended by revising the clause date to read ''(DATE)''; and in paragraph (e)(3)(ii) by removing ''certifying'' wherever it appears and inserting ''stating''.

70. Section 52.227–21 is amended by revising the section and clause headings, the clause date, paragraph (b)(1), the first sentence of (b)(2), and (d)(1)(ii) to read as follows:

52.227–21 Technical Data Declaration, Revision, and Withholding of Payment—Major Systems.

* * * * *

TECHNICAL DATA DECLARATION, REVISION, AND WITHHOLDING OF PAYMENT—MAJOR SYSTEMS (DATE)

* * * * *

(b) *Technical data declaration.* (1) All technical data that are subject to this clause shall be accompanied by the following declaration upon delivery:

TECHNICAL DATA DECLARATION (DATE)

The Contractor, _____, hereby declares that, to the best of its knowledge and belief, the technical data delivered herewith under Government contract No. _____ (and subcontract _____, if appropriate) are complete, accurate, and comply with the requirements of the contract concerning such technical data.

(End of declaration)

(2) The Government shall rely on the declarations set out in paragraph (b)(1) of this clause in accepting delivery of the technical data, and in consideration thereof may, at any time during the period covered by this clause, request correction of any deficiencies which are not in compliance with contract requirements. * * *

* * * * *

(d) * * *

(1) * * *

(ii) Provide the declaration required by paragraph (b)(1) of this clause;

* * * * *

(End of clause)

71. Section 52.228–5 is amended by revising the clause date and the first sentence of paragraph (b) to read as follows:

52.228–5 Insurance—Work on a Government Installation.

* * * * *

INSURANCE—WORK ON A GOVERNMENT INSTALLATION (DATE)

* * * * *

(b) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained. * * *

* * * * *

72. Section 52.228–8 is amended by revising the clause date and the first sentence of paragraph (d) to read as follows:

52.228–8 Liability and Insurance—Leased Motor Vehicles.

* * * * *

LIABILITY AND INSURANCE—LEASED MOTOR VEHICLES (DATE)

* * * * *

(d) Before commencing work under this contract, the Contractor shall notify the Contracting Officer in writing that the required insurance has been obtained.

* * * * *

73. Section 52.228–9 is amended by revising the clause date, the second sentence of paragraph (b), and paragraph (c)(2) to read as follows:

52.228–9 Cargo Insurance.

* * * * *

CARGO INSURANCE (DATE)

(a) * * *

(b) * * * As evidence of insurance maintained, an authenticated copy of the cargo liability insurance policy or policies shall be furnished to _____ [*insert name of contracting agency*]. * * *

(c) * * *

(2) An authenticated copy of any renewal policy to _____ [*insert name of contracting agency*] not less than 15 days prior to the expiration of any current policy on file with _____ [*insert name of contracting agency*].

(End of clause)

74. Section 52.237–7 is amended by revising the clause date and the first sentence of paragraph (d) to read as follows:

52.237–7 Indemnification and Medical Liability Insurance.

* * * * *

INDEMNIFICATION AND MEDICAL LIABILITY INSURANCE (DATE)

* * * * *

(d) Evidence of insurance documenting the required coverage for each health care provider who will perform under this contract shall be provided to the Contracting Officer prior to the commencement of services under this contract. * * *

* * * * *

75. Section 52.242–4 is amended by revising the clause date and paragraph (a)(1); and in paragraph 2 of the Certificate following paragraph (c) by removing ''billing or''. The revised text reads as follows:

52.242–4 Certification of Indirect Costs.

* * * * *

CERTIFICATION OF INDIRECT COSTS (DATE)

(a) * * *

(1) Certify any proposal to establish final indirect cost rates;

* * * * *

52.245–8 [Amended]

76. Section 52.245–8 is amended by revising the clause date to read ''(DATE)''; and in paragraph (f) by removing ''a certificate'' and inserting ''documentation'' both times it appears; the first instance should be capitalized.

77. Section 52.247–2 is amended by revising the introductory paragraph, the clause date and paragraph (a) to read as follows:

52.247–2 Permits, Authorities, or Franchises.

As prescribed in 47.207–1(a), insert the following clause:

PERMITS, AUTHORITIES, OR FRANCHISES (DATE)

(a) The offeror does ☐, does not ☐, hold authorization from the Federal Highway Administration (FHWA) or other cognizant regulatory body. If authorization is held, it is as follows:

_____

(Name of regulatory body)

_____

(Authorization No.)

* * * * *

[End of clause]

52.247–54 [Removed and Reserved]

78. Section 52.247–54 is removed and reserved.

79. Section 52.247–63 is amended by revising the clause date and the definition ''U.S.-flag air carrier''; in paragraph (b) by removing ''49 U.S.C. 1517'' and inserting ''49 U.S.C. 40118''; and by revising paragraph (d) to read as follows:

52.247–63 Preference for U.S.-Flag Air Carriers.

* * * * *

PREFERENCE FOR U.S.-FLAG AIR CARRIERS (DATE)

* * * * *

(a) * * *

U.S.-flag air carrier, as used in this clause, means an air carrier holding a certificate under Chapter 411 of Title 49 of U.S.C.

* * * * *

(d) In the event that the Contractor selects a carrier other than a U.S.-flag air carrier for international air transportation, the Contractor shall include a statement on vouchers involving such transportation essentially as follows:

STATEMENT OF UNAVAILABILITY OF U.S.-FLAG AIR CARRIERS

International air transportation of persons (and their personal effects) or property by U.S.-flag air carrier was not available or it was necessary to use foreign-flag air carrier service for the following reasons (see section 47.403 of the Federal Acquisition Regulation): [*State reasons*]:

_____

(End of statement)

* * * * *

PART 53—FORMS

80. Section 53.214(e) is amended by revising the paragraph heading to read as follows:

53.214 Sealed bidding.

* * * * *

(e) *SF 129 (REV. XX/XX), Solicitation Mailing List Application.* * * *

* * * * *

81. Section 53.215–1(f) is amended by revising the paragraph heading to read as follows:

53.215–1 Solicitation and receipt of proposals and quotations.

* * * * *

(f) *SF 129, Solicitation Mailing List Application.* * * *

* * * * *

82. Section 53.222(g) is amended by revising the paragraph heading to read as follows:

53.222 Application of labor laws to Government acquisitions (SF's 99, 308, 1093, 1413, 1444, 1445, 1446, WH–347).

* * * * *

(g) *SF 1445 (REV. XX/XX), Labor Standards Interview.* * * *

* * * * *

83. Section 53.229 is amended by revising the paragraph heading to read as follows:

53.229 Taxes (SF's 1094, 1094–A).

SF 1094 (REV. XX/XX, U.S. Tax Exemption Certificate, and SF 1094–A (REV XX/XX), Tax Exemption Certificates Accountability Record. * * *

84. Section 53.245 is amended in paragraphs (c), (f), (g), (h), (i), and (j) by revising the paragraph headings to read as follows:

53.245 Government property.

* * * * *

(c) *SF 1423 (REV. XX/XX), Inventory Verification Survey.*

* * * * *

(f) *SF 1426 (REV. XX/XX), Inventory Schedule A (Metals in Mill Product Form), and SF 1427 (REV. 7/89), Inventory Schedule A-Continuation Sheet (Metals in Mill Product Form.* * * *

(g) *SF 1428 (REV. XX/XX), Inventory Schedule B, and SF 1429 (REV. 7/89), Inventory Schedule B-Continuation Sheet.* * * *

(h) *SF 1430 (REV. XX/XX), Inventory Schedule C (Work-in-Process) and SF 1431 (REV. 7/89), Inventory Schedule C-Continuation Sheet (Work-in-Process).* * * *

(i) *SF 1432 (REV. XX/XX), Inventory Schedule D (Special Tooling and Special Test Equipment), and SF 1433 (REV. 7/89), Inventory Schedule D-Continuation Sheet (Special Tooling and Special Test Equipment).** * *

(j) *SF 1434 (REV. XX/XX), Termination Inventory Schedule E (Short Form for Use with SF 38 Only).* * * *

BILLING CODE 6820–EP–P

85. Section 53.301–129 is revised to read as follows:

53.301–129 Standard Form 129, Solicitation Mailing List Application.

SOLICITATION MAILING LIST APPLICATION

1. TYPE OF APPLICATION ☐ INITIAL ☐ REVISION

2. DATE

OMB NO.: 9000-0002
Expires: 10/31/97

NOTE: Please complete all items on this form. Insert N/A in items not applicable. See reverse for instruction.

Public reporting burden for this collection of information is estimated to average .58 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

3. SUBMIT TO
- a. FEDERAL AGENCY'S NAME
- b. STREET ADDRESS
- c. CITY
- d. STATE
- e. ZIP CODE

4. APPLICANT
- a. NAME
- b. STREET ADDRESS
- c. COUNTY
- d. CITY
- e. STATE
- e. ZIP CODE

5. TYPE OF ORGANIZATION *(Check one)*

☐ INDIVIDUAL ☐ NON-PROFIT ORGANIZATION

☐ PARTNERSHIP ☐ CORPORATION, INCORPORATED UNDER THE LAWS OF THE STATE OF:

6. ADDRESS TO WHICH SOLICITATIONS ARE TO BE MAILED *(If different than Item 4)*
- a. STREET ADDRESS
- b. COUNTY
- c. CITY
- d. STATE
- e. ZIP CODE

7. NAMES OF OFFICERS, OWNERS, OR PARTNERS

a. PRESIDENT	b. VICE PRESIDENT	c. SECRETARY
d. TREASURER	e. OWNERS OR PARTNERS	

8. AFFILIATES OF APPLICANT

NAME	LOCATION	NATURE OF AFFILIATION

9. PERSONS AUTHORIZED TO SIGN OFFERS AND CONTRACTS IN YOUR NAME *(Indicate if agent)*

NAME	OFFICIAL CAPACITY	TELEPHONE NUMBER	
		AREA CODE	NUMBER

10. IDENTIFY EQUIPMENT, SUPPLIES, AND/OR SERVICES ON WHICH YOU DESIRE TO MAKE AN OFFER *(See attached Federal Agency's supplemental listing and instruction, if any)*

11a. SIZE OF BUSINESS *(See defintions on reverse)*

☐ SMALL BUSINESS *(If checked, complete Items 11B and 11C)* ☐ OTHER THAN SMALL BUSINESS

11b. AVERAGE NUMBER OF EMPLOYEES *(Including affiliates)* FOR FOUR PRECEDING CALENDAR QUARTERS

11c. AVERAGE ANNUAL SALES OR RECEIPTS FOR PRECEDING THREE FISCAL YEARS

$

12. TYPE OF OWNERSHIP *(See definitions on reverse)* *(Not applicable for other than small businesses)*

☐ DISADVANTAGED BUSINESS ☐ WOMAN-OWNED BUSINESS

13. TYPE OF BUSINESS *(See definitions on reverse)*

☐ MANUFACTURER OR PRODUCER ☐ CONSTRUCTION CONCERN ☐ SURPLUS DEALER

☐ SERVICE ESTABLISHMENT ☐ RESEARCH AND DEVELOPMENT

14. DUNS NO. *(If available)*

15. HOW LONG IN PRESENT BUSINESS?

16. FLOOR SPACE *(Square Feet/M²)*
- a. MANUFACTURING
- b. WAREHOUSE

17. NET WORTH
- a. DATE
- b. AMOUNT $

18. SECURITY CLEARANCE *(If applicable, check highest clearance authorized)*

FOR	TOP SECRET	SECRET	CONFIDENTIAL	c. NAMES OF AGENCIES GRANTING SECURITY CLEARANCES	d. DATES GRANTED
a. KEY PERSONNEL					
b. PLANT ONLY					

The information supplied herein *(Including all pages attached)* is correct and that neither the applicant nor any person *(or concern)* in any connection with the applicant as a principal or officer, so far as is known, is now debarred or otherwise declared ineligible by any agency of the Federal Government from making offers for furnishing materials, supplies, or services to the Government or any agency thereof.

19a. NAME OF PERSON AUTHORIZED TO SIGN *(Type or print)*

19b. TITLE OF PERSON AUTHORIZED TO SIGN *(Type or print)*

20. SIGNATURE

21. DATE SIGNED

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition usable

STANDARD FORM 129 (REV.)
Prescribed by GSA - FAR (48 CFR) 53.214(e)

OFFICIAL

INSTRUCTIONS

Persons or concerns wishing to be added to a particular agency's bidder's mailing list for supplies or services shall file this properly completed Solicitation Mailing List Application, together with such other lists as may be attached to this application form, with each procurement office of the Federal agency with which they desire to do business. If a Federal agency has attached a Supplemental Commodity list with instructions, complete the application as instructed. Otherwise, identify in Item 10 the equipment, supplies, and/or services on which you desire to bid. (Provide Federal Supply Class or Standard Industrial Classification codes, if available.) The application shall be submitted and signed by the principal as distinguished from an agent, however constituted.

After placement on the bidder's mailing list of an agency, your failure to respond (submission of bid, or notice in writing, that you are unable to bid on that particular transaction but wish to remain on the active bidder's mailing list for that particular item) to solicitations will be understood by the agency to indicate lack of interest and concurrence in the removal of your name from the purchasing activity's solicitation mailing for items concerned.

SIZE OF BUSINESS DEFINITIONS
(See Item 11A.)

a. Small business concern - A small business concern for the purpose of Government procurement is a concern, including its affiliates, which is independently owned and operated, is not dominant in the field of operation in which it is competing for Government contracts, and can further qualify under the criteria concerning number of employees, average annual receipts, or the other criteria, as prescribed by the Small Business Administration. (See Code of Federal Regulations, Title 13, Part 121, as amended, which contains detailed industry definitions and related procedures.)

b. Affiliates - Business concerns are affiliates of each other when either directly or indirectly (i) one concern controls or has the power to control the other, or (ii) a third party controls or has the power to control both. In determining whether concerns are independently owned and operated and whether or not affiliation exists, consideration is given to all appropriate factors including common ownership, common management, and contractual relationship. (See Items 8 and 11A.)

c. Number of employees - (Item 11B) In connection with the determination of small business status, "number of employees" means the average employment of any concern, including the employees of its domestic and foreign affiliates, based on the number of persons employed on a full-time, part-time, temporary or other basis during each of the pay periods of the preceding 12 months. If a concern has not been in existence for 12 months, "number of employees" means the average employment of such concern and its affiliates during the period that such concern has been in existence based on the number of persons employed during each of the pay periods of the period that such concern has been in business.

TYPE OF OWNERSHIP DEFINITIONS
(See Item 12.)

a. "Disadvantaged business concern" - means any business concern (1) which is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (2) whose management and daily business operations are controlled by one or more of such individuals.

b. "Women-owned business" - means a business that is at least 51 percent owned by a woman or women who are U.S. citizens and who also control and operate the business.

TYPE OF BUSINESS DEFINITIONS
(See Item 13.)

a. "Manufacturer or producer" - means a person (or concern) owning, operating, or maintaining a store, warehouse, or other establishment that produces, on the premises, the materials, supplies, articles or equipment of the general character of those listed in Item 10, or in the Federal Agency's Supplemental Commodity List, if attached.

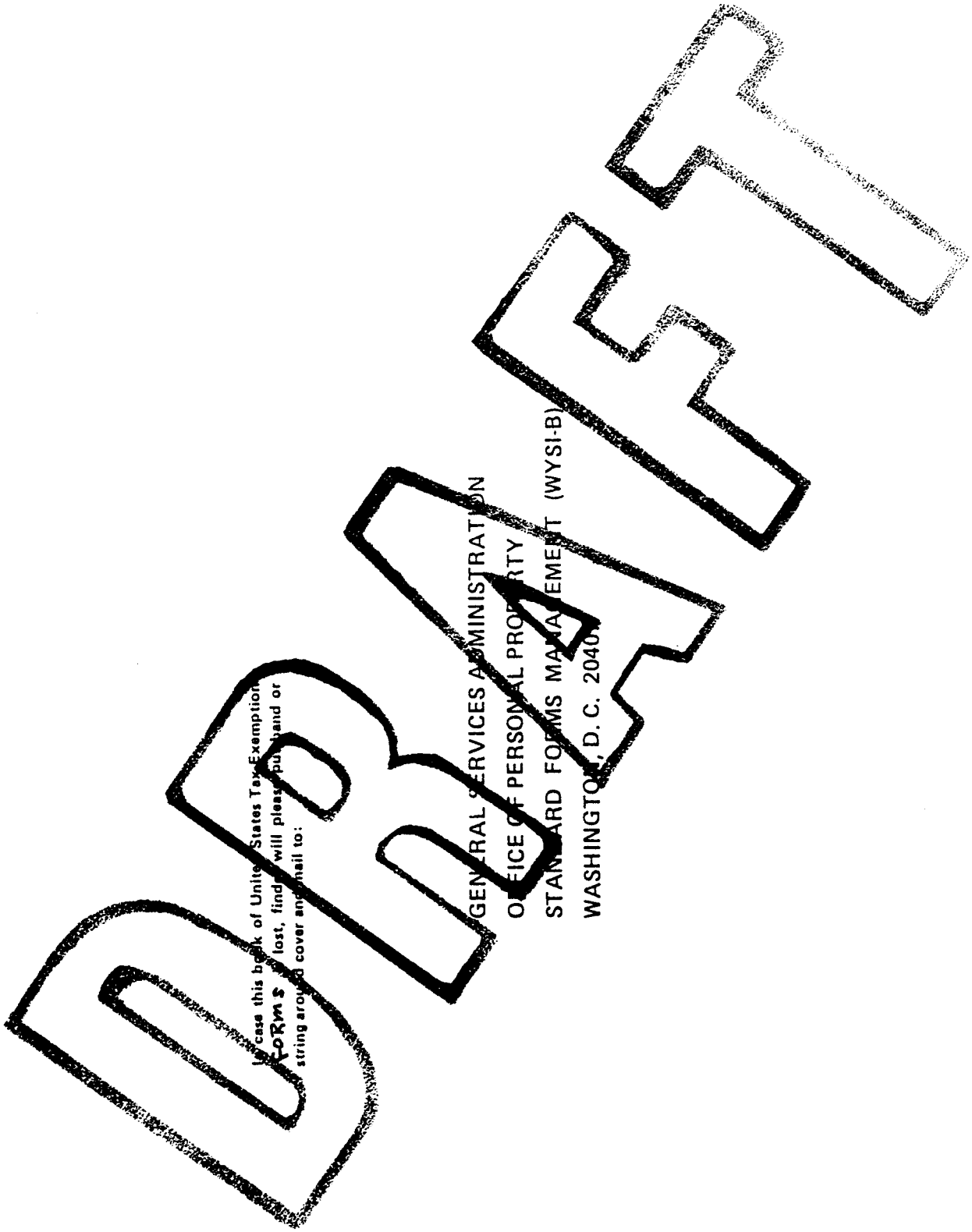
b. "Service establishment" - means a concern (or person) which owns, operates, or maintains any type of business which is principally engaged in the furnishing of nonpersonal services, such as (but not limited to) repairing, cleaning, redecorating, or rental of personal property, including the furnishing of necessary repair parts or other supplies as a part of the services performed.

DRAFT

- COMMERCE BUSINESS DAILY - The Commerce Business Daily, published by the Department of Commerce, contains information concerning proposed procurements, sales, and contract awards. For further information concerning this publication, contact your local Commerce Field Office.

85. Section 53.301–1094 is revised to read as follows:

53.301–1094 Standards Form 1094, U.S. Tax Exemption Certificates.



U.S. TAX EXEMPTION form	Read the instructions on the reverse side.	DEPARTMENT, AGENCY, OR OFFICE	SERIAL NO.
ITEM PURCHASED FOR EXCLUSIVE USE OF THE U.S. GOVERNMENT *(Describe)*			QUANTITY / UNIT PRICE $
VENDOR FROM WHICH PURCHASED	NAME	A tax exemption form has not previously been issued and the described item(s) has (have) been delivered and invoiced pursuant to:	Amount of Tax Excluded
	ADDRESS *(No., Street, City, State, and ZIP Code)*		State $
	The information on this form is true and correct to the best of my knowledge and belief.	P.O. OR CONTRACT NO.	Local $
PURCHASER'S SIGNATURE, OFFICE TITLE, AND ADDRESS ▶	DATE	DATES	For Administrative Office D.O. SYMBOL NO.
SIGNATURE AND TITLE OF VENDOR'S REPRESENTATIVE ▶		DATE	VOUCHER NO. DATE

STANDARD FORM 1094 (REV. ~~10-83~~)
Prescribed by GSA
FAR (48 CFR) 53.229

DRAFT

INSTRUCTIONS

1. This form will be used to establish the Government's exemption or immunity from State or Local taxes whenever no other evidence is available.

2. This form shall NOT be used for:
(a) Purchases of quarters or subsistence made by employees in travel status.
(b) Expenses incident to use of a privately owned motor vehicle for which a mileage allowance has been authorized, or
(c) Merchandise purchased which is subject only to Federal Tax.

3. If the spaces provided on the face of this form are inadequate, attach a separate statement containing the required information.

4. If both State and Local taxes are involved, use a separate form for each tax. The form will be provided to the vendor when the prices exclude State or Local tax.

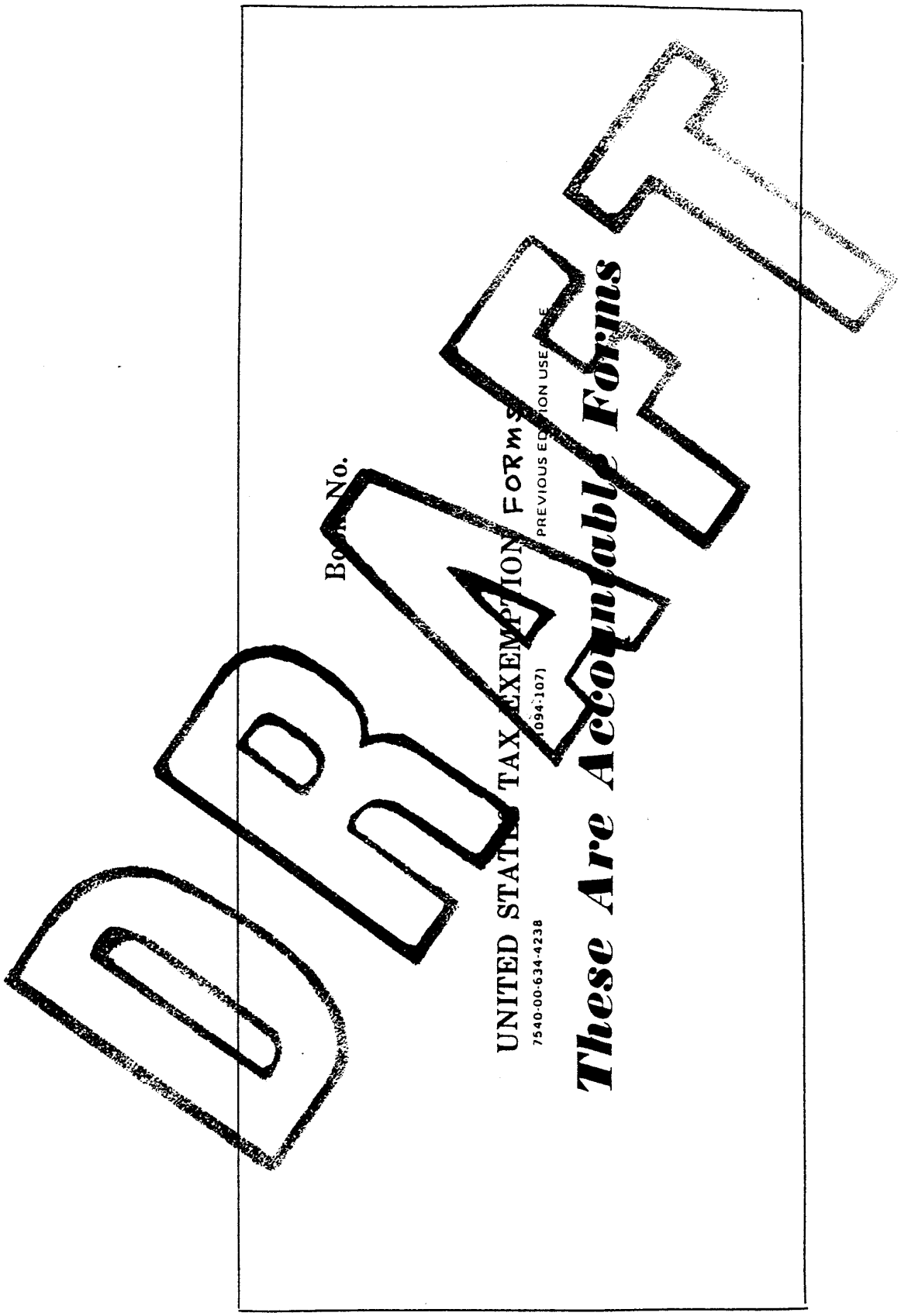
5. The serial number of each form prepared will be shown on the payment voucher.

THE FRAUDULENT USE OF THIS form FOR THE PURPOSE OF OBTAINING EXEMPTION FROM OR ADJUSTMENT OF TAXES IS PROHIBITED.

STANDARD FORM 1094 BACK (REV. 10-83)

86. Section 53.301–1094 is revised to read as follows:

53.301–1094A Standard Form 1094A, Tax Exemption Certificates Accountability Record.



TAX EXEMPTION FORMS ACCOUNTABILITY RECORD

To be used for convenience of the issuing agency for maintaining a control record of tax exemption issued

TAX EXEMPTION FORM IN THIS BOOK NUMBERED ▶ THROUGH

ISSUED TO

NAME

TITLE

OFFICE DESIGNATION

DATE ISSUED

SIGNATURE

ISSUING OFFICER

TITLE AND OFFICE DESIGNATION

TAX EXEMPTION FORM RETURNED UNUSED FOR REISSUE ▶ THROUGH

REISSUED TO

NAME

TITLE

OFFICE DESIGNATION

DATE ISSUED

SIGNATURE

ISSUING OFFICER

TITLE AND OFFICE DESIGNATION

STANDARD FORM 1094-A (REV. 10-83)
Prescribed by GSA
FAR (48 CFR) 53.229

FORM NO. / DATE	VENDOR NAME AND ADDRESS	Mark "X" in appropriate column to indicate type of tax: ITEM PURCHASED	TAX EXCLUDED (Amount)	S/O C	TRANSACTION REFERENCE
	VENDOR NAME AND ADDRESS	ITEM PURCHASED	$		Voucher No. / Voucher Date / PO/Cont. No.
	VENDOR NAME AND ADDRESS	ITEM PURCHASED			Voucher No. / Voucher Date / PO/Cont. No.
	VENDOR NAME AND ADDRESS	ITEM PURCHASED			Voucher No. / Voucher Date / PO/Cont. No.
	VENDOR NAME AND ADDRESS	ITEM PURCHASED	$		Voucher No. / Voucher Date / PO/Cont. No.
	VENDOR NAME AND ADDRESS	ITEM PURCHASED	$		Voucher No. / Voucher Date / PO/Cont. No.

STANDARD FORM 1094-A BACK (REV. 10-83)

DRAFT

87. Section 53.301–1423 is revised to read as follows:

53.301–1423 Standard Form 1423, Inventory Verification Survey.

INVENTORY VERIFICATION SURVEY
(See FAR 45.606-3)

DATE

OMB No.: 9000-0015
Expires: 05/31/98

Public reporting burden for this collection of information is estimated to average 1 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

SECTION I - GENERAL

1. FROM: *(Include ZIP Code)*

2. CONTRACT NUMBER

3. TO: *(Include ZIP Code)*

4. CONTRACT/SUBCONTRACTOR

5. SCHEDULES OF INVENTORY TO BE INSPECTED AND VERIFIED

SF 1426 pages _____ through _____ $ _____
SF 1428 pages _____ through _____ $ _____
SF 1430 pages _____ through _____ $ _____
SF 1432 pages _____ through _____ $ _____
SF 1434 pages _____ through _____ $ _____

SECTION II - TECHNICAL VERIFICATION

	YES	NO
6. IS PROPERTY LISTED ON THE INVENTORY SCHEDULES ON HAND AND IN THE QUANTITIES INDICATED?		
7. IS THE PROPERTY CORRECTLY DESCRIBED ON THE INVENTORY SCHEDULES?		*
8. IS THE PROPERTY SEGREGATED OR ADEQUATELY PROTECTED?		*
9. IS THE PROPERTY PROPERLY TAGGED?		*
10. ARE THE CONDITION CODES ACCURATE?		*
11. ARE THE ITEMS LISTED ON SF 1432 CORRECTLY CATEGORIZED AS SPECIAL TOOLING OR SPECIAL TESTING EQUIPMENT?		*

	YES	NO
12. ARE THE WEIGHTS OF THE ITEMS RECOMMENDED AS SCRAP APPROXIMATELY CORRECT? IF WEIGHTS ARE NOT SHOWN, GIVE ESTIMATE OF WEIGHT BY BASIC MATERIAL CONTENT: _____		*
13. DO THE ITEMS APPEAR TO HAVE COMMERCIAL VALUE OTHER THAN SCRAP?		*
14. ARE THE ITEMS AGENCY-PECULIAR?	*	
15. DO ANY ITEMS REQUIRE SPECIAL PROCESSING *(Fire arms, drugs, hazardous or explosive items, or precious metals, etc.)*?	*	
16. ARE COMMON ITEMS INCLUDED ON THE INVENTORY SCHEDULE?	*	

SECTION III - TERMINATION INVENTORY

COMPLETION OF THIS SECTION ☐ IS ☐ IS NOT REQUIRED *(Requestor, check one)*

	YES	NO
17. DID WORK STOP PROMPTLY UPON RECEIPT OF THE TERMINATION NOTICE? DATE TO NOTICE:		*
18. DO THE QUANTITIES OF MATERIAL EXCEED THE AMOUNTS THAT WOULD HAVE BEEN REQUIRED TO COMPLETE THE TERMINATED PORTION OF THE CONTRACT?	*	
CAN THE ITEMS OF TERMINATION INVENTORY BE USED ON THE CONTINUING PORTION OF THE CONTRACT?	*	
19. ARE ALL ITEMS AND QUANTITIES ALLOCABLE TO THE TERMINATION PORTION OF THIS CONTRACT OR ORDER?		

	YES	NO
20. DOES THE INVENTORY INCLUDE REJECTS? IF YES, EXPLAIN SPECIFIC LINE ITEM ENTRIES. OBTAIN FROM CONTRACTOR ESTIMATED COST OF REWORKING REJECTS ON SPECIFIC LINE ITEM BASIS.	*	
21a. HAVE COMPLETED ARTICLES BEEN INSPECTED AS TO QUALITY AND CONFORMANCE TO SPECIFICATIONS?		*
b. DO THE COMPLETED ITEMS INSPECTED CONFORM TO CONTRACT SPECIFICATIONS?		*
c. DO OTHER THAN COMPLETED ITEMS CONFORM WITH TECHNICAL REQUIREMENTS OF THE CONTRACT OR ORDER?		*

22. REQUESTING OFFICE REMARKS *(Where the answer to any question is given in a block containing an asterisk (*) detailed comments of the verifier shall be included on the reverse of this form and identified by section and item number.)*

23. SIGNATURE OF REQUESTER

INVENTORY VERIFICATION

The above information is based on a physical Veritication of Inventory listed under Item 5.

24. NAME AND TITLE	25. SIGNATURE OF VERIFIER	26. DATE

AUTHORIZED FOR LOCAL REPRODUCTION
previous edition is not usable

STANDARD FORM 1423 (REV.)
Prescribed by GSA-FAR (48 CFR) 53.245(c)

DRAFT

88. Section 53.301–1426 is revised to read as follows:

53.301–1426 SF 1426, Inventory Schedule A (Metals in Mill Product Form).

INVENTORY SCHEDULE A
(METALS IN MILL PRODUCT FORM)
(See FAR Section 45.606 for Instructions)

☐ PARTIAL ☐ FINAL

TYPE: ☐ TERMINATION ☐ NONTERMINATION

TYPE OF CONTRACT | DATE | OMB No.: 9000-0015 Expires: 05/31/98

PROPERTY CLASSIFICATION | PAGE | NO. OF PAGES

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

THIS SCHEDULE APPLIES TO *(Check one)*
☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT(S) OR PURCHASE ORDER(S)

GOVERNMENT PRIME CONTRACT NO. | SUBCONTRACT OR P.O. NO. | REFERENCE NO.

COMPANY PREPARING AND SUBMITTING SCHEDULE

STREET ADDRESS

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME | STREET ADDRESS | CITY | STATE | ZIP CODE

CITY | STATE | ZIP CODE

LOCATION OF MATERIAL

PRODUCT COVERED BY CONTRACT OR ORDER

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	DESCRIPTION: FORM, SHAPE, ROLLING TREATMENT (When applicable, type of edge. Example: HR coiled strip, CR flat sheets box rod, tubing in straight length, etc.) (b)	HEAL TREATMENT, TEMPER, HARDNESS FINISH, ETC. (Example: Annealed and pickled, 1/2 hard, polished, etc.) (b1)	SPECIFICATION, AND ALLOY OR OTHER VARIABLE DESIGNATION IN THE SPECIFICATION (Example: OO-T-951-D B16-42 Alloy 7 Grade B) (b2)	DIMENSIONS: THICKNESS (Wall for tubing, class for pipe, type for copper or water-tube) (b3)	WIDTH (O.D. for tube, diameter of rod, size for pipe, manufacturer's no. for extruded shapes) (b4)	LENGTH (b5) FT	IN/CM	CONDITION (Use code) (c)	QUANTITY (d)	UNIT OF MEASURE (d(1))	COST: UNIT (e)	TOTAL (f)	CONTRACTOR'S OFFER (G)	FOR USE OF CONTRACTING AGENCY ONLY

INVENTORY SCHEDULE

This inventory Schedule has been examined, and in the exercise of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and the costs shown on this Schedule are in accordance with the Contractor's records and books of account.

The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR | NAME OF SUPERVISORY ACCOUNTING OFFICIAL | TITLE

BY (Signature of Authorized Official) | NAME OF AUTHORIZED OFFICIAL | TITLE | DATE

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Previous edition not usable

STANDARD FORM 1426 (REV.)
Prescribed by GSA - FAR (48 CFR) 53.245(f)

89. Section 53.301–1428 is revised to read as follows:

53.301–1428 SF 1428, Inventory Schedule B.

INVENTORY SCHEDULE B (See FAR Section 45.606 for Instructions)	TYPE	TYPE OF CONTRACT	DATE	OMB No.: 9000-0015 Expires: 05/31/98
☐ PARTIAL ☐ FINAL	☐ TERMINATION ☐ NONTERMINATION			

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

TYPE OF INVENTORY

☐ RAW MATERIALS (Other than metals) ☐ PURCHASED PARTS ☐ FINISHED COMPONENTS

☐ FINISHED PRODUCT ☐ PLANT EQUIPMENT ☐ MISCELLANEOUS

THIS SCHEDULE APPLIES TO *(Check one)*

☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT OR PURCHASE ORDER

GOVERNMENT PRIME CONTRACT NO.	SUBCONTRACT OR P.O. NO.	REFERENCE NO.

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS *(Include ZIP Code)*

PRODUCT COVERED BY CONTRACT OR ORDER

PROPERTY CLASSIFICATION	PAGE NO.	NO. OF PAGES

COMPANY PREPARING AND SUBMITTING SCHEDULE

STREET ADDRESS

CITY AND STATE *(Include ZIP Code)*

LOCATION OF MATERIAL

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	DESCRIPTION: ITEM DESCRIPTION (b)	GOVERNMENT PART OR DRAWING NUMBER AND REVISION NUMBER (b1)	TYPE OF PACKING (Bulk, bbls, crates, etc.) (b2)	CONDITION (Use code) (c)	QUANTITY (d)	UNIT OF MEASURE (d1)	COST (For finished product, show contract price instead of cost): UNIT (e)	TOTAL (f)	CONTRACTOR'S OFFER (g)	FOR USE OF CONTRACTING AGENCY ONLY

INVENTORY SCHEDULE

This inventory Schedule has been examined, and in the exercise of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and the costs shown on this Schedule are in accordance with the Contractor's records and books of account.

The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR	BY *(Signature of Authorized Official)*	TITLE	DATE

NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE

AUTHORIZED FOR LOCAL REPRODUCTION

STANDARD FORM 1428 (REV.)
Prescribed by GSA-FAR (48 CFR) 53.245(g)

90. Section 53.301–1430 is revised to read as follows:

53.301–1430 SF 1430, Inventory Schedule C (Work-in-Process).

INVENTORY SCHEDULE C
(WORK-IN-PROCESS)
(See FAR Section 45.606 for instructions)

☐ PARTIAL ☐ FINAL

TYPE: ☐ TERMINATION ☐ NONTERMINATION

TYPE OF CONTRACT

DATE

OMB No.: 9000-0015
Expires: 05/31/98

PAGE NO. | NO. OF PAGES

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405

THIS SCHEDULE APPLIES TO *(Check one)*

☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT(S) OR PURCHASE ORDER(S)

GOVERNMENT PRIME CONTRACT NO. | SUBCONTRACT OR P.O. NO. | REFERENCE NO.

COMPANY PREPARING AND SUBMITTING SCHEDULE

STREET ADDRESS

CITY AND STATE *(Include ZIP Code)*

LOCATION OF MATERIAL

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS *(Include ZIP Code)*

PRODUCT COVERED BY CONTRACT OR ORDER

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	ITEM DESCRIPTION (b)	DESCRIPTION	ESTIMATED WEIGHT	CONDITION (Use code) (c)	QUANTITY (d)	UNIT OF MEASURE (d1)	COST UNIT (e)	COST TOTAL (f)	CONTRACTOR'S OFFER (g)	FOR USE OF CONTRACTING AGENCY ONLY

INVENTORY SCHEDULE CERTIFICATE

This inventory Schedule has been examined, and in the exercise of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and the costs shown on this Schedule are in accordance with the Contractor's records and books of account.

The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR | BY *(Signature of Authorized Official)* | TITLE | DATE

NAME OF SUPERVISORY ACCOUNTING OFFICIAL | TITLE

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 1430 (REV.)
Prescribed by GSA - FAR (48 CFR) 53.245(h)

SAMPLE

91. Section 53.301–1434 is revised to read as follows:

53.301–1432 SF 1432, Inventory Schedule D (Special Tooling and Special Test Equipment).

INVENTORY SCHEDULE D
(SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT)
(See FAR Section 45.606 for Instructions)

TYPE: ☐ TERMINATION ☐ NONTERMINATION

☐ PARTIAL ☐ FINAL

TYPE OF CONTRACT | DATE

PROPERTY CLASSIFICATION

OMB No.: 9000-0015
Expires: 05/31/98

PAGE NO. | NO. OF PAGES

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 2040.

THIS SCHEDULE APPLIES TO *(Check one)*

☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT(S) OR PURCHASE ORDER(S)

GOVERNMENT PRIME CONTRACT NO. | SUBCONTRACT OR P.O. NO. | REFERENCE NO.

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS *(Include ZIP Code)*

PRODUCT COVERED BY CONTRACT OR ORDER

COMPANY PREPARING AND SUBMITTING SCHEDULE

STREET ADDRESS

CITY AND STATE *(Include ZIP Code)*

LOCATION OF MATERIAL

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO.	ITEM DESCRIPTION	CONDITION (Use code)	QUANTITY	COST: UNIT	COST: TOTAL	COST: APPLICABLE TO THIS CONTRACT: TO ENTIRE CONTRACT	COST: APPLICABLE TO THIS CONTRACT: TO PORTION NOT TO BE COMPLETED	CONTRACTOR'S OFFER	FOR USE OF CONTRACTING AGENCY ONLY
	(a)	(b)	(c)	(d)	(e)		(f1)	(f2)	(g)	

INVENTORY SCHEDULE

This inventory Schedule has been examined, and in the exercise of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and the costs shown on this Schedule are in accordance with the Contractor's records and books of account.

The contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory described in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR | BY *(Signature of Authorized Official)* | TITLE | DATE

NAME OF SUPERVISORY ACCOUNTING OFFICIAL | TITLE

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 1432 (REV.)
Prescribed by GSA - FAR (48 CFR) 53.245(i)

DRAFT

92. Section 53.301–1434 is revised to read as follows:

53.301–1434 SF 1434 Termination Inventory Schedule E (Short Form For Use With SF 1438 Only).

TERMINATION INVENTORY SCHEDULE E
(SHORT FORM FOR USE WITH SF 1438 ONLY)
(See FAR Section 45.606 for Instructions)

☐ PARTIAL ☐ FINAL

DATE	PAGE NO.	NO. OF PAGES	OMB No.: 9000-0015 Expires: 05/31/98

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVR), Federal Acquisition Policy Division, GSA, Washington, DC 20405.

THIS SCHEDULE APPLIES TO *(Check one)*

☐ A PRIME CONTRACT WITH THE GOVERNMENT ☐ SUBCONTRACT(S) OR PURCHASE ORDER(S)

GOVERNMENT PRIME CONTRACT NO.	SUBCONTRACT OR P.O. NO.	REFERENCE NO.

CONTRACTOR WHO SENT NOTICE OF TERMINATION

NAME

ADDRESS *(Include ZIP Code)*

PRODUCT COVERED BY CONTRACT OR ORDER

COMPANY PREPARING AND SUBMITTING SCHEDULE

STREET ADDRESS

CITY AND STATE *(Include ZIP Code)*

LOCATION OF MATERIAL

FOR USE OF CONTRACTING AGENCY ONLY	ITEM NO. (a)	DESCRIPTION: ITEM DESCRIPTION (b)	DESCRIPTION: GOVERNMENT PART OR DRAWING NUMBER AND REVISION NUMBER (b1)	DESCRIPTION: TYPE OF PACKING (Bulk, bbls., crates, etc.) (b2)	CONDITION (Use code) (c)	QUANTITY (d)	UNIT OF MEASURE (d1)	COST (For finished product, show contract price instead of cost): UNIT (e)	COST: TOTAL (f)	CONTRACTOR'S OFFER (g)	FOR USE OF CONTRACTING AGENCY ONLY

TERMINATION INVENTORY

This inventory Schedule has been examined, and in the exercise of the signer's best judgment and to the best of the signer's knowledge, based upon information believed by the signer to be reliable, said Schedule has been prepared in accordance with applicable instructions; the inventory described is allocable to the designated contract and is located at the places specified; if the property reported is termination inventory, the quantities are not in excess of the reasonable quantitative requirements of the terminated portion of the contract; this Schedule does not include any items reasonably usable, without loss to the Contractor, on its other work; and the costs shown on this Schedule are in accordance with the Contractor's records and books of account.

The Contractor agrees to inform the Contracting Officer of any substantial change in the status of the inventory shown in this Schedule between the date hereof and the final disposition of such inventory.

Subject to any authorized prior disposition, title to the inventory listed in this Schedule is hereby tendered to the Government and is warranted to be free and clear of all liens and encumbrances.

NAME OF CONTRACTOR	BY *(Signature of Authorized Official)*	TITLE	DATE

NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE

AUTHORIZED FOR LOCAL REPRODUCTION
Previous edition is not usable

STANDARD FORM 1434 (REV.)
Prescribed by GSA - FAR (48 CFR) 53.245(j)

DRAFT

93. Section 53.301–1445 is revised to read as follows:

53.301–1445 SF 1445, Labor Standards Interview.

LABOR STANDARDS INTERVIEW

FORM APPROVED
OMB NO. 9000–0089

CONTRACT NUMBER	EMPLOYEE'S NAME *(Last, First, M.I.)*
NAME OF PRIME CONTRACTOR	EMPLOYEE'S ADDRESS *(Street, City, State, ZIP Code)*
NAME OF EMPLOYER	WORK CLASSIFICATION / WAGE RATE
	SUPERVISOR'S NAME *(Last, First, M.I.)*

	(Check Below) YES	NO
DO YOU WORK OVER 8 HOURS PER DAY?		
DO YOU WORK OVER 40 HOURS PER WEEK?		
ARE YOU PAID AT LEAST TIME AND A HALF FOR OVERTIME HOURS?		
ARE YOU RECEIVING ANY CASH PAYMENTS FOR FRINGE BENEFITS REQUIRED BY THE POSTED WAGE DETERMINATION/DECISION?		

WHAT DEDUCTIONS OTHER THAN TAXES AND SOCIAL SECURITY ARE MADE FROM YOUR PAY?

HOW MANY HOURS DID YOU WORK ON YOUR LAST WORK DAY BEFORE THIS INTERVIEW?

HOURS	WHAT DATE *(YYMMDD)* WAS THAT?

WHAT TOOLS DO YOU USE?

WHEN DID YOU BEGIN WORK ON THIS PROJECT *(YYMMDD)*?

THE ABOVE *IS* CORRECT TO THE BEST OF MY KNOWLEDGE.

EMPLOYEE'S SIGNATURE	DATE *(YYMMDD)*
INTERVIEWER'S SIGNATURE	DATE *(YYMMDD)*

INTERVIEWER'S COMMENTS

WORK EMPLOYEE WAS DOING WHEN INTERVIEWED

IS EMPLOYEE PROPERLY CLASSIFIED AND PAID? *(If additional space is needed, use comments section)*
☐ YES ☐ NO

ARE WAGE RATES AND POSTERS DISPLAYED?
☐ YES ☐ NO

FOR USE BY PAYROLL CHECKER

IS ABOVE INFORMATION IN AGREEMENT WITH PAYROLL DATA?
☐ YES ☐ NO

COMMENTS

DATE OF CHECK *(YYMMDD)*	NAME OF CHECKER *(Last, First, M.I.)*	JOB TITLE	SIGNATURE

NSN 7540-01-268-0632 1445-101 STANDARD FORM 1445 (10-87) Prescribed by GSA FAR (48 CFR) 53.222(g)

DRAFT

[FR Doc. 96–23169 Filed 9–11–96; 8:45 am]
BILLING CODE 6820–EP–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 14, 15, 36, 52, and 53

[FAR Case 95–029]

RIN 9000–AH21

Federal Acquisition Regulation; Part 15 Rewrite—Phase I

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule and notice of public meeting.

SUMMARY: This proposed rule contains the Phase I rewrite of Federal Acquisition Regulation Part 15, Contracting by Negotiation. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: *Public Meeting:* A public meeting will be conducted at the address shown below starting at 10 a.m. to 5:00 p.m., local time, on October 17, 1996.

Evening Session: Requests for an evening meeting should be made on or before September 27, 1996.

Statements: Statements from interested parties for presentation at the public meeting should be submitted to the GSA address below on or before October 8, 1996.

Comments: Comments should be submitted on or before November 12, 1996 to be considered in the formulation of a final rule.

ADDRESSES: *Comments:* Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 18th & F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 95–029 in all correspondence related to this case.

Public Meeting: The location of the public meeting is the National Aeronautics and Space Administration Auditorium, 300 E Street, SW, First Floor, Washington, DC 20546. Use the entrance at 4th & E Streets.

Evening Session: Send requests for an evening meeting to: Ms. Melissa Rider, DAR Council, Attn: IMD 3D139, PDUSD(A&T)DP/DAR, 3062 Defense Pentagon, Washington, DC 20301–3062; fax (703) 602–0350.

Internet Access: This proposed rule will also be posted on the Acquisition Reform Network (ARNET) at www.Arnet.gov. Comments may be submitted electronically at that address and will be considered official public comments.

FOR FURTHER INFORMATION CONTACT: Individuals wishing to attend the meeting, including individuals wishing to make presentations on the topic scheduled for discussion, should contact the Part 15 Rewrite Committee Chair, Ms. Melissa Rider (703) 602–0131; fax (703) 602–0350. For general information, contact Ms. Victoria Moss at (202) 501–4764, or the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 95–029.

SUPPLEMENTARY INFORMATION:

A. Background

On January 29, 1996, the FAR Council tasked an ad hoc interagency committee to rewrite FAR Part 15, Contracting by Negotiation. The rewrite will be accomplished in two phases. Phase I consists of rewriting FAR Subparts 15.0, 15.1, 15.2, 15.3, 15.4, 15.6, and 15.10 covering acquisition techniques and source selection.

The FAR Council and the Part 15 Rewrite Committee are providing a forum for the exchange of ideas and information with Government and industry personnel by holding a public meeting and soliciting comments. The goal is to ensure an open dialogue between the Government and the general public on this important initiative. Interested parties are invited to present statements or comments on the Phase I proposed rewrite at the public meeting.

An evening session is also being considered to allow small businesses and other interested parties a greater opportunity to attend and present comments. Those who would find an evening session easier to attend should contact Ms. Melissa Rider at the address listed above. If there is sufficient interest, an evening session will be scheduled and announced in a separate Federal Register notice.

B. Case Summary

The proposed rule revises fundamental concepts and processes in the current FAR Part 15 and introduces new policies. In addition, a more appropriate sequencing of information has been adopted to facilitate use. The proposed rule does not alter the full and open competition provisions of FAR Part 6. The proposed rule is Phase I of a two-phase rewrite of FAR Part 15. Phase II will cover pricing-related issues in FAR Subparts 15.7, 15.8, and 15.9 and unsolicited proposals in FAR Subpart 15.5.

The committee believes that the spirit of the National Performance Review, the Federal Acquisition Streamlining Act of 1994, and the Federal Acquisition Reform Act of 1995 support an aggressive approach to the rewrite. The committee reviewed the history of the current regulation, including archive copies of the Armed Services Procurement Regulation (ASPR), Defense Acquisition Regulation (DAR), Defense Acquisition Regulations Council files documenting previous changes to the regulations, GAO and Boards of Contract Appeals decisions, statutes and supporting legislative histories, the archives of the Acquisition Law Advisory Panel to the United States Congress (''Section 800 Panel''), SWAT team recommendations, results of a 1990 GSA survey on improving the FAR, and recommendations of the Second Hoover Commission and the Packard Commission. Comments considered in drafting this rule were received—

1. During a public meeting held on January 25, 1996, and public comments received in response to three Federal Register notices (60 FR 63023, December 8, 1995; 60 FR 65360, December 19, 1995; and 60 FR 67113, December 28, 1995);
2. Over the Acquisition Reform Network (an Internet forum);
3. From other Government agencies, the DAR Council, the CAAC, and the Office of Federal Procurement Policy;
4. In response to other notices of the rewrite in various print media and conferences; and
5. From Government fora such as the Front-line Professional's Forum and the Federal Procurement Executive Association.

C. Summary of Changes

Major policy shifts in this proposed rule include—

- A narrower definition of ''discussions'' limited to communications after establishment of the competitive range;
- A shift in competitive range policy to encourage retaining only the offerors with the greatest likelihood of award and allowing the contracting officer to further limit the competitive range in the interest of efficiency;
- Encouragement of communication with industry throughout the solicitation process to ensure competitive range determinations are informed decisions. The rule allows disclosure of perceived deficiencies

before establishment of the competitive range to resolve ambiguities and other concerns. These communications are not ''discussions.''

• Elimination of ''minor clarifications'' except for use in award without discussions; and

• Revision of the rules governing late proposals for negotiated acquisitions to make the offeror responsible for timely delivery of its offer, and to allow late offers to be considered if doing so is in the best interests of the Government.

The proposed rule also specifically authorizes practices currently in use at some agencies including—

• Comparison of one offer to another; and

• Release of the Government estimate to all offerors;

Changes made to support streamlined source selections include—

• Additional discussion of the concept of fairness in the guiding principles at FAR 1.102–2(c);

• A new definition of ''best value'' at FAR Part 2;

• A description of the two most common source selection processes—award to the low price technically acceptable offeror, and tradeoffs among cost and other factors;

• Authorization to use techniques such as multiphase proposals or oral presentations. These processes and techniques are addressed at 15.2 and comply with Section 18 of the Office of Federal Procurement Policy (OFPP) Act and Sections 8(e), (f), and (g) of the Small Business Act;

• Guidance on communications between the Government and industry prior to release of the solicitation. Agencies are encouraged to share available information freely with industry, within the constraints of the prohibition on giving information necessary to prepare a proposal to one interested party without sharing the information with all other interested parties; and

• A new Model Contract Format (MCF), based on a joint Army/Air Force proposal, that is proposed to replace the uniform contract format. The MCF format has only six sections. The new format will require a change to existing automated systems.

The greatest challenge to the committee was addressing the concerns that traditionally have been raised under the concept of fairness, while maintaining an acquisition process that promotes best value to the taxpayers. This challenge was perhaps most evident in deliberations regarding the treatment of ''discussions.'' The committee believes that the requirement in the Competition in Contracting Act (CICA) that discussions be held with all offerors in the competitive range does not require that such discussions be held an equal number of times with all offerors. In the past, discussions were conducted as ''rounds of discussions,'' with submissions of revised proposals signaling the end of each round. Under that approach, the Government was compelled to reopen discussions with all offerors in the competitive range, even when discussions were only needed with some of those offerors. That process is burdensome, expensive, and time consuming for both the Government and industry. The committee abandoned the concept of rounds of discussion and eliminated that portion of the current definition which provided for best and final offers, so that both industry and Government could rely more on agreements reached during discussions without requiring offerors to develop revised proposals. However, the contracting officer may request proposal revisions as often as needed, during discussions.

Refining the definition of ''discussions'' resulted in a disconnect with the concept of communications prior to establishment of the competitive range. In this area, the committee believed increased communications with industry could be particularly beneficial. However, it is necessary to provide guidelines for those communications in order to preserve fairness in the contracting process. The committee decided that those communications should be used to obtain information to understand fully the offeror's intent and to facilitate the Government's decision either to award without discussions or to determine the competitive range. In order to make the communications effective, the committee determined that the information obtained could be used in proposal evaluation. However, changes to the offeror's proposal, other than correction of mistakes, would not be permitted.

Additionally, the committee reaffirmed the flexibility available to the contracting officer for determining what past performance information should be included as part of the proposal. The committee believes the contracting officer is in the best position to determine whether and when to obtain information regarding corrective actions taken to remedy poor past performance. To that end, the existing regulation provides the contracting officer with the greatest amount of flexibility in exercising discretion. While, as a general matter, it is usually a more accurate indicator to look at trends in an offeror's actual performance rather than on promises or otherwise untested changes (the effectiveness of which is yet unknown), the rule allows the contracting officer to ask the offerors to submit corrective action information as part of their proposals or to request the information at any time following receipt of proposals.

D. Regulatory Flexibility Act

The proposed changes may 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 the proposed rule revises fundamental concepts and processes in the current FAR Part 15 and introduces new policies. The goals of this rewrite are to infuse into the source selection process innovative techniques designed to simplify the process and produce better value, and to eliminate regulations that impose unnecessary burdens on industry and Government contracting officers.

The proposed rule will apply to all large and small entities (including educational and nonprofit entities), that offer supplies or services to the Government in competitive negotiated acquisitions. Aspects of the proposed rule which may impact small entities are: Making a shift in competitive range policy to encourage retaining only those offerors with the greatest likelihood of award rather than all those with a reasonable chance of award; allowing the contracting officer to limit the competitive range in the interest of efficiency; prohibiting cost analysis when contracting on a fixed-price basis without cost incentives, unless the contracting officer has reason to believe that the proposed prices are not reasonable; requiring that evaluation factors established for solicitations provide for meaningful evaluations of competing proposals; rewriting past performance requirements using plain English; allowing for increased communication between the Government and industry earlier in the acquisition process to ensure industry's understanding of Government requirements and the Government's understanding of firms' proposals; eliminating the need for firms to prepare revised proposals reflecting agreements reached during discussions; allowing discussions to remain open until a contract is awarded to simplify making minor adjustment to successful offerors' proposals; allowing the Government to reveal the cost or price that its analysis, market research, and other reviews have identified for an acquisition; and simplifying the process used to amend solicitations after proposals have been

received. The rule proposes to streamline source selection procedures, thereby creating a more efficient process that benefits both private and public sectors.

OFPP believes the proposed rule reduces Government regulations that establish requirements for the way Government deals with those seeking to do business with it. Such deregulation reflects the spirit and intent of the Regulatory Flexibility Act. OFPP further believes that the changes are good for small businesses; that there are many small businesses that do not do business with the Government because of the complexity of offering, evaluation and award, that will benefit from these changes.

An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 95–029), in correspondence.

E. Paperwork Reduction Act

The Paperwork Reduction Act applies because the rule revises existing information collection requirements. Accordingly, a request for amendments of information collection requirements under Office of Management and Budget (OMB) control numbers 9000–0037, 9000–0044, and 9000–0048 will be submitted to OMB under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1, 2, 14, 15, 36, 52, and 53

Government procurement.

Dated: September 9, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 1, 2, 14, 15, 36, 52, and 53 be amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 2, 14, 15, 36, 52, and 53 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATION SYSTEM

2. Section 1.102–2 is amended by adding paragraph (c)(3) to read as follows:

1.102 Performance standards.

* * * * *

(c) * * *

(3) All offerors and contractors are entitled to fair treatment. Fair treatment requires that the members of the acquisition team abide by the solicitation and acquisition plan (if any) and not act in an arbitrary or capricious manner when dealing with offerors and contractors. Fairness does not mean that offerors and contractors of differing capabilities, past performance, or other relevant factors, must be treated the same.

PART 2—DEFINITIONS OF WORDS AND TERMS

3. Section 2.101 is amended by inserting, in alphabetical order, the definition ''Best value'' to read as follows:

2.101 Definitions

* * * * *

Best value means an offer or quote which is most advantageous to the Government, cost or price and other factors considered.

* * * * *

PART 14—SEALED BIDDING

4. Section 14.404–1 is amended by adding paragraph (f) to read as follows:

14.404–1 Cancellation of invitations after opening.

* * * * *

(f) When the agency head has determined, in accordance with 14.404–1(e)(1), that an invitation for bids should be canceled and that use of negotiation is in the Government's interest, the contracting officer may negotiate and make award without issuing a new solicitation, provided, each responsible bidder in the sealed-bid acquisition has been given notice that negotiations will be conducted and has been given an opportunity to participate in negotiations.

PART 15—CONTRACTING BY NEGOTIATION

5. The Table of Contents for Part 15 is revised to read as follows:

Sec.

Subpart 15.0—General

15.000 Scope of part.
15.001 Definitions.
15.002 Negotiated acquisition.

Subpart 15.1—Source Selection Processes and Techniques

15.100 Scope of subpart.
15.101 Lowest price technically acceptable process.
15.102 Tradeoff process.
15.103 Multiphase acquisition technique.
15.104 Oral presentations.

Subpart 15.2—Solicitation and Receipt of Proposals and Quotations

15.200 Scope of subpart.
15.201 Presolicitation exchanges with industry.
15.202 Requests for proposals.
15.203 Model contract format.
15.203–1 Section I, Cover sheet/supplemental information.
15.203–2 Section II, Acquisition description.
15.203–3 Section III, Financial and administrative information.
15.203–4 Section IV, Contract clauses.
15.203–5 Section V, Performance requirements.
15.203–6 Section VI, Proposal evaluation and submission information.
15.204 Issuing solicitations.
15.205 Amending the solicitation.
15.206 Receipt of proposals and requests for information.
15.207 Submission, modification, revision, and withdrawal of proposals.
15.208 Solicitation provisions and contract clause.
15.209 Forms.

Subpart 15.3—Unsolicited Proposals

15.300 Scope of subpart.
15.301 Definitions.
15.302 Policy.
15.303 General.
15.304 Advance guidance.
15.305 Content of unsolicited proposals.
15.306 Agency procedures.
15.306–1 Receipt and initial review.
15.306–2 Evaluation.
15.307 Contracting methods.
15.308 Prohibitions.
15.309 Limited use of data.

Subpart 15.4—Source Selection

15.400 Scope of subpart.
15.401 Definitions.
15.402 Source selection objective.
15.403 Responsibilities.
15.404 Evaluation factors and subfactors.
15.405 Proposal evaluation.
15.406 Competitive range.
15.407 Communications with offerors.
15.408 Award without discussions.
15.409 Proposal revisions.
15.410 Source selection.

Subpart 15.5—Make-or-Buy Programs

15.500 Scope of subpart.
15.501 Definitions.
15.502 General.
15.503 Acquisitions requiring make-or-buy programs.
15.504 Items and work included.
15.505 Solicitation requirements.
15.506 Evaluation, negotiation, and agreement.
15.507 Incorporating make-or-buy programs in contracts.
15.508 Contract clause.

Subpart 15.6—Price Negotiation

15.600 Scope of subpart.
15.601 Definitions.
15.602 Policy.
15.603 General.
15.604 Cost or pricing data and information other than cost or pricing data.
15.604–1 Prohibition on obtaining cost or pricing data.

15.604–2 Requiring cost or pricing data.
15.604–3 [Reserved]
15.604–4 Certificate of Current Cost or Pricing Data.
15.604–5 Requiring information other than cost or pricing data.
15.604–6 Instructions for submission of cost or pricing data or information other than cost or pricing data.
15.604–7 Defective cost or pricing data.
15.604–8 Contract clauses and solicitation provisions.
15.605 Proposal analysis.
15.605–1 General.
15.605–2 Price analysis.
15.605–2 Cost analysis.
15.605–4 Technical analysis.
15.605–5 Field pricing support.
15.606 Subcontract pricing considerations.
15.606–1 General.
15.606–2 Prospective subcontractor cost or pricing data.
15.606–3 Field pricing reports.
15.607 Prenegotiation objectives.
15.608 Price negotiation memorandum.
15.609 Forward pricing rates agreements.
15.610 Should-cost review.
15.610–1 General.
15.610–2 Program should-cost review.
15.610–3 Overhead should-cost review.
15.611 Estimating systems.
15.612 Unit prices.
15.612–1 General.
15.612–2 Contract clause.
15.613 [Reserved]
15.614 Unbalanced offers.

Subpart 15.7—Profit

15.700 Scope of subpart.
15.701 General.
15.702 Policy.
15.703 Contracting officer responsibilities.
15.704 Solicitation provision and contract clause.
15.705 Profit-analysis factors.
15.705–1 Common factors.
15.705–2 Additional factors.

Subpart 15.8—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

15.801 Definition.
15.802 Applicability.
15.803 Notifications to unsuccessful offerors.
15.804 Award to successful offeror.
15.805 Preaward debriefing of offerors.
15.806 Postaward debriefing of offerors.
15.807 Protests against award.
15.808 Discovery of mistakes.
15.809 Forms.

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

6. Subpart 15.0, is added, consisting of 15.000, which is revised, and 15.001 and 15.002 which are added to read as set forth below. Subpart 15.1 is revised and Subpart 15.2 is added to read as follows:

Subpart 15.0—General

15.000 Scope of part.

This part prescribes policies and procedures governing acquisitions that do not use sealed bid or simplified acquisition procedures, including both competitive and sole source acquisitions.

15.001 Definitions.

As used in this part—

Proposal modification is a change made to a proposal before the solicitation is closing date and time; made in response to an amendment; or made to correct a mistake at any time before award.

Revision is a change to a proposal requested by a contracting officer as the result of discussions.

15.002 Negotiated acquisition.

This part covers negotiated acquisition processes for competitive and sole source acquisitions (see Part 6.303–1).

(a) *Sole source acquisitions.* When contracting in a sole source environment, contracting officers are encouraged to follow the procedures in this part to the maximum practicable extent, consistent with an efficient process. Sole source acquisitions should rely on detailed communications with offerors rather than formal procedures. The RFP should be tailored to remove unnecessary information and requirements (e.g. evaluation criteria, voluminous proposal preparation instructions); however, the Model Contract Format should be used, whenever practicable.

(b) *Competitive acquisitions.* When contracting in a competitive environment, the procedures of this part are intended to minimize the complexity of the solicitation, evaluation, the source selection decision to the greatest practicable extent, while maintaining a process designed to foster an impartial and comprehensive evaluation of offerors' proposals, leading to selection of the offer representing the best value to the Government.

Subpart 15.1—Source Selection Processes and Techniques

15.100 Scope of subpart.

This subpart describes some acquisition processes and techniques which may be used, singly or in combination with others, to design acquisition strategies suitable for the complexity of the Government's requirement and the amount of Government resources available to conduct the source selection. These alternatives should be considered during acquisition planning. The source selection authority (SSA) should select the process most appropriate to the particular acquisition that is expected to result in the best value.

15.101 Lowest price technically acceptable process.

(a) This process permits communications with offerors and requires fewer resources than a tradeoff process (see 15.102).

(b) If the Source Selection Authority elects to use a lowest price technically acceptable process, the following evaluation considerations apply:

(1) The threshold(s) of technical acceptability shall be set forth in the solicitation. The solicitation must specify that award will be made on the basis of lowest evaluated price of proposals meeting or exceeding the threshold(s).

(2) This process does not permit tradeoffs between price and non-cost factors/subfactors. The non-cost evaluation is done on a pass/fail basis.

(3) If discussions are necessary, the Government's concerns shall be discussed with offerors and a revised proposal may be requested as described in 15.409(c).

15.102 Tradeoff process.

(a) A tradeoff acquisition process is more flexible, but also more resource intensive, than a low price technically acceptable acquisition process. This process is appropriate when the SSA believes that the best value may not be the lowest price offer.

(b) If the SSA elects to use a tradeoff process, the following evaluation considerations apply:

(1) All factors and significant subfactors that will affect contract award and their relative importance shall be clearly stated in the solicitation.

(2) The solicitation shall state whether all evaluation factors other than cost or price when combined are significantly more important, approximately equal or significantly less important than cost or price.

(3) This process requires tradeoffs between cost or price and non-cost factors/subfactors and permits the Government to accept other than the lowest priced technically acceptable offer. Specific tradeoffs need not be described in terms of cost or price impacts nor do the tradeoffs need to be quantified in any other manner.

15.103 Multiphase acquisition technique.

(a) *General.* Multiphase source selection may be appropriate when the submission of full proposals at the beginning of a source selection would be burdensome for offerors to prepare and for Government personnel to evaluate. Using multiphase techniques, agencies may seek limited information initially, make one or more down-selects, and request full proposals from a limited number of offerors.

(b) *First phase notice.* In the first phase, the Government shall publish a notice (see 5.205) that provides a general description of the scope or purpose of the acquisition, identifies the criteria that will be used to make the initial down-select decision, and solicits responses. Alternatively, the Government may issue a solicitation that provides a more specific description of the supplies or services to be procured. The notice or solicitation may also inform offerors of the evaluation criteria or process that will be used in subsequent down-select decisions. The notice or solicitation shall contain sufficient information to allow potential offerors to make an informed decision about whether to participate in the acquisition. The notice or solicitation shall advise offerors that failure to participate in the first phase will make them ineligible to participate in subsequent phases.

(c) *First phase responses.* Offerors shall submit the information requested in the notice or solicitation described in paragraph (b) of this section. Information sought in the first phase may be limited to a statement of qualifications and other appropriate information (e.g., proposed technical concept, past performance information, limited pricing information).

(d) *First phase evaluation and down-select.* The Government shall evaluate all offerors' submissions in accordance with the criteria in the notice or solicitation and make either a mandatory or advisory down-select decision.

(1) The Government may make a ''mandatory'' down-select if it identified the criteria or process that will be used to evaluate offers in all phases and requested sufficient information (including cost information) for there to be binding offers. A mandatory down-select allows the Government to prohibit offerors from participating in subsequent phases based on the evaluation criteria set forth in the notice or solicitation.

(2) If the Government did not request sufficient information for there to be binding offers that the Government could accept without further submissions, the Government must make an ''advisory'' down-select. In conducting an advisory down-select, the Government shall—

(i) Request selected offerors provide a proposal for the next phase of the acquisition;

(ii) Inform offerors not selected that, based on the offeror's initial submission, they are unlikely to receive an award and provide them supporting rationale. Such offerors may, at their option, submit a proposal for the second phase which the Government must evaluate; and

(iii) Debrief offerors as required by 15.805 and 15.806 only when they have been formally excluded from the competition. Advisory down-selects do not constitute such exclusion.

(e) *Subsequent phases.* Additional information shall be sought in the second phase so that a mandatory down-select or competitive range determination can be performed or an award made without discussions. If the criteria to be used in making decisions in the second phase were not stated in the original notice or the solicitation, they shall be identified to all remaining offerors at the start of this phase. If desired, the Government may conduct additional phases.

15.104 Oral presentations.

(a) Except for certifications, representations, and a signed offer sheet (including any exceptions to the Government's terms and conditions), the SSA may require offerors to submit all, or part of, their proposals through oral presentations. Oral presentations may occur either before or after a competitive range (if any) is established. Generally, oral presentations are most beneficial when they substitute for, rather than augment, written information.

(b)(1) In deciding which information to obtain through an oral presentation, consider the following:

(i) Whether the information can be reasonably and adequately presented to permit evaluation by the Government.

(ii) Whether there is a need to incorporate any of the information into the resultant contract, and if so, the ease of incorporation; and

(iii) The impact oral presentations will have on the efficiency of the competition.

(2) Information pertaining to such areas as an offeror's capability, work plans or approaches, staffing resources, transition plans, sample tasks or other tests may be suitable for oral presentations.

(c) Where oral presentations are required, the solicitation shall provide offerors with sufficient information to prepare them. Accordingly, the solicitation may describe—

(1) The scope of the presentations, including the types of information to be presented orally and the associated evaluation criteria that will be used;

(2) The personnel that will be required to provide the oral presentation(s);

(3) The requirements for, any limitations and/or prohibitions on, the use of written material or other media to supplement the oral presentations;

(4) The impact oral presentations will have on the small businesses;

(5) The location at which the oral presentations will be made;

(6) The restrictions governing the time permitted for each oral presentation; and

(7) The extent of communication that may occur between the Government's participants and the offeror's representatives as part of the oral presentations (e.g. will communications encompass discussions).

Subpart 15.2—Solicitation and Receipt of Proposals and Information

15.200 Scope of subpart.

This subpart prescribes policies and procedures for—

(a) Preparing and issuing requests for proposals (RFP's) and requests for information (RFI's); and

(b) Receiving proposals and information.

15.201 Presolicitation exchanges with industry.

(a) Exchange of information by all interested parties involved in an acquisition from the earliest identification of a requirement through release of the solicitation is encouraged. Interested parties include potential offerors, end users, Government acquisition and supporting personnel and others involved in the conduct or outcome of the acquisition.

(b) The purpose of exchanging information is to improve the understanding of Government requirements, thereby enhancing the Government's ability to obtain quality products and services at reasonable prices, and increase the efficiency in proposal preparation, proposal evaluation, negotiation and contract award.

(c) Agencies are encouraged to promote early exchange of information about future acquisitions. An early exchange of information can efficiently and effectively identify and resolve concerns regarding the acquisition strategy, including proposed contract type, terms and conditions and acquisition planning schedules; the feasibility of the requirement, including performance requirements, statements of work and data requirements; the suitability of the proposal instructions and evaluation criteria; the availability of reference documents and information exchange approaches; and any other industry concerns or questions. Techniques to promote early exchange of information include—

(1) Industry or small business conferences;

(2) Public hearings;

(3) Market research, as described in FAR Part 10;

(4) One on one meetings with potential offerors (see paragraph (f));

(5) Presolicitation notices;

(6) Draft RFPs;

(7) Requests for information (RFIs);

(8) Presolicitation or preproposal conferences; and

(9) Site visits.

(d) The special notices of procurement matters at 5.205(c) or electronic notices may be used to publicize the Government's requirement or solicit information from industry.

(e) *Requests for Information (RFIs).* This method may be used when the Government does not intend to award a contract on the basis of the solicitation but needs to obtain price, delivery, other market information, or capabilities for planning purposes. Responses to these notices are not offers and cannot be accepted by the Government to form a binding contract.

(f) Government personnel may disclose general information about agency mission needs and future requirements. If Government personnel disclose specific information about a proposed acquisition which is necessary for the preparation of proposals, that information shall be made available to the public as soon as possible, but no later than the next release of information in order to avoid creating an unfair competitive advantage. When a presolicitation or preproposal conference is conducted, distributed materials should be made available to potential offerors, upon their requests.

15.202 Requests for Proposals.

(a) Requests for proposals (RFPs) are used in negotiated acquisitions to communicate Government requirements to prospective contractors and to solicit proposals. RFPs shall only be used when there is a definite intention to award a contract, and therefore, shall not be used as a solicitation for information or planning purposes. RFPs shall, at a minimum, describe the—

(1) Government's requirement;

(2) Anticipated terms and conditions that will apply to the contract;

(i) Contracting officers may allow offerors to propose alternative terms and conditions, including a contract line item number (CLIN) structure that is different from the model in the solicitation.

(ii) Since CLIN structure is often dictated by considerations such as place of performance, or payment and funding requirements, the potential impact of a changed CLIN structure shall be determined before accepting any proposed alternative.

(3) Information requirements of the offeror's proposal;

(4) Factors and significant subfactors that will be used to evaluate the proposal.

(b) An RFP may be issued for OMB Circular A–76 studies. See Subpart 7.3 for additional information regarding cost comparisons between Government and contractor performance.

(c) In accordance with Subpart 4.5, contracting officers may authorize use of electronic commerce for RFPs and receipt of proposals. If electronic proposals are authorized, the RFP shall specify the electronic commerce method(s) that offerors may use.

(d) Contracting officers may issue RFPs or receive proposals by facsimile.

(1) In determining whether or not to use these methods, the contracting officer shall consider such factors as—

(i) Anticipated proposal size and volume;

(ii) Urgency of the requirement;

(iii) Availability and suitability of electronic commerce methods; and

(iv) Adequacy of administrative procedures and controls for receiving, identifying, recording, and safeguarding facsimile proposals, and ensuring their timely delivery to the designated proposal delivery location.

(2) If facsimile proposals are authorized, contracting officers may request offeror(s) to provide the complete, original signed proposal at a later date.

(e) Letter RFPs may be used, when appropriate (e.g., a sole source follow-on procurement). Use of a letter RFP does not relieve the contracting officer from complying with other requirements of this regulation. Letter RFPs should be as clear and concise as possible and, as a minimum, contain the following:

(1) RFP number and date;

(2) Name, address, and telephone number of contracting office;

(3) Type of contract contemplated;

(4) Quantity, description, and required delivery dates for the item;

(5) Applicable certifications and representations;

(6) Contract terms and conditions (reference to prior contract or updates should be provided, as applicable);

(7) Instructions to offerors and evaluation criteria (for other than sole-source actions);

(8) Offer due date; and

(9) Other relevant information; e.g., incentives, variations in delivery schedule, any peculiar or different requirements, cost proposal support, and different data requirements.

(f) Oral RFPs are authorized when processing a written solicitation would delay the acquisition of supplies or services to the detriment of the Government (e. g., perishable items and support of contingency operations or other emergency situations).

(1) Use of an oral solicitation does not relieve the contracting officer from complying with other requirements of this regulation.

(2) The contract files supporting oral solicitations shall include—

(i) A justification for use of an oral solicitation;

(ii) Sources solicited, including the date, time, name of individuals contacted, and prices offered; and

(iii) The solicitation number provided to the prospective contractors.

(3) The information furnished to potential offerors under oral solicitations should include that set forth in paragraph (e), to the maximum extent practicable.

15.203 Model contract format.

(a) Contracting Officers should prepare solicitations and contracts using the model contract format (MCF) outlined in Table 15–1 to the maximum extent practicable. The use of the MCF facilitates preparation of the solicitation and contract as well as reference to, and use of, those documents by offerors, contractors, and contract administrators. The MCF need not apply to the following acquisitions:

(1) Construction and Architect-engineer contracts (see FAR Part 36).

(2) Subsistence items.

(3) Supplies or services requiring special contract formats prescribed elsewhere in this regulation that are inconsistent with the MCF.

(4) Letter Request for Proposals (see 15.203(e)).

(5) Contracts exempted by the agency head or designee.

TABLE 15–1A—MODEL CONTRACT FORMAT

Section	Title
I	Cover sheet/supplemental information.
II	Acquisition description.
III	Financial and administrative information.
IV	Contract clauses.
V	Performance requirements.
VI	Proposal evaluation and submission information.

§ 15.203–1 Section I, Cover sheet/supplemental information.

The solicitation cover sheet summarizes essential details about the solicitation. The cover sheet is the first

page of the solicitation. The cover sheet shall include, as a minimum, the following information:

(a) Brief description of the acquisition.

(b) Whether or not the acquisition is restricted to small business.

(c) Name, address and location of issuing activity, including room and building where proposals must be submitted.

(d) Solicitation number.

(e) Date of issuance.

(f) Closing date and time.

(g) Number of pages.

(h) A Government point of contact and telephone number.

(i) Government designated period for acceptance of offers (in days).

§ 15.203–2 Section II, Acquisition Description.

This section includes a summary description of the supplies and/or services, and anticipated contract type, e.g., quantities, prices, item number, national stock number/part number, title or name identifying the supplies or services, and options.

§ 815.203–3 Section III, Financial and Administrative Information.

This section includes any required accounting and appropriation data and information affecting payment and contract administration, e.g., the small business subcontracting plan, tailored instructions and/or special tailored requirements for property management, packaging, packing, preservation, marking, inspection, acceptance, or quality assurance.

15.203–4 Section IV, Contract Clauses.

This section includes all contract clauses not tailored specifically for the acquisition that are incorporated by reference (i.e., all standard clauses incorporated by reference, including those with minimal fill-ins) or are not tailored but are required to be inserted in full text. The text of clauses incorporated by reference shall be available through the Internet or from the contracting officer. If the contracting officer elects to include a clause in full text, the clause shall be treated as if it were tailored (e.g., placed in the financial and administrative information section). The restrictions in 52.104 on use of standard clauses still apply.

15.203–5 Section V, Performance Requirements.

This section includes more detailed information as to what and when the contractor is to deliver, e.g., the statement of work or its equivalent, process requirements, data requirements or special requirements for time and place of delivery.

15.203–6 Section VI, Proposal Evaluation and Submission Information.

(a) This section includes information on how the Government will evaluate the proposal and what the proposal must include, e.g., representations and certifications, instructions to offerors, and evaluation criteria.

(b) Upon award, the contracting officer shall not include section VI in any resultant contract but shall retain it in the contract file.

15.204 Issuing solicitations.

(a) The contracting officer shall furnish copies of unclassified solicitations to any party upon request.

(b) A master solicitation (see 14.203–3) may be used for negotiated acquisitions.

15.205 Amending the solicitation.

(a) When, either before or after receipt of proposals, the Government changes, relaxes, increases, or otherwise modifies its requirements, the contracting officer shall issue an amendment to the solicitation.

(b) Amendments issued before the established time and date for receipt of proposals shall be issued to all parties receiving the solicitation, and should be issued in the same manner as the solicitation.

(c) Amendments issued after the established time and date for receipt of proposal should be issued—

(1) To all offerors still eligible for award; and

(2) In the same manner as the solicitation.

(d) Oral notices may be used when time is of the essence. The contracting officer shall document the contract file and formalize the notice with an amendment.

(e) If a change is so substantial that it warrants a complete revision of a solicitation, the contracting officer shall cancel the original solicitation and issue a new one, regardless of the stage of the acquisition.

(f) If the proposal considered to be most advantageous to the Government (determined according to the established evaluation criteria) involves a departure from the stated requirements, the contracting officer shall provide all offerors an opportunity to submit new or amended proposals on the basis of the revised requirements; *provided,* that this can be done without revealing to the other offerors the solution proposed in the original departure or any other information that is entitled to protection (see 15.206(b) and 15.409(d)).

(g) At a minimum, the following information should be included at the beginning of each amendment:

(1) Name and address of issuing activity.

(2) Solicitation number and date.

(3) Amendment number and date.

(4) Number of pages.

(5) Short description of the change being made.

(6) Government point of contact and phone number.

(7) Revision to solicitation closing date, if applicable.

15.206 Receipt of proposals and requests for information.

(a) Upon receipt at the location specified in the solicitation, proposals and information received in response to an RFI shall be marked with the date and time of receipt and be transmitted to the appropriate source selection officials.

(b) Proposals shall be safeguarded from unauthorized disclosure throughout the source selection process. See 3.104 for statutory requirements and regulations related to the disclosure of proposal information and source selection information (41 U.S.C. 423(d)). Information received in response to an RFI shall also be safeguarded from unauthorized disclosure.

(c) If a proposal received by the contracting officer in electronic format is unreadable to the degree that conformance to the essential requirements of the solicitation cannot be ascertained from the document, the contracting officer immediately shall notify the offeror and request retransmission of the proposal or, at the contracting officer's discretion, resubmittal of the proposal in another format. If the retransmitted proposal is still unreadable, it may be rejected.

15.207 Submission, modification, revision, and withdrawal of proposals.

(a) Offerors are responsible for timely submission of proposals, and any requested revisions or modifications to them, to the Government office designated in the solicitation. Unless the solicitation states another specific time, the time for receipt is 4:30 p.m., local time, at the designated Government office on the date that proposals, requested revisions or modifications are due.

(b) Proposals, modifications, and revisions received in the designated Government office after the exact time specified are ''late'' but may be considered if doing so is in the best interests of the Government. Government mishandling or fault need not be established in order to accept a

late offer. The contracting officer shall promptly notify any offeror if its proposal, modification, or revision was received late and whether or not it will be considered, unless contract award is imminent and the notice prescribed in 15.803(b) would suffice.

(c) Offerors may not revise proposals unless requested by the contracting officer.

(d) Proposals may be withdrawn at any time before award. Written proposals are withdrawn upon receipt by the contracting officer of a written notice of withdrawal. Oral offers in response to oral solicitations are withdrawn by the offeror's statement of withdrawal made to the contracting officer, who then shall document the contract file. Withdrawn proposals will be destroyed or returned to the offeror at the offeror's request and expense.

15.208 Solicitation provisions and contract clause.

When contracting by negotiation—

(a) The contracting officer shall insert the provision at 52.215–1, Instructions to Offerors—Competitive Acquisition, in all competitive solicitations where the Government intends to award a contract without discussions:

(1) If the Government intends to make award after discussions with offerors within the competitive range, use the basic provision with its Alternate I; and

(2) If the Government wishes to reserve the right for purposes of efficiency to limit the competitive range to no more than a specific number, use the basic provision with its Alternate II, or the basic provision with both Alternates I and II.

(b) The contracting officer shall insert the clause at 52.215–2, Audit and Records—Negotiation, in solicitations and contracts except—

(1) Acquisitions not exceeding the simplified acquisition threshold in Part 13;

(2) Acquisitions for utility services at rates not exceeding those established to apply uniformly to the general public, plus any applicable reasonable connection charge (10 U.S.C. 2313, 41 U.S.C. 254d, and OMB Circular No. A–133); or

(3) Facilities acquisitions, where the contracting officer shall use the clause with its Alternate I;

(4) Cost-reimbursement contracts with educational institutions and other nonprofit organizations, the contracting officer shall use the clause with its Alternate II; or

(5) When the examination of records by the Comptroller General is waived in accordance with 25.901, the contracting officer shall use the clause with its Alternate III.

(c) When issuing a solicitation for information or planning purposes, the contracting officer shall insert the provision at 52.215–3, Solicitation for Information or Planning Purposes, and clearly mark on the face of the solicitation that it is for information or planning purposes.

(d) The contracting officer shall insert the provision at 52.215–4, Type of Business Organization, in all solicitations.

(e) The contracting officer shall insert the provision at 52.215–5, Facsimile Proposals, in solicitations if facsimile proposals are authorized (see 15.203(d)).

(f) The contracting officer shall insert the provision at 52.215–6, Place of Performance, in solicitations except those in which the place of performance is specified by the Government.

(g) The contracting officer shall insert the provision at 52.215–7, Annual Representations and Certifications—Negotiation, in solicitations if annual representations and certifications are utilized (see 14.213).

(h) The contracting officer shall insert the clause at 52.215–8, Order of Precedence, in all solicitations and contracts.

15.209 Forms.

Forms are not needed to prepare solicitations described in this subpart. The following forms may be used at the discretion of the contracting officer:

(a) Optional Form XX, Solicitation and Offer—Negotiated Acquisition, may be used to issue RFPs and RFQs.

(b) Optional Form XY, Amendment of Solicitation, may be used to amend solicitations of negotiated contracts.

(c) Standard Forms 30 and 33 may be used, if appropriately modified (e.g., substitute the MCF for the Uniform Contract Format Table of Contents). If so modified, the contracting officer shall remove the form designation (i.e., standard form number).

(d) To promote identification and proper handling of proposals, Optional Form 17, Offer Label, may be furnished with each request for proposals. The form may be obtained from the General Services Administration (see 53.107).

Subpart 15.3—[Redesignated as Subpart 15.3]

7. Subpart 15.5 is redesignated as Subpart 15.3

8. Subpart 15.4 is revised to read as follows:

Subpart 15.4—Source Selection

15.400 Scope of subpart.

This subpart prescribes policies and procedures for selection of a source or sources in competitive negotiated acquisitions.

15.401 Definitions.

Deficiency, as used in this subpart is a single material failure to meet a Government requirement or a single flaw that appreciably increases the risk of unsuccessful contract performance.

Discussion, as used in this subpart, means communication after establishment of the competitive range between the contracting officer and an offeror in the competitive range.

15.402 Source selection objective.

The objective of source selection is to select the offer which represents the best value. Typically, the best value would be achieved through—

(a) A tradeoff process used to select the most advantageous offer by evaluating and comparing factors in addition to cost or price. A best value decision in these acquisitions reflects the Government's willingness to accept other than the lowest priced acceptable offer if the perceived benefits of the higher priced offer merit the additional cost; or

(b) A lowest price technically acceptable process is used where it has been determined that the Government's interests are best served by selection of the lowest price offer that is evaluated (on a pass/fail basis) as technically acceptable used to select the most advantageous offer where proposals are evaluated on a pass/fail basis, and award is made to the lowest cost (price) technically acceptable offeror. Proposals need not be ranked under this process nor are communications precluded.

§ 15.403 Responsibilities.

(a) Agency heads are responsible for source selection. The contracting officer is designated as the source selection authority, unless the agency head appoints another individual for a particular procurement or class of procurements.

(b) The source selection authority shall—

(1) Establish an evaluation team, tailored for the particular procurement, that includes an appropriate mix of contracting, legal, logistics, technical, and other expertise to assure a comprehensive evaluation of offers;

(2) Approve the source selection plan before solicitation release, if agency procedures require a plan;

(3) Ensure consistency among the solicitation requirements, notices to offerors, proposal preparation instructions, evaluation factors and subfactors, solicitation provisions or contract clauses, and data requirements;

(4) Ensure that proposals are evaluated based solely on the factors and subfactors contained in the solicitation (10 U.S.C. 2305(b)(1) and 41 U.S.C. 253b(d)(2));

(5) Consider the recommendations of advisory boards or panels (if any); and

(6) Select the source or sources whose proposal is the best value to the Government (10 U.S.C. 2305(b)(4)(B) and 41 U.S.C. 253b(d)(2));

(c) The contracting officer shall—

(1) After release of a solicitation, serve as the focal point for inquiries from actual or prospective offerors;

(2) After receipt of proposals, control and conduct communications with offerors in accordance with 15.409; and

(3) Award the contract(s).

15.404 Evaluation factors and subfactors.

(a) The criteria upon which the award decision is based consist of evaluation factors and subfactors. The selected factors and subfactors shall be tailored to the acquisition.

(b) Use factors and subfactors that—

(1) Represent the key areas of importance and emphasis to be considered in the source selection decision, and

(2) Support meaningful discrimination and comparison between and among competing proposals.

(c) If a multiphase solicitation technique will be used, the factors and subfactors (if any) that apply to the initial phase shall be set forth in the notice or solicitation.

(d) The evaluation factors and significant subfactors that apply to an acquisition and their relative importance, are within the broad discretion of agency acquisition officials, subject to the following requirements:

(1) Price or cost to the Government shall be evaluated in every source selection (10 U.S.C. 2305(a)(3)(A)(ii) and 41 U.S.C. 253a(c)(1)(B)).

(2) The quality of the product or service shall be addressed in every source selection through consideration of one or more non-cost evaluation factors such as past performance, compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience (10 U.S.C. 2305(a)(3)(A)(i) and 41 U.S.C. 253a(c)(1)(B).

(3)(i) Except as set forth in paragraph (ii) of this paragraph, past performance shall be evaluated in all source selections for competitive acquisitions issued on or after—

(A) July 1, 1995, for acquisition expected to exceed $1,000,000;

(B) July 1, 1997, for acquisitions expected to exceed $500,000; or

(C) January 1, 1999, for acquisitions expected to exceed $100,000.

(ii) Past performance need not be evaluated if the contracting officer documents the reason past performance is not an appropriate evaluation factor for the acquisition (OFPP Policy Letter 92–5).

(e) All factors and significant subfactors that will affect contract award and their relative importance shall be clearly stated in the solicitation (10 U.S.C. 2305(a)(2)(A)(i) and 41 U.S.C. 253a(b)(1)(A)) (see 15.205–5(c)). The rating method need not be disclosed in the solicitation.

(f) The solicitation shall also state, at a minimum, whether all evaluation factors other than cost or price, when combined, are—

(1) Significantly more important than cost or price;

(2) Approximately equal to cost or price; or

(3) Significantly less important than cost or price. (10 U.S.C. 2305(a)(3)(A)(iii) and 41 U.S.C. 253a(c)(1)(C)).

15.405 Proposal evaluation.

(a) Proposal evaluation is an assessment of both the proposal and the offeror's ability to accomplish the prospective contract successfully. An agency shall evaluate competitive proposals solely on the factors (including any subfactors) specified in the solicitation. In evaluation of competitive proposals against the evaluation factors specified in the solicitation, an agency should compare their relative qualities. Agencies may use any method or combination of methods to evaluate proposals, including color/adjectival ratings, numerical weights, and ordinal rankings. If preaward testing or product demonstration is required, it need not be accomplished in accordance with a formal test plan, provided all offerors are evaluated against the same criteria. The evaluation method used by the agency need not be disclosed in the solicitation.

(1) *Cost or price evaluation.* Normally, competition establishes price reasonableness. Therefore, when contracting on a firm fixed price or fixed price with economic price adjustment basis, comparison of the proposed prices will usually satisfy the requirement to perform a price analysis; do not perform a cost analysis unless the price of the otherwise successful offeror is determined to be unreasonable (see 15.604–1(b)(1)(i)(B)). When contracting on other than a firm fixed price or fixed price with economic price adjustment basis, the evaluations should include a cost realism analysis to determine what the Government should realistically expect to pay for the proposed effort, the offeror's understanding of the work and ability to perform the contract. The contracting officer shall document the cost or price evaluation.

(2) *Past performance evaluation.* (i) Past performance information is one indicator of an offeror's ability to perform the contract successfully. The age and relevance of the information, source of the information, subjectivity of the data and general trends in contractor's performance should be considered. This assessment of past performance information is separate from the responsibility determination required under Subpart 9.1.

(ii) The solicitation shall provide offerors an opportunity to identify past contracts (including Federal, State, and local Governments and private) for efforts similar to the Government requirement. At the discretion of the contracting officer, the solicitation may also request offerors to provide information on problems encountered on the identified contracts and the offeror's corrective actions. The Government may use this information as well as information obtained from any other sources to evaluate the offeror's past performance.

(iii) Firms lacking relevant past performance history shall receive a neutral evaluation for past performance. A neutral evaluation means any assessment that neither rewards nor penalizes firms without relevant performance history.

(3) *Technical evaluation.* If a technical evaluation is necessary beyond ensuring that the proposal meets the minimum requirements in the solicitation, the source selection records shall include—

(i) An assessment of each offeror's ability to accomplish the technical requirements; and

(ii) A summary, matrix, or quantitative ranking of each technical proposal against the evaluation criteria.

(4) Cost information may be provided to members of the technical evaluation team if the source selection authority concurs.

(b) All proposals received in response to a solicitation may be rejected if the source selection authority determines that doing so is in the best interests of the Government.

15.406 Competitive range.

(a) The contracting officer shall establish a competitive range for the purpose of conducting written or oral discussion (see 15.409(c)). The

competitive range shall include proposals having the greatest likelihood of award based on the factors and subfactors in the solicitation.

(b) In planning an acquisition, the contracting officer may determine that the number of proposals that would otherwise be included in the competitive range is expected to exceed the number at which an efficient competition can be conducted. In reaching such a conclusion, the contracting officer may consider such factors as the results of market research, historical data from previous acquisitions for similar supplies and services, and the resources available to conduct the source selection. Alternate II of 52.215–1, Information to Offerors—Competitive Acquisition, may be used to indicate the Government's estimate of the greatest number or proposals that will be included in the competitive range for purposes of conducting an efficient competition among the most highly rated proposals.

(c) After evaluating offers, the contracting officer may determine that the number of proposals that would otherwise be included in the competitive range exceeds the number at which an efficient competition can be conducted. Provided the solicitation notifies offerors that the competitive range can be limited for purposes of efficiency, the contracting officer may limit the number or proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. The solicitation provision at 52.215–1, Instruction to Offerors-Competitive Acquisition, reserves the contracting officer's right to limit the competitive range for purposes of efficiency.

(d) If the contracting officer determines that an offeror's proposal is no longer in the competitive range the proposal shall no longer be considered for award. Written notice of this decision shall be provided to unsuccessful offerors at the earliest practicable time (see 15.803(a)(1)).

(e) Offerors excluded from the competitive range may request a debriefing. When a debriefing is requested, see 15.805.

15.407 Communications with offerors.

(a) Competition on other than price alone and the source selection process necessarily involve communications between the Government and competing offerors. Open communications support the goal of efficiency in Government procurement (10 U.S.C. 2304(j) and 41 U.S.C. 253(h)) by providing the Government with relevant information (in addition to that submitted in the offeror's initial proposal) needed to understand and evaluate the offeror's proposal. The nature and extent of communications between the Government and offerors is a matter of contracting officer judgment.

(b) *Communication with offerors prior to establishment of the competitive range.* Communication with offerors after receipt of proposals, but prior to establishment of the competitive range (or award, if award is to be made without discussions), is encouraged to obtain information to facilitate the Government's decision either to award without discussions or determine the competitive range. Information received during this phase of communications may provide context to the proposal in that it allows the Government to understand the offeror's intent. Consequently, it may be used in proposal evaluation. Communications conducted pursuant to this paragraph—

(1) Are not ''discussions'' (see 15.409(c));

(2) Do not permit changes in an offeror's proposal other than correction of mistakes;

(3) Are conducted to obtain information that explains or resolves ambiguities or other concerns (e.g., perceived errors, perceived omissions, or perceived deficiencies) in the offeror's proposal. However, a willingness by the offeror to correct any perceived errors, perceived omissions, perceived deficiencies, or other concerns does not require that the offeror be placed in the competitive range;

(4) Shall only be initiated if authorized by the contracting officer; and

(5) Need not be conducted with all offerors. For example, when trying to determine the competitive range, the Government could limit communications to those offerors, whose proposals, on initial evaluation, would be neither clearly ''in'' nor clearly ''out'' of the competitive range. Similarly, when trying to decide whether or not to award without discussions, the Government could limit communications to the offeror(s), based on initial evaluation, deemed to have the greatest likelihood of award.

(c) *Communication with offerors after establishment of the competitive range.* Communication with offerors determined to be in the competitive range is accomplished through written and/or oral discussions (see 15.401). If a competitive range is established, the Contracting Officer shall conduct discussions at least once with all offerors in the competitive range (but see 15.410). All evaluated deficiencies in an offeror's proposal, except those relating to past performance on which the offeror has already had an opportunity to comment, and any other issues which, in the judgment of the contracting officer, should be brought to the offeror's attention shall be disclosed during the conduct of discussions. While the Government may rely upon agreements made during discussions for the purposes of proposal evaluations, such agreements shall be confirmed by proposal revision(s) before contract award (see 15.411).

(d) *Improper discussions and communications.* The contracting officer and other Government personnel involved in the procurement shall not engage in—

(1) Favoring one offeror over another by coaching, prompting, suggesting, or recommending ways in which an offeror must change its proposal to bring it up to the level of other proposals;

(2) Revealing an offeror's technical solution to another offeror;

(3) Advising an offeror of another offeror's price without that other offeror's permission. However, the contracting officer may inform an offeror that its price is considered by the Government to be too high or unrealistic, and the results of the analysis supporting that conclusion. It is also permissible to indicate to all offerors the cost or price that the Government's price analysis, market research, and other reviews have identified as reasonable (41 U.S.C. 423(h)(1)(2));

(4) Revealing the names of individuals providing reference information about an offeror's past performance; or

(5) Knowingly furnishing source selection information or information about other offerors' proposals without permission of the source (see 3.104–4(j) and (k) and 41 U.S.C. 423(h)(1)(2)).

15.408 Award without discussions.

Award may be made without discussions if the solicitation states that the Government intends to evaluate proposals and make award without discussions, unless the contracting officer determines that discussions are considered necessary. However, if the solicitation contains such a notice and the Government later conducts discussions, the rationale for doing so shall be documented in the contract file (see 52.215–16 Alt III) (10 U.S.C. 2305(b)(4)(A)(ii) and 41 U.S.C. 253b(d)(1)(B)). The Contracting Officer may permit minor clarifications to allow proposal modifications that resolve ambiguities, or correct apparent mistakes.

15.409 Proposal revisions.

(a) The contracting officer may request proposal revisions as often as needed during discussions. Proposal revisions shall be submitted in writing. The contracting officer may establish a common cut off date for receipt of proposal revisions.

(b) If an offeror in the competitive range is no longer considered to be among those most likely to receive award after discussions have begun, the offeror may be eliminated from the competitive range without being afforded an opportunity to submit a proposal revision.

(c) Requesting and/or receiving proposal revisions does not necessarily conclude discussions. However, requests for proposal revisions should advise offerors that the Government may make award without obtaining further revisions.

15.410 Source selection.

An integrated comparative assessment of proposals shall be performed before source selection is made. The source selection authority shall independently determine which proposal(s) represents the best value, consistent with the factors and subfactors in the solicitation. The source selection authority may determine that all proposals should be rejected if it is in the best interests of the Government (see 15.407(b)).

(a) The source selection team, or advisory boards or panels, may conduct the comparative analysis(es) and make award recommendations, if the source selection authority requests such assistance.

(b) The basis for the source selection decision shall be documented and shall reflect the rationale for any tradeoffs among factors, subfactors, and business judgments. The perceived benefits to be received for any total additional cost should be specified. Specific tradeoffs need not be described in terms of cost/price impacts nor do the tradeoffs need to be quantified in any other manner.

Subpart 15.7—[Subpart 15.7 Redesignated as Subpart 15.5]

9. Subpart 15.7 is redesignated as new Subpart 15–5.

Subpart 15.6—[Removed]

Subpart 15.8—[Redesignated as Subpart 15.6]

10. Subpart 15.6 is removed and Subpart 15.8 is redesignated as new Subpart 15.6.

Subpart 15.9—[Redesignated as Subpart 15.7]

11. Subpart 15.9 is redesignated as new Subpart 15.7 .

12. Subpart 15.10 is redesignated as Subpart 15.8 and revised to read as follows:

Subpart 15.8—Preaward, Award, and Postaward Notifications, Protests, and Mistakes

15.801 Definition.

Day, as used in this subpart, means calendar day, except that the period will run until a day which is not a Saturday, Sunday, or legal holiday.

15.802 Applicability.

This subpart applies to the use of competitive proposals, as described in 6.102(b), and a combination of competitive procedures, as described in 6.102(c). To the extent practicable, however, the procedures and intent of this subpart, with reasonable modification, should be followed for sole source acquisitions and acquisitions described in 6.102(d): broad agency announcements, small business innovation research contracts, and architect-engineer contracts. However, they do not apply to multiple award schedules, as described in 6.102(d)(3).

15.803 Notifications to unsuccessful offerors.

(a) *Preaward notices*—(1) *Preaward notices of exclusion from competitive range.* The contracting officer shall notify offerors promptly when their proposals are excluded from the competitive range or otherwise excluded from competition. The notice shall state the basis for the determination and that a proposal revision will not be considered.

(2) *Preaward notices for small business set-asides.* In a small business set-aside (see Subpart 19.5), upon completion of negotiations and determinations of responsibility, but prior to award, the contracting officer shall notify each offeror in writing of the name and location of the apparent successful offeror. The notice shall also state that (i) the Government will not consider subsequent revisions of the offeror's proposal and (ii) no response is required unless a basis exists to challenge the small business size status of the apparently successful offeror. The notice is not required when the contracting officer determines in writing that the urgency of the requirement necessitates award without delay.

(b) *Postaward notices.* (1) Within three days after the date of contract award, the contracting officer shall provide written notification to each offeror whose proposal was in the competitive range but was not selected for (10 U.S.C. 2305(b)(5) and 41 U.S.C. 253b(c)). The notice shall include-

(i) The number of offerors solicited;

(ii) The number of proposals received;

(iii) The name and address of each offeror receiving an award;

(iv) The items, quantities, and unit prices of each award (if the number of items or other factors makes listing unit prices impracticable, only the total contract price need be furnished); and

(v) In general terms, the reason(s) the offeror's proposal was not accepted, unless the price information in paragraph (b)(1)(iv) of this section readily reveals the reason. In no event shall an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

(2) Upon request, the contracting officer shall furnish the information described in paragraphs (b)(1) (i) through (v) of this section to unsuccessful offerors in solicitations using simplified acquisition procedures in FAR Part 13.

(3) Upon request, the contracting officer shall provide the information in paragraphs (b)(1) (i) through (v) of this section to unsuccessful offerors who received a preaward notice of exclusion from the competitive range.

15.804 Award to successful offeror.

The contracting officer shall award a contract to the successful offeror by furnishing the contract or other notice of the award to that offeror.

(a) If award is made without discussions, the contracting officer may award a contract without obtaining the offeror's signature a second time. The offeror's signature on the offer constitutes the offeror's agreement to be bound by the offer.

(b) If the award document includes information that is different than the latest signed offer, both the offeror and the contracting officer shall sign the contract award.

(c) When an award is made to an offeror for less than all of the items that may be awarded and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the offer acceptance period.

(d) If the Optional Form YY (OF YY), Contract Award, is not used to award the contract, the first page of the award document shall contain the

Government's acceptance statement from block 15A of that form and the contracting officer's signature. In addition, if the award document includes information that is different than the latest signed offer, the first page shall include the contractor's agreement statement from block 14A of OF YY and the signature of the contractor's authorized representative.

15.805 Preaward debriefing of offerors.

Offerors excluded from the competitive range or otherwise excluded from the competition before award may request a debriefing before award (10 U.S.C. 2305(b)(6)(A) and 41 U.S.C. 253b (f)–(h)).

(a) The offeror may request a preaward debriefing by submitting a written request for debriefing to the contracting officer within three days after the receipt of notice of exclusion from the competition. If the offeror does not submit a timely request, the offeror need not be given either a preaward or a postaward debriefing. Offerors are entitled to no more than one debriefing for each proposal.

(b) The contracting officer should provide a debriefing to the offeror as soon as practicable. If providing a preaward debriefing is not in the best interest of the Government at the time it is requested, the contracting officer may delay the debriefing, but shall provide the debriefing no later than the time postaward debriefings are provided under 15.806. In that event, the contracting officer shall include the information at 15.806(d) in the debriefing.

(c) Debriefings may be done orally, in writing, or by any other method acceptable to the contracting officer.

(d) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.

(e) At a minimum, preaward debriefings shall include—

(1) The agency's evaluation of significant elements in the offeror's proposal;

(2) A summary of the rationale for eliminating the offeror from the competition; and

(3) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed in the process of eliminating the offeror from the competition.

(f) Preaward debriefings shall not disclose—

(1) The number of offerors;

(2) The identity of other offerors;

(3) The content of other offeror's proposals;

(4) The ranking of other offerors;

(5) The evaluation of other offerors; or

(6) Any of the information prohibited in 15.806(e)

(g) The contracting officer shall include an official summary of the debriefing in the contract file.

15.806 Postaward debriefing of offerors.

(a) An offeror, upon its written request received by the agency within three days after the date on which that offeror has received notice of contract award, shall be debriefed and furnished the basis for the selection decision and contract award. An offeror who was notified of exclusion from the competition (15.805(a)), but failed to submit a timely request, is not entitled to a debriefing. When practicable, debriefing requests received more than three days after the offeror receives notice of contract award may be accommodated. However, accommodating untimely debriefing requests does not extend the time within which suspension of performance can be required, because this accommodation is not a ''required debriefing'' as described in FAR Part 33. To the maximum extent practicable, the debriefing should occur within five days after receipt of the written request.

(b) Debriefings of successful and unsuccessful offerors may be done orally, in writing, or by any other method acceptable to the contracting officer.

(c) The contracting officer should normally chair any debriefing session held. Individuals who conducted the evaluations shall provide support.

(d) At a minimum, the debriefing information shall include—

(1) The Government's evaluation of the significant weaknesses or deficiencies in the offeror's proposal, if applicable;

(2) The overall evaluated cost or price and technical rating, if applicable, of the successful offeror and the debriefed offeror (including unit prices);

(3) The overall ranking of all offerors when any ranking was developed by the agency during the source selection;

(4) A summary of the rationale for award;

(5) For acquisitions of commercial end items, the make and model of the item to be delivered by the successful offeror; and

(6) Reasonable responses to relevant questions about whether source selection procedures contained in the solicitation, applicable regulations, and other applicable authorities were followed.

(e) The debriefing shall not include point-by-point comparisons of the debriefed offeror's proposal with those of other offerors. Moreover, the debriefing shall not reveal any information exempt from release under the Freedom of Information Act (5 U.S.C. 552) including—

(1) Trade secrets;

(2) Privileged or confidential manufacturing processes and techniques;

(3) Commercial and financial information that is privileged or confidential, including cost breakdowns, profit, indirect cost rates, and similar information; and

(4) The names of individuals providing reference information about an offeror's past performance.

(f) The contracting officer shall include an official summary of the debriefing in the contract file.

15.807 Protests against award.

(a) Protests against award in negotiated acquisitions shall be treated substantially the same as in sealed bidding (see Subpart 33.1). Use of agency protest procedures which incorporate the alternative dispute resolution provisions of Executive Order 12979 is encouraged for both preaward and postaward protests.

(b) If, within one year of contract award, a protest causes the agency to issue either a new solicitation or a new request for revised offers on the protested contract award, the agency shall make available to prospective offerors or original offerors still within the competitive range, respectively—

(1) Information provided in any debriefings conducted on the original award about the successful offeror's proposal; and

(2) Other nonproprietary information that would have been provided to the original offerors.

15.808 Discovery of mistakes.

Mistakes in a contractor's proposal that are disclosed after award shall be processed in accordance with 14.407–4.

15.809 Forms.

(a) Optional Form YY, Contract Award, may be used to award negotiated contracts. If the form is not used, the award document shall incorporate the agreement and award language from the form.

(b) Standard Form 26, Award/Contract, may be used, if appropriately modified (e.g., substitute the MCF for the Uniform Contract Format Table of Contents). If so modified, the contracting officer shall remove the form designation (i.e., standard form number).

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

13. Section 36.524 is revised to read as follows:

36.524 Contracting by Negotiation.

The contracting officer shall insert in solicitations for construction the provision at 52.236–XX, Preparation of Offers—Construction, when contracting by negotiation.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. Section 52.215–1 is revised to read as follows:

52.215–1 Instructions to Offerors—Negotiated Acquisition.

As prescribed in 15.208(a), insert the following provision:

Instructions to Offerors—Negotiated Acquisition (Date)

(a) *Definitions.*

(1) *Time,* if stated as a number of days, will include Saturdays, Sundays, and Federal holidays.

(2) *In writing* or *written* means any worded or numbered expression which can be read, reproduced, and later communicated, and includes electronically transmitted and stored information.

(3) *Revision* means a revision of an offer requested by the contracting officer during discussions.

(4) *Discussion* means communication after establishment of the competitive range between the contracting officer and an offeror in the competitive range.

(5) *Communication* means interchanges with offerors which are not discussions. They may be conducted to obtain information which explains or resolves ambiguities or for minor clarifications.

(b) *Amendments to solicitations.* If this solicitation is amended, all terms and conditions which are not modified remain unchanged. Offerors shall acknowledge receipt of any amendment to this solicitation by the date and time specified in the amendment(s).

(c) *Submission, revision and withdrawal of offers.* (1) Unless other methods (*e.g.* electronic commerce, facsimile, etc.) are permitted in the solicitation, offers and modifications to offers shall be submitted in paper media in sealed envelopes or packages (i) addressed to the office specified in the solicitation, and (ii) showing the time specified for receipt, the solicitation number, and the name and address of the offeror.

(2) The first page of the offer must show—

(i) The solicitation number;

(ii) The name, address, and telephone number of the offeror;

(iii) A statement specifying the extent of agreement with all terms, conditions, and provisions included in the solicitation and agreement to furnish any or all items upon which prices are offered at the price set opposite each item;

(iv) Names, titles, and telephone numbers of persons authorized to negotiate on its behalf with the Government in connection with this solicitation; and

(v) Name, title, and signature of person authorized to sign the offer. Offers signed by an agent shall be accompanied by evidence of that agent's authority, unless that evidence has been previously furnished to the issuing office.

(3) Offerors are responsible for submitting offers, and any requested revisions to them, to the Government office designated in the solicitation on time. Unless the solicitation states a specific time, the time for receipt is 4:30 p.m., local time, at the designated Government office on the date that offers or requested revisions are due. Offers, and requested revisions to them, that are received in the designated Government office after the time for receipt are ''late'' and shall be considered at the Source Selection Authority's discretion.

(4) Unless otherwise specified in the solicitation, the offeror may propose any item or combination of items.

(5) Offers submitted in response to this solicitation shall be in the English language and shall be in terms of U.S. dollars, unless otherwise permitted in the solicitation.

(6) Offerors may not revise offers unless requested by the Contracting Officer.

(7) Offers may be withdrawn at any time prior to award. Withdrawals are effective upon receipt by the Contracting Officer.

(d) *Period for acceptance of offers.* Offers in response to this solicitation will be valid for the number of days specified on the solicitation cover sheet (unless a different period is proposed by the offeror.

(e) *Restriction on disclosure and use of data.* Offerors who include in their proposals data that they do not want disclosed to the public for any purpose or used by the Government except for evaluation purposes, shall—

(1) Mark the title page with the following legend:

This proposal includes data that shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed—in whole or in part—for any purpose other than to evaluate this proposal. If, however, a contract is awarded to this offeror as a result of—or in connection with—the submission of this data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the resulting contract. This restriction does not limit the Government's right to use information contained in this data if it is obtained from another source without restriction. The data subject to this restriction are contained in sheets [*insert numbers or other identification of sheets*]; and

(2) Mark each sheet of data it wishes to restrict with the following legend:

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this proposal.

(f) *Contract award* (1) The Government intends to award a contract or contracts resulting from this solicitation to the responsible offeror(s) whose offer(s) conforming to the solicitation represent the best value.

(2) The Government may reject any or all offers if such action is in the Government's interest.

(3) The Government may waive informalities and minor irregularities in offers received.

(4) The Government intends to evaluate proposals and award a contract without discussions with offerors (except communications). Therefore, each individual offer should contain the offeror's best terms from a cost or price and technical standpoint. The Government reserves the right to conduct discussions if the Contracting Officer later determines them to be necessary. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals.

(5) The Government reserves the right to make an award on any item for a quantity less than the quantity offered, at the unit cost or prices offered, unless the offeror specifies otherwise in the offer.

(6) Communications with offerors after receipt of an offer do not necessarily constitute a rejection or counteroffer by the Government.

(7) The Government may determine that an offer is unacceptable if the prices proposed are materially unbalanced between line items or subline items. An offer is materially unbalanced when it is based on prices significantly less than

cost for some work and prices which are significantly overstated in relation to cost for other work, and if there is a reasonable doubt that the offer will result in the lowest overall cost to the Government, even though it may be the low evaluated offer, or it is so unbalanced as to be tantamount to allowing an advance payment.

(8) The Government reserves the right to make multiple awards if, after considering the additional administrative costs, it is in the Government's best interest to do so.

(9) Award of a contract is effective upon transmittal of the contract signed by the Government.

(10) The Government may disclose the following information in postaward debriefings to other offerors: (i) the overall evaluated cost or price and technical rating of the successful offeror; (ii) the overall ranking of all offerors, when any ranking was developed by the agency during source selection; (iii) a summary of the rationale for award; and (iv) for acquisitions of commercial end items, the make and model of the item to be delivered by the successful offeror.

(End of provision)

Alternate I (Date). As prescribed in 15.208(a)(1), substitute the following paragraph (f)(4) for paragraph (f)(4) of the basic provision:

(4) The Government intends to evaluate proposals and award a contract after conducting discussions with responsible offerors whose proposals have been determined to be within the competitive range. If the Contracting Officer determines that the number of proposals that would otherwise be in the competitive range exceeds the number at which an efficient competition can be conducted, the Contracting Officer may limit the number of proposals in the competitive range to the greatest number that will permit an efficient competition among the most highly rated proposals. Therefore, the offeror's initial offer should contain the offeror's best terms from a price and technical standpoint.

Alternate II (Date). As prescribed in 15.208(a)(2), add the following to paragraph (f)(4):

(4) If the Contracting Officer exercises the Government's right to limit the number of proposals in the competitive range, the competitive range will be limited to no more than _____ (*insert number*).

15. Section 52.215–2 is amended by revising the introductory text to read as follows:

52.215–2 Audit and Records—Negotiation.

As prescribed in 15.208(b), insert the following clause:

* * * * *

16. Sections 52.215–3 through 52.215–8 are revised to read as follows:

52.215–3 Solicitation for Information or Planning Purposes.

As prescribed in 15.208(c), insert the following provision:

Solicitation for Information or Planning Purposes (Date)

(a) The Government does not intend to award a contract on the basis of this solicitation or to otherwise pay for the information solicited except as provided in subsection 31.205–18, Bid and proposal costs of the Federal Acquisition Regulation.

(b) Although ''offer'' and ''offeror'' are used in this Request for Information, your response will be treated as information only. It shall not be used as an offer.

(c) This solicitation is issued for the purpose of: [*state purpose*].

(End of provision)

52.215–4 Type of Business Organization.

As prescribed in 15.208(d), insert the following provision:

Type of Business Organization (Date)

The offeror or quoter, by checking the applicable box, represents that—

(a) It operates as a corporation incorporated under the laws of the State of _____, ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, or ☐ a joint venture.

(b) If the offeror or quoter is a foreign entity, it operates as ☐ an individual, ☐ a partnership, ☐ a nonprofit organization, ☐ a joint venture, or ☐ a corporation, registered for business in _____
(country)

(End of provision)

52.215–5 Facsimile Proposals.

As prescribed in 15.208(e), insert the following provision:

Facsimile Proposals (Date)

(a) *Definition-Facsimile proposal,* as used in this solicitation, means a proposal, revision or modification of a proposal, or withdrawal of a proposal that is transmitted to and received by the Government via facsimile machine.

(b) Offerors may submit facsimile proposals as responses to this solicitation. Facsimile offers are subject to the same rules as paper proposals.

(c) Telephone number of receiving facsimile equipment:[insert telephone number]

(d) If the offeror chooses to transmit a facsimile proposal, the Government will not be responsible for any failure attributable to the transmission or receipt of the facsimile proposal including, but not limited to, the following:

(1) Receipt of garbled or incomplete proposal.

(2) Availability or condition of the receiving facsimile equipment.

(3) Incompatibility between the sending and receiving equipment.

(4) Delay in transmission or receipt of proposal.

(5) Failure of the offeror to properly identify the proposal.

(6) Illegibility of proposal.

(7) Security of proposal data.

(e) The Government reserves the right to make award solely on the facsimile proposal. However, if requested to do so by the Contracting Officer, the apparently successful offeror agrees to promptly submit the complete original signed proposal.

(End of provision)

52.215–6 Place of Performance.

As prescribed in 15.208(f), insert the following provision:

Place of Performance (Date)

(a) The offeror or quoter, in the performance of any contract resulting from this solicitation, ☐ intends, ☐ does not intend [*check applicable block*] to use one or more plants or facilities located at a different address from the address of the offeror or quoter as indicated in this proposal or quotation.

(b) If the offeror or quoter checks ''intends'' in paragraph (a) of this provision, it shall insert in the spaces provided below the required information:

Place of Performance

(Street Address, City, County, State, Zip Code)

_____

_____

Name and Address of Owner and Operator of the Plant or Facility if Other than Offeror Quoter

_____

_____

(End of provision)

52.215–7 Annual Representations and Certifications—Negotiation.

As prescribed in 15.208(g), insert the following provision:

Annual Representations and Certifications—Negotiation (Date)

The offeror certifies that annual representations and certifications (check the appropriate block):

☐ (a) Dated _____[*insert date of signature on submission*] that are incorporated herein by reference, have been submitted to the Contracting Office issuing this solicitation and that the submittal is current, accurate, and complete as of the date of this offer, except as follows [*insert changes that affect only this solicitation; if ''none,'' so state*]:

☐ (b) Are enclosed.

(End of provision)

52.215–8 Order of Precedence.

As prescribed in 15.208(h), insert the following clause:

Order of Precedence (Date)

Any inconsistency in this solicitation or contract shall be resolved by giving precedence in the following order: (a) The Acquisition Description (excluding the specifications); (b) tailored clauses; (c) Performance Requirements (including the specifications); (d) other contract clauses; and (e) other parts of the contract, including attachments.

(End of clause)

17. Section 52.236–XX is added to read as follows:

52.236–XX Preparation of Offers—Construction.

As prescribed in 36.524, insert the following provision:

Preparation of Offers—Construction (Date)

(a) Offers must be (1) Submitted on the forms furnished by the Government or on copies of those forms, and (2) manually signed. The person signing an offer must initial each erasure or change appearing on any offer form.

(b) The offer form may require offerors to submit offer prices for one or more items on various bases, including—

(1) Lump sum offer;

(2) Alternate prices;

(3) Units of construction; or

(4) Any combination of subparagraphs (b)(1) through (b)(3) of this provision.

(c) If the solicitation requires an offer on all items, failure to do so will disqualify the offer. If an offer on all items is not required, offerors should insert the words ''no offer'' in the space provided for any item on which no price is submitted.

(d) Alternate offers will not be considered unless this solicitation authorizes their submission.

(End of provision)

PART 53—FORMS

18. Section 53.213 is amended by revising paragraph (a) to read as follows:

53.213 Simplified acquisition procedures (SF's 18, 30, 44, 1165, OF's 347, 348).

(a) *SF 18 (Rev. 6/95), Request for Quotations.* SF 18 is prescribed for use in obtaining price, cost, delivery, and related information from suppliers as specified in 13.107(a).

* * * * *

19. Section 53.214 is amended by revising the first sentences of paragraphs (a) and (d) to read as follows:

53.214 Sealed bidding.

(a) *SF 26, Award/Contract.* SF 26 is prescribed for use in awarding sealed bid contracts for supplies or services in which bids were obtained on SF 33, Solicitation, Offer, and Award, as specified in 14.408–1(d)(1). * * *

* * * * *

(d) *SF 1447(5/88), Solicitation/Contract.* SF 1447 is prescribed for use in soliciting supplies or services and for awarding contracts that result from the bids.* * *

* * * * *

20. Section 53.215–1 is revised to read as follows:

53.215–1 Solicitation and receipt of proposals and quotations.

The following forms are prescribed, as stated below, for use in contracting by negotiation (except for construction, architect-engineer services, or acquisitions made using simplified acquisition procedures):

(a) *OF 307 (XX/96), Solicitation and Offer-Negotiated Acquisition.* OF XX may be used to support solicitation of negotiated contracts as specified in 15.210(a). Award of such contracts may be made by OF YY, as specified in 15.809(a).

(b) *OF 308 (XX/96), Amendment of Solicitation.* OF XY may be used to amend solicitations of negotiated contracts, as specified in 15.210(b).

(c) *OF 309 (XX/96), Contract Award.* OF YY may be used to award negotiated contracts as specified in 15.809(a).

(d) *SF 26 (REV. 4/85), Award/Contract.* SF 26 as prescribed in 53.214(a) may be used in entering into negotiated contracts in which the signature of both parties on a single document is appropriate, as specified in 15.809(b).

(e) *SF 30, Amendment of Solicitation/Modification of Contract.* SF 30, prescribed in 53.243, may be used for amending requests for proposals, and for amending requests for information, as specified in 15.210(c).

(f) *SF 33, Solicitation, Offer, and Award.* SF 33, prescribed in 53.214(c), may be used in connection with the solicitation and award of negotiated contracts. Award of such contracts may be by either OF YY, SF 33, or SF 26, as specified in 15.809(a) and (b), and 53.214(c).

(g) *OF 17 (REV. 12/93), Offer Label.* OF 17 may be furnished with each request for proposals to facilitate identification and handling of proposals, as specified in 15.210(d).

21. Section 53.243 is amended by revising the introductory paragraph to read as follows:

53.243 Contract modifications.

SF 30 (REV 10/83), Amendment of Solicitation/Modification of Contract. SF 30 is prescribed for use in amending solicitations, as specified in 14.208, and 43.301, modifying purchase and delivery orders, as specified in 13.503(b), and modifying contracts, as specified in 42.1203(f), 43.301, 49.602–5, and elsewhere in this regulation. The form may also be used to amend solicitations for negotiated contracts, as specified in 15.209(c). Pending the publication of a new edition of the form, Instruction (b), Item 3 (effective date) is revised in paragraphs (3) and (5) as follows:

* * * * *

22. Sections 53.302–307, 53.302–308, and 53.302–309 are added to read as follows:

BILLING CODE 6820–EP–P

53.302–307 Optional Form 307 Contract Award.

CONTRACT AWARD			PAGE OF PAGES
1. CONTRACT NUMBER	2. EFFECTIVE DATE	3. SOLICITATION NUMBER	4. REQUISITION/PROJECT NUMBER
5. ISSUED BY CODE		6. ADMINISTERED BY *(If other than Item 5)* CODE	
7. NAME AND ADDRESS OF CONTRACTOR CODE		8. PAYMENT WILL BE MADE BY	
9. DUNS NUMBER		10 SUBMIT INVOICES *(4 copies unless otherwise specified)* TO ☐ ITEM 5 ☐ ITEM 6 ☐ ITEM 8 ☐ OTHER *(Specify)*	

11. TABLE OF CONTENTS
(Insert the page number where each of the listed items is found in this package)

ITEM	PAGE	ITEM	PAGE
I SOLICITATION AND OFFER		IV CONTRACT CLAUSES	
II ACQUISITION DESCRIPTION		V PERFORMANCE REQUIREMENTS	
III FINANCIAL AND ADMINISTRATIVE INFORMATION			

12. BRIEF DESCRIPTION

13. TOTAL AMOUNT OF CONTRACT ▶

14. CONTRACTOR'S AGREEMENT. Contractor agrees to furnish and deliver the items or perform services to the extent stated in this document for the consideration stated. The rights and obligations of the parties to this contract shall be subject to and governed by this document and any documents attached or incorporated by reference.

☐ a. CONTRACTOR IS REQUIRED TO SIGN THIS DOCUMENT AND RETURN FOUR COPIES TO THE ISSUING OFFICE. *(Check if applicable)*

b. SIGNATURE OF PERSON AUTHORIZED TO SIGN

c. NAME OF SIGNER

d. TITLE OF SIGNER

e. DATE

15. AWARD. The Government hereby accepts your offer on the solicitation identified in item 3 above as reflected in this award document. The rights and obligations of the parties to this contract shall be subject to and governed by this document and any documents attached or incorporated by reference.

a. UNITED STATES OF AMERICA *(Signature of Contracting Officer)*

b. NAME OF CONTRACTING OFFICER

c. DATE

OPTIONAL FORM 307 (REV.)

DRAFT

53.302–308 Optional Form 308 Solicitation and Offer—Negotiated Acquisition.

SOLICITATION AND OFFER - NEGOTIATED ACQUISITION	PAGE	OF	PAGES

I. SOLICITATION

1. SOLICITATION NUMBER	2. DATE ISSUED	3. OFFERS DUE BY	4. OFFERS VALID FOR 60 DAYS UNLESS A DIFFERENT PERIOD IS ENTERED HERE

5. ISSUED BY	6. ADDRESS OFFER TO *(If other than Item 5)*

7. FOR INFORMATION CALL *(No collect calls)*

a. NAME	b. TELEPHONE		c. E-MAIL ADDRESS
	AREA CODE	PHONE NUMBER	

8. BRIEF DESCRIPTION

9. TABLE OF CONTENTS

(Insert the page number where each of the listed items is found in this package)

ITEM	PAGE	ITEM	PAGE
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II ACQUISITION DESCRIPTION		V PERFORMANCE REQUIREMENTS	
III FINANCIAL AND ADMINISTRATIVE INFORMATION		VI PROPOSAL EVALUATION AND SUBMISSION INFORMATION	

II. OFFER

The undersigned agrees to furnish and deliver the items or perform services to the extent stated in this document for the consideration stated. The rights and obligations of the parties to the resultant contract shall be subject to and governed by this document and any documents attached or incorporated by reference.

10a. PERSONS AUTHORIZED TO NEGOTIATE	10b. TITLE	10c. TELEPHONE	
		AREA CODE	NUMBER

11. NAME AND ADDRESS OF OFFEROR	12a. SIGNATURE OF PERSON AUTHORIZED TO SIGN
	12b. NAME OF SIGNER
	12c. TITLE OF SIGNER
	12d. DATE / 12e. TELEPHONE: AREA CODE / NUMBER

OPTIONAL FORM 308 ()

SAMPLE

53.302–309 Optional Form 309—Amendment of Solicitation

AMENDMENT OF SOLICITATION
(Negotiated Procurements)

PAGE OF PAGES

NOTICE: Offerors must acknowledge receipt of this amendment in writing, by the date and time specified for proposal submissions or the date and time specified in Block 6, whichever is later. IF YOUR ACKNOWLEDGMENT IS NOT RECEIVED AT THE DESIGNATED LOCATION BY THE SPECIFIED DATE AND TIME, YOUR OFFER MAY BE REJECTED. If, by virtue of this amendment, you wish to change your offer, such change must make reference to the solicitation and this amendment and be received prior to the date and time specified in Block 6.

I. AMENDMENT

1. SOLICITATION NUMBER	2. SOLICITATION DATE	3. AMENDMENT NUMBER	4. AMENDMENT DATE

5. ISSUED BY

6. DUE DATE

THIS AMENDMENT DOES NOT CHANGE THE DATE BY WHICH OFFERS ARE DUE UNLESS A DATE AND TIME IS INSERTED BELOW.

a. DATE	b. TIME

7. FOR INFORMATION CALL *(No collect calls)*

a. NAME	b. TELEPHONE		c. E-MAIL ADDRESS
	AREA CODE	PHONE NUMBER	

8. DESCRIPTION OF AMENDMENT

Except as provided herein, all terms and conditions of the solicitation remain unchanged and in full force and effect.

II. ACKNOWLEDGMENT OF AMENDMENT

In lieu of other written methods of acknowledgment, the offeror may complete Blocks 9 and 10 and return this amendment to the address in Block 5.

9. NAME AND ADDRESS OF OFFEROR	10a. OFFEROR *(Signature of person authorized to sign)*
	10b. NAME OF SIGNER
	10c. TITLE OF SIGNER
	10d. DATE

OPTIONAL FORM 309

DRAFT

[FR Doc. 96–23392 Filed 9–10–96; 8:45 am]
BILLING CODE 6820–EP–C

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Thursday, September 12, 1996

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